

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52505; File No. SR-Amex-2005-056)

September 23, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Requirement that Registered Options Traders May Only Sign on to Auto-Ex for ETFs Traded by the Same or Adjoining Specialists and Shall Sign on to Auto-Ex for a Maximum of Fifteen ETFs

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 23, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 13, 2005, the Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes amendments to Amex Rule 958, Commentary .10 and Amex Rule 958-ANTE, Commentary .09, to establish that Registered Options Traders (“ROTs”) may only sign on to Auto-Ex for Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts (collectively “Exchange-Traded Funds” or “ETFs”) traded by the same or adjoining specialists, for a maximum of three (3) contiguous panels, and shall also not sign on to Auto-Ex for more than a maximum of fifteen (15) ETFs.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Form 19b-4 dated September 13, 2005, which replaced the original filing in its entirety (“Amendment No. 1”).

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

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### **Rule 958. Options Transactions of Registered Traders**

**(a)-(h)** - No change

**Commentary ...**

**.01 - .09** - No change

**.10** (a) Transactions on the Floor in index warrants, currency warrants, securities listed pursuant to Section 107 of the Company Guide ("Other Securities"), and Trust Issued Receipts listed pursuant to Amex Rules 1200 et seq. which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule, and shall only be effected by Registered Traders who are regular members. Transactions by Registered Traders on the Floor in derivative products (as defined in Article I, Section 3(d) of the Exchange Constitution) which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule. In addition, Amex Rule 111, Commentary .01 shall not apply to such transactions. (See Amex Rule 111, Commentary .12, and Amex Rule 114, Commentary .14.)

(b) A Registered Trader who is logged onto Auto-Ex shall only sign on to Auto-Ex for Portfolio Depository Receipts, Index Fund Shares and Trust Issued Receipts (collectively "Exchange Traded Funds" or "ETFs") traded on the same or contiguous panels, i.e. ETFs traded by two adjoining Specialists, or ETFs traded by the same Specialist for a maximum of three (3) panels. A Registered Trader also shall not sign on to Auto-Ex for more than fifteen (15) ETFs. A Senior Floor Official may modify the foregoing restrictions if he determines that a Registered

Trader is able to appropriately fulfill his obligations to the market due to the level of activity in the ETFs and their proximity.

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### **Rule 958 – ANTE Options Transactions of Registered Options Traders**

**(a)-(i)** - No change

**Commentary ...**

**.01- .08-** No change

**.09** (a) Transactions on the Floor and through the facilities of the Exchange in index warrants, currency warrants, securities listed pursuant to Section 107 of the Company Guide ("Other Securities"), and Trust Issued Receipts listed pursuant to Amex Rules 1200 et seq. which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule, and shall only be effected by registered options traders who are regular members. Transactions by registered options traders on the Floor in derivative products (as defined in Article I, Section 3(d) of the Exchange Constitution) which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule. In addition, Amex Rule 111, Commentary .01 shall not apply to such transactions. (See Amex Rule 111, Commentary .12, and Amex Rule 114, Commentary .14.)

(b) A Registered Trader who is logged onto Auto-Ex shall only sign on to Auto-Ex for Portfolio Depository Receipts, Index Fund Shares and Trust Issued Receipts (collectively "Exchange Traded Funds" or "ETFs") traded on the same or contiguous panels, i.e. ETFs traded by two adjoining Specialists, or ETFs traded by the same Specialist for a maximum of three (3) panels. A Registered Trader also shall not sign on to Auto-Ex for more than fifteen (15) ETFs. A Senior Floor Official may modify the foregoing restrictions if he determines that a Registered

Trader is able to appropriately fulfill his obligations to the market due to the level of activity in the ETFs and their proximity.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 958(c) and Amex Rule 958(c)-ANTE currently provide that an ROT is required to make competitive bids and offers necessary to contribute to the maintenance of a fair and orderly market. ROTs must reasonably engage in dealings for their own accounts when there exists a lack of price continuity and a temporary disparity between the supply and demand of ETFs. As part of their market making activities in ETFs, ROTs may sign on to Auto-Ex, the Exchange's automatic execution system.

The Exchange proposes to amend Amex Rule 958, Commentary .10 and Amex Rule 958-ANTE, Commentary .09 to state that if an ROT logs onto Auto-Ex for ETFs, the ROT would only be allowed only to log onto contiguous panels, or on panels traded on by the same or

adjoining specialists (i.e., electronic order book work stations).<sup>4</sup> ROTs would be permitted to log onto a maximum of three (3) contiguous panels. The amendments to Amex Rule 958, Commentary .10 and Amex Rule 958-ANTE, Commentary .09 would also limit an ROT to trading in a maximum of fifteen (15) ETFs while signed onto Auto-Ex.<sup>5</sup> A Senior Floor Official would be permitted to modify these restrictions if he determines that an ROT is able to appropriately fulfill his obligations to the market due to the level of activity in the ETFs and their proximity.

The Exchange believes the foregoing amendments are necessary to ensure that ROTs fulfill their market-making obligations to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market in ETFs, by encouraging ROTs logged onto Auto-Ex to remain in the crowd. In order to make competitive bids, ROTs must remain in the crowd near the specialist panels. If ROTs were allowed to log onto Auto-Ex panels throughout the trading floor, it would be difficult for them to remain in the crowd. The Exchange notes that ROTs logged onto Auto-Ex may not be actively quoting because they do not post their own quotes on Auto-Ex; instead they receive executions, which are allocated to ROTs and specialists on the wheel, at the specialist quote. However, the Exchange's proposal, which only would permit a ROT to log onto three contiguous panels, would confine the ROT to one section of the trading floor with the intent of encouraging the ROT to remain in that area as part of the crowd in order to make competitive bids and offers in ETFs.

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<sup>4</sup> Each panel has one specialist assigned to it. Numerous ETFs may be traded on one panel.

<sup>5</sup> Although ETFs are traded on NETS (New Equity Trading System) and not ANTE (Amex New Trading Environment), Amex Rule 958-ANTE applies to ETFs.

## 2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act<sup>6</sup>, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-056 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-056. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-Amex-2005-056 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Jonathan G. Katz  
Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).