

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-48818; File No. SR-Amex-2003-28)

November 21, 2003

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the American Stock Exchange LLC Relating to the Elimination of the 10-Second Interval at Which Persons May Enter Auto-Ex Eligible Orders for Exchange-Traded Funds

I. Introduction

On April 16, 2003, 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”),¹ and Rule 19b-4 thereunder,² a proposed rule change to eliminate the 10-second “speed bump” on the entry of Auto-Ex eligible orders for Exchange-Traded Funds (“ETFs”) and Trust-Issued Receipts (“TIRs”), while allowing it to be reinstated if conditions warrant its reintroduction. On May 7, 2003, Amex submitted Amendment No. 1 to the proposed rule change.³ On June 3, 2003, Amex submitted Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended by Amendment Nos. 1 and 2 was published for comment in the Federal Register on June 16, 2003.⁵ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission dated May 6, 2003 (“Amendment No. 1”).

⁴ See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission dated June 2, 2003 (“Amendment No. 2”).

⁵ See Securities Exchange Act Release No. 48004 (June 9, 2003), 68 FR 35741 (June 16, 2003) (“Notice”).

received one comment letter with respect to the proposal.⁶ On October 3, 2003, the Amex filed Amendment No. 3 to the proposed rule change.⁷ This Order approves the proposed rule change; grants accelerated approval to Amendment No. 3 to the proposed rule change; and solicits comments from interested persons on Amendment No. 3.

II. Description of the Proposal and Amendment Nos. 1 and 2 Thereto

On June 19, 2001, the Commission approved the Exchange's proposal to permit the automatic execution ("Auto-Ex") of orders for Exchange Traded Funds ("ETFs") on a six-month pilot program basis.⁸ The Exchange extended the pilot several times for an additional six months, most recently on July 2, 2003.⁹ As part of an extension of the Auto-Ex for ETFs pilot the Exchange reduced, from 30 seconds to 10 seconds, the interval at which member firms could enter orders on the same side of the market for any account in which the same person is directly or indirectly interested.¹⁰ The Exchange now proposes to eliminate the 10-second "speed bump" for all ETFs. The Exchange also proposes to amend Amex Rule 128A to clarify that Auto-Ex for ETFs applies to both ETFs and TIRs.

⁶ See letter to Jonathan G. Katz, Secretary, Commission, from Patrick K. Blackburn, Executive Vice President and Lawrence J. Hanson, Senior Vice President, ABN AMRO Incorporated, dated June 30, 2003.

⁷ See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated October 3, 2003 ("Amendment No. 3").

⁸ See Securities Exchange Act Release No. 44449 (June 19, 2001), 66 FR 33724 (June 25, 2001), (SR-Amex-2001-29).

⁹ See Securities Exchange Act Release No. 48126 (July 2, 2003), 68 FR 41189 (July 10, 2003).

¹⁰ See Securities Exchange Act Release No. 47105 (December 30, 2002), 68 FR 592 (January 6, 2003).

The Exchange's rules currently provide that Auto-Ex eligible orders on the same side of the market in an ETF for any account in which the same person is directly or indirectly interested may only be entered at intervals of 10 seconds or more. According to the Exchange, order flow providers have objected to this interval since it requires them to block their customers from entering any Auto-Ex eligible orders on the same side of the market in the Exchange's order routing systems for the affected security within 10 seconds. Accordingly, the Exchange proposes to eliminate the speed bump in ETFs and TIRs while allowing it to be reinstated on a temporary basis if conditions warrant its reintroduction.

The Exchange states that the Auto-Ex Enhancements Committee ("Committee"), upon the request of a specialist, would review a request to reinstate the 10-second speed bump. The Committee consists of the Exchange's four Floor Governors and the Chairmen (or their designees) of the Specialists Association, Options Market Makers Association and the Floor Brokers Association. According to the Exchange, this Committee currently reviews requests to change various Auto-Ex parameters. (See Commentaries .02 and .04 to Amex Rule 128A.) Under Amendment No. 2, which was included in the Notice, the Exchange proposed to give members and member organizations ten business days' notice prior to reintroducing the 10-second speed bump to allow them to implement internal procedures to comply with this requirement. The Exchange also proposed to notify members and member organizations of the reintroduction of the 10-second speed bump through Amex Notices, which are distributed on the Exchange Floor and posted on the Exchange's "Amex Trader" web site.

III. Comment Summary

The Commission received one comment letter on the proposed rule change. The commenter supported the elimination of the 10-second speed bump, but opposed the

requirement of only ten business days' notice for reinstatement of the speed bump.¹¹

Specifically, the commenter noted that reinstatement of the speed bump with just ten business days' notice is an insufficient amount of time to prepare internal systems to comply with the reinstated speed bump. The commenter suggested that the Exchange provide a 60 to 90 day reinstatement period. On October 3, 2003, the Exchange submitted Amendment No. 3 in response to the comment letter. In particular, the Exchange amended the proposal to give members and member organizations 30 calendar days' notice prior to reintroducing the 10-second speed bump to allow them to implement internal procedures to comply with the reinstated requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3 to the proposed rule change, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 such filing will also be available for inspection and copying at the principal

¹¹ See ABN AMRO Letter.

office of the Amex. All submissions should refer to File No. SR-Amex-2003-28 and should be submitted by [insert date 21 days from the date of publication].

V. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.¹² Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,¹³ in that it is designed to facilitate transactions in securities; 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 a national market system; and in general, to protect investors and the public interest. The Commission believes that the proposed rule change should benefit investors by allowing the entry of multiple Auto-Ex eligible orders on the same side of the market without regard to any “time-out” between entry of those orders, while affording the Exchange the option to reinstate the 10-second speed-bump if circumstances warrant such reintroduction. The Commission believes that 30 days is an appropriate period of time for members and member organizations to accommodate potential reinstatement of the 10-second speed bump.

¹² 15 U.S.C. 78f(b). 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).

¹³ 15 U.S.C. 78f(b)(5).

VI. Accelerated Approval of Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the Federal Register pursuant to Section 19(b)(2) of the Act.¹⁴ In Amendment No. 3, Amex addresses the concern raised in the comment letter by increasing the required notice of reinstatement of the 10-second speed bump from ten business days to 30 calendar days. As noted above, the Commission believes that this time period is appropriate. The Commission further believes that acceleration of the amendment will allow the Amex to remove the speed-bump without delay, thereby enabling entry of multiple Auto-Ex eligible orders on the same side of the market without a 10-second “time-out.”

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.¹⁵

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁶ that Amendment No. 3 be approved on an accelerated basis, and that the proposed rule change (SR-Amex-2003-28) be approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland
Deputy Secretary

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).