

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. 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 office of the Amex. All submissions should refer to File No. SR-Amex-2001-92 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-7113 Filed 3-25-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47531; File No. SR-Amex-2002-33]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change as Amended by Amendment No. 1 Thereto Relating to Proprietary Order Routing Facilities for Amex Listed Options and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto

March 19, 2003.

I. Introduction

On April 16, 2002, 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

prohibit members from using facilities that are not owned or operated by the Exchange to transmit orders electronically from the Amex floor to other exchanges through a direct electronic link, and to receive orders transmitted electronically to the Amex floor from other exchanges through a direct electronic link for the purchase or sale of Amex listed options after the complete implementation of the permanent intermarket linkage in the options market ("Options Linkage"). On April 30, 2002, Amex submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published in the **Federal Register** on May 8, 2002.⁴ The Commission received one comment letter on the proposed rule change.⁵ On May 28, 2002, Amex submitted Amendment No. 2 to the proposed rule change.⁶ On September 13, 2002, Amex submitted a response to the ISE Letter.⁷ On December 30, 2002, Amex submitted an additional response to the ISE Letter.⁸ This order approves the amended proposed rule change, provides notice of filing of Amendment No. 2 and grants accelerated approval to Amendment No. 2.

II. Description of the Proposal and Amendment No. 2

As originally filed, Amex proposed to prohibit members from using facilities that are not owned or operated by the Exchange to transmit orders⁹ electronically from the Amex floor to other exchanges through a direct electronic link, and to receive orders transmitted electronically to the Amex floor from other exchanges through a

direct electronic link for the purchase or sale of Amex listed options upon the complete implementation of the Options Linkage.¹⁰

In Amendment No. 2, Amex limited the proposed rule change to apply only to facilities and services of another registered exchange on the Amex floor that provide a direct electronic link to the other exchange. The proposed rule change would not alter the current ability of members and member organizations, with the prior written approval of Amex, to use an electronic order routing facility or service owned and operated by a registered broker-dealer to transmit orders for Amex listed options to another registered exchange for execution.

III. ISE Letter and Amex Responses

ISE Letter

In the ISE Letter, ISE argues that Amex's proposal has significant customer protection and competitive implications because it would require an Amex floor broker that sees an ISE price that is superior to the Amex price to route the order off-floor for transmission to the ISE. ISE believes the delay caused by off-floor transmissions raises serious risks that the ISE market may not be available when the customer order reaches ISE. In addition, ISE believes the Amex floor broker may determine that the delay makes the possibility of ISE execution too risky and may execute the order on the Amex at the inferior price. ISE points out that once the Options Linkage is implemented, the Amex broker could incur trade-through liability if the broker executes the order on the Amex at the inferior price.

ISE argues that in limiting members' ability to send orders electronically to other markets, the Amex impedes competition because, without this limitation, free market forces and price competition would lead to the sending of order flow to exchanges displaying superior prices. ISE stated its view that, under the proposal, market makers could use only the Options Linkage to access competing exchanges electronically, even if there may be more efficient methods of access, and that the Options Linkage will provide only limited access because: (1) Brokers will not have direct access to the Options Linkage; (2) market makers are prohibited from using the Options Linkage as an order delivery system for

³ See letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 29, 2002 ("Amendment No. 1"). In Amendment No. 1, Amex included the text of the proposed rule change.

⁴ See Securities Exchange Act Release No. 45864 (May 2, 2002), 67 FR 30985.

⁵ See letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. ("ISE"), to Jonathan Katz, Secretary, Commission, dated May 28, 2002 ("ISE Letter").

⁶ See letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 24, 2002 ("Amendment No. 2").

⁷ See letter from Bill Floyd-Jones, Assistant General Counsel, Amex, to Deborah Flynn, Division, Commission, dated September 13, 2002 ("Amex Initial Response").

⁸ See letter from Bill Floyd-Jones, Assistant General Counsel, Amex, to Deborah Flynn, Division, Commission, dated December 27, 2002 ("Amex Supplemental Response").

⁹ These facilities cannot be used for listed equities and Exchange-Traded Funds as the Intermarket Trading System serves as the mechanism for routing trading interest in these securities between exchanges.

¹⁰ The Commission approved the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Linkage Plan") in July 2000. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.