

relating to facilitation cross transactions, with an added clarification concerning specialist participation in such transactions. The pilot program was initially approved by the Commission on June 2, 2000, was most recently extended on January 10, 2003, and is due to expire on April 7, 2003.⁶

Commentary .02(d) to Amex Rule 950(d) established a pilot program to allow facilitation cross transactions in equity options.⁷ The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with an order for the member firm's proprietary account before specialists and/or registered options traders in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class-by-class basis, provided that the eligible order size is not for fewer than 50 contracts.

The amount of the guaranteed participation percentage depends upon a comparison of the original market quoted by the trading crowd in response to a request from the floor broker and the price at which the orders are traded. If the order is traded at the best bid or offer provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 20% of the order. If the order is traded at a price that improves the market provided by the trading crowd (i.e., at a price between the best bid and offer) in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 40% of the order. In addition, the facilitating member firm may only participate in the executed contracts after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled.

In addition to its proposal to adopt the pilot program permanently, the Exchange proposes to revise subparagraph (d)(3) of Commentary .02

to Amex Rule 950(d) to clarify the participation of the specialist in executed contracts allocated after all public customer orders and the member firm's facilitation order have been satisfied.⁸ Subparagraph (d)(3) would provide that the specialist shall be allocated the greater of either: (i) 20% of the executed contracts if the facilitating member firm, pursuant to the subparagraph (d)(1)(i) of Commentary .02, has participated to the extent of 20% of the executed contracts; or (ii) a share of the executed contracts that have been divided equally among the specialist and other participants to the trade.

2. Statutory Basis

The Exchange believes that the proposed rule change 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, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

The Exchange believes that the proposed rule change will impose no burden on competition.

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 with respect to the proposed rule change.

III. 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. 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 the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2000-49 and should be submitted by May 5, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.¹¹ In its approval of the pilot program,¹² the Commission detailed its reasons for finding the program's substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.¹³ The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,¹⁴ and the establishment of the pilot as a permanent program on the Amex raises no new regulatory issues for consideration by the Commission.

The Commission notes that, in approving member firms participation rights and other guaranteed participations in the past, it has found that rules entitling a market participant(s) to up to 40% of an order are not inconsistent with the statutory standards of competition and free and open markets.¹⁵ The Commission has raised concerns, on the other hand, about participation guarantees that "lock up" a larger percentage of an order, and thereby reduce the number of

⁶ See Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001); 44538 (July 11, 2001), 66 FR 37507 (July 18, 2001); 44924 (October 11, 2001), 66 FR 53456 (October 22, 2001); 45241 (January 7, 2002), 67 FR 1524 (January 11, 2002); 45703 (April 8, 2002), 67 FR 18272 (April 15, 2002); 46176 (July 9, 2002), 67 FR 47007 (July 17, 2002); 46630 (October 9, 2002), 67 FR 64425 (October 18, 2002); and 47153 (January 10, 2003), 68 FR 2378 (January 16, 2003).

⁷ Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

⁸ In addition to the clarification provided by the proposed rule change, subparagraph (d)(3) would continue to include the general statement that if the facilitation transaction occurred at the specialist's bid or offer, the total number of contracts guaranteed to the member firm and the specialist in the aggregate could not exceed 40% of the facilitation transaction. If the facilitation transaction occurred at a price at which the specialist was not on parity, the specialist would be entitled to no guaranteed participation allocation.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 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).

¹² See *supra*, note 6.

¹³ 15 U.S.C. 78f(b)(5) and (b)(8).

¹⁴ See, e.g., Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

¹⁵ See, e.g., Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000); 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000); 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).