

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52837; File No. SR-Amex-2005-056)

November 25, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a 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

On May 23, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to provide that Registered Options Traders (“ROT”) may only sign on to Auto-Ex<sup>3</sup> for a maximum of fifteen Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts (collectively, “Exchange-Traded Funds” or “ETFs”) and only if such ETFs are traded by the same or adjoining specialists for a maximum of three contiguous panels (*i.e.*, electronic order book work stations).<sup>4</sup> On September 13, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The proposed rule change and Amendment No. 1 were published for comment in the Federal Register on September 30, 2005.<sup>6</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

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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> Auto-Ex is the Exchange’s automated execution system.

<sup>4</sup> The Exchange stated that each panel has one specialist assigned to it and that numerous ETFs may be traded on each panel.

<sup>5</sup> See Form 19b-4 dated September 13, 2005, which replaced the original filing in its entirety (“Amendment No. 1”).

<sup>6</sup> Securities Exchange Act Release No. 52505 (September 23, 2005), 70 FR 57226.

Amex Rule 958(c) and Amex Rule 958(c)-ANTE currently require ROTs to make competitive bids and offers necessary to contribute to the maintenance of a fair and orderly market and to engage, to a reasonable degree, 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 proposed rule change would amend Amex Rule 958, Commentary .10, and Amex Rule 958-ANTE, Commentary .09, to state that, if an ROT logs on to Auto-Ex for ETFs, the ROT would only be permitted to log on to Auto-Ex for ETFs traded on the same or contiguous panels, *i.e.*, ETFs traded by the same or adjoining specialists, for a maximum of three contiguous panels. The proposal also would limit an ROT to trading in a maximum of fifteen ETFs while signed on to Auto-Ex.<sup>7</sup> A Senior Floor Official would be permitted to modify these restrictions if he or she 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 Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>8</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>9</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> in that it is designed to prevent fraudulent and manipulative acts and

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<sup>7</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.

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

In exchange for receiving certain benefits for carrying out their duties as market makers, ROTs have affirmative obligations, one of which is incorporated in current Amex Rule 958(c) and Amex Rule 958(c)-ANTE, which require ROTs to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market. The Exchange believes that, in order to make competitive bids and offers in an ETF, ROTs must be present in the crowd near the specialist panels for such ETF. ROTs logged on to Auto-Ex are entitled to receive executions at the specialist's quote but are not currently required to be present in the crowd. If an ROT is logged onto Auto-Ex panels throughout the trading floor, the ROT is less likely to be physically present in the trading crowd for a particular ETF, thus making it less likely that the ROT is able to make competitive bids and offers in such ETF because, in order to make competitive bids and offers, a ROT must be physically present in the trading crowd near the specialist panel for that ETF. The proposed rule change, by limiting the ROTs ability to log on to Auto-Ex to a maximum of three contiguous Auto-Ex panels, would confine the ROT to one area of the floor, thus encouraging the ROT to remain in the trading crowd for a particular ETF that such ROT is entitled to receive automatic executions at the specialist's quote. In this regard, the Commission believes that the proposed rule change should help ensure that ROTs fulfill their market maker obligations to make competitive bids and offers.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-Amex-2005-056), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Jonathan G. Katz  
Secretary

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<sup>11</sup> 15 U.S.C. 78f(b).

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