

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53234; File No. SR-Amex-2006-009)

February 6, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to “All or None” Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 2, 2006, 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 and II below, which Items have been prepared by the Amex. On February 3, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Exchange filed the proposed rule change, as amended, as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Amex proposes to eliminate the “all or none” (“AON”) order type.⁵ The text of the proposed rule change, as amended, is below. Proposed new language is underlined. Proposed deletions are in [brackets].

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Partial Amendment No. 1 (“Amendment No. 1”) corrects an error in the heading of Exhibit 5 of Form 19b-4.

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange is proposing to eliminate the AON order type for equities (including Exchange Traded funds, Trust Issued Receipts and other equity traded products), options, and bonds.

Rule 118. Trading in Nasdaq National Market Securities

(a) – (p) No change.

(q) An institutional order is a limit order for a Nasdaq National Market Security of 10,000 shares or more transmitted to the order book electronically which is to be executed automatically in full at one price. If it is not executed automatically in full at one price, it is to be routed to the specialist for execution and may be partially executed. [Unlike an all or none order, a]An institutional order has standing on the limit order book. An institutional order may not be entered for the proprietary account of a broker-dealer.

Rule 122. Bids or Offers for More Than Unit of Trading

Bids or offers for more than one unit of trading shall be deemed to be for the amount thereof or a smaller number of units[, except that bids or offers may be made and executed "all or none" if all of the following conditions are met:

Bids or offers, "all or none"

- (1) The securities bid for or offered are bonds;
- (2) The amount bid for or offered equals or exceeds \$25,000 of par value;
- (3) The bid or offer is executed at a price higher than the best bid price and lower than the best offer price, "regular way," at the time of execution].

Rule 124. Types of Bids and Offers

(a) – (f) No change.

["All or none"]

(g) "All or none," i.e., that the bid or offer is for an amount of securities equal to the total amount of securities bid for or offered and no less; provided, however, that such condition may be specified only in accordance with the provisions of Rule 122.]

Rule 128A. Automatic Execution

(a) No change.

(b) Definitions:

Amex Published Quote ("APQ") - Specialist/Registered Trader Quantity – No change.

Available Book Quantity: The Available Book Quantity is the number of shares on the order book at the APQ plus additional orders on the book that can be executed at or within the APQ minus shares on the book priced at or within the APQ that cannot be executed by their terms (e.g., [all or none orders and]tick sensitive orders).

Trade Threshold – Maximum Spread Value – No change.

(c) – (i) No change.

(j) Auto-Ex Unavailability. Auto-Ex will be unavailable in the following situations.

(i) – (vii) No change.

(viii) Auto-Ex will not occur with respect to an incoming Auto-Ex Eligible [All Or None or] Institutional Order in the event that there is insufficient size to execute the order in full at one price.

(ix) – (xi) No change.

(xii) [Auto-Ex will not occur if it would cause a trade to occur through the price of an all or none order on the book.

(xiii)] Auto-Ex will not occur if there are orders on both sides of the market when the order book comes out of a Freeze condition to allow the specialist to pair-off the orders.

(xiii) [(xiv)] Auto-Ex will not occur if the spread exceeds the Maximum Spread Value.

Auto-Ex Eligible Orders that are not automatically executed will be routed to the specialist for handling.

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Rule 131. Types of Orders

(a)-(b) No change.

[All or none order

(c) An all or none order is a market or limited price order which is to be executed in its entirety or not at all, but, unlike a fill or kill order, is not to be treated as cancelled if not executed as soon as it is represented in the Trading Crowd. The making of "all or none" bids or offers in stocks is prohibited, and the making of "all or none" bids or offers in bonds is subject to the restrictions of Rule 122.]

(d) – (t) No change.

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Rule 904. Position Limits

(a) – (b) No change.

... Commentary

.01 - .09 No change.

.10 No change.

(a) – (b) No change.

(c) The facilitation firm shall comply with the following provisions regarding the execution of its customer's order and its own facilitating order:

(1) neither the customer order nor the facilitation order may be contingent on ["all or none" or] "fill or kill" instructions;

(2) the orders may not be executed until Rule 950(d) procedures have been satisfied and all market participants have been given a reasonable time to participate in the order.

* * * * *

.11 No change.

Rule 904C. Position Limits

(a) - (d) No change.

... Commentary

.01 No change.

.02 No change.

(a)-(b) No change.

(c) The facilitation firm shall comply with the following provisions regarding the execution of its customer's order and its own facilitating order:

(1) neither the customer order nor the facilitation order may be contingent on ["all or none" or] "fill or kill" instructions;

(2) the orders may not be executed until Rule 950 (d) procedures have been satisfied and all market participants have been given a reasonable time to participate in the order;

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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, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Amex 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, Proposed Rule Change

1. Purpose

The Exchange proposes the elimination of the AON order type. The Amex states that, Exchange Rule 131(c) defines an AON order as a market or limited price order which is to be executed in its entirety or not at all, but, unlike a “fill or kill”⁶ order, is not to be treated as cancelled if not executed as soon as it is represented in the Trading Crowd.

The Amex believes that, AON orders are unnecessary and should be eliminated because:

(i) AON orders are infrequently used and represent a very small percentage of order flow; (ii) the

⁶ The Exchange states that, Amex Rule 131(i) defines a “fill or kill” order as a market or limited price order which is to be executed in its entirety as soon as it is represented in the Trading Crowd, and such order, if not so executed, is to be treated as cancelled. The Amex states that, for purposes of this definition, a “stop” is considered an execution. The Amex states, that a fill or kill order for securities other than options sent to the order book electronically and not executed by Auto-Ex would be cancelled immediately.

resources and programming effort necessary to support AON orders cannot be justified; (iii) the availability of “immediate or cancel”⁷ and “fill or kill” orders provide a better substitute for customers seeking similar types of executions; and (iv) AON orders cannot be represented in the Amex’s published best bid/offer due to the conditional nature of the order’s execution.

In support of the infrequent use of AON orders, Amex states that, an analysis of all AON equity orders on the Exchange for the months of November 2005 and December 2005 revealed that AON orders are infrequently used and represent a very small percentage of equity order flow. The Exchange notes that out of 7,854,438 and 8,736,624 orders entered on the Exchange during November 2005 and December 2005, respectively, only 53,405, or 0.68% and 54,607, or 0.63%, respectively, were AON orders. In addition, approximately 70.1% and 72.1% of these AON orders that were entered during the respective months of November and December were cancelled.

The Amex states that, similarly, an analysis of all AON options orders on the Exchange for the months of November 2005 and December 2005 also revealed that AON orders are infrequently used and represent a very small percentage of options order flow. The Exchange notes that out of 1,093,173 and 996,564 orders entered on the Exchange during November 2005 and December 2005, respectively, only 6,857, or 0.63% and 4,278 or 0.43%, respectively, were AON orders. In addition, approximately 26.6% and 28.3% of these AON orders that were entered during the respective months of November and December were cancelled.

⁷ The Exchange states that, Amex Rule 131(k) defines an “immediate or cancel” order as a market or limited price order which is to be executed in whole or in part as soon as such order is represented in the Trading Crowd, and the portion not so executed is to be treated as cancelled. The Amex states that, for the purposes of this definition, a “stop” is considered an execution. The Amex states that, in the case of an immediate or cancel order for securities other than options sent to the order book electronically, any portion not executed by Auto-Ex would be cancelled automatically.

Additionally, Amex notes that the New York Stock Exchange (the “NYSE”) filed a proposal with the Commission in July 2005 to eliminate the AON order type citing similar reasons.⁸ The Exchange believes that the AON order type should be eliminated, and accordingly, all references to AON orders should be eliminated from relevant Amex rules.

2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁸ Securities Exchange Act Release No. 52154 (July 28, 2005), 70 FR 44966 (August 4, 2005) (order approving file No. SR-NYSE-2005-51).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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

The Exchange states that, no written comments were solicited or received with respect to the proposed rule change, as amended.

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

Because the proposed rule change, as amended, does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹³ However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has satisfied the five-day filing requirement. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change, as amended, to become upon filing. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to expeditiously eliminate an infrequently used order type, which may increase the efficiency of the Exchange. The Commission also notes that this proposed

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ Id.

rule change, as amended, is similar to SR-NYSE-2005-51.¹⁵ For the reasons stated above, the Commission designates the proposal, as amended, to become effective and operative immediately.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.¹⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Please include File Number SR-Amex-2006-009 on the subject line.

¹⁵ See *supra*, note 8.

¹⁶ For purposes only of accelerating the operative date of this proposal, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ The effective date of the original proposed rule change is February 2, 2006, and the effective date of Amendment No. 1 is February 3, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, the Commission considers the period to commence on February 3, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-009. 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 Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-2006-009 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.¹⁸

Nancy M. Morris
Secretary

¹⁸ 17 CFR 200.30-3(a)(12).