

unreliable.⁹ Auto-Ex also would not occur if the execution would elect a stop or stop limit order on the book, or would trade through an all or none order on the book. The Exchange believes that the specialist should review situations where an incoming order may elect one or more stop orders or trade through an all or none order on the book to ensure that the orders are executed consistent with the maintenance of a fair and orderly market. Auto-Ex also would be unavailable for 10 seconds after an automatic execution to give the specialist an opportunity to update the market.

The Exchange believes that the 1,000 and 500 share size limits and the 10-second pause in Auto-Ex following an automatic execution are minimum standards that a specialist should have flexibility to increase on a security-by-security basis. The Exchange, consequently, is proposing to allow specialists to request an increase in the size of orders eligible for Auto-Ex, an increase in the number of trades between automatic executions before there is a pause in Auto-Ex, and a reduction in the 10-second pause. The Auto-Ex Enhancements Committee would review such requests to enhance these Auto-Ex parameters. The Auto-Ex Enhancements Committee also would review requests to reduce these parameters (if they had been previously increased) to no less than the base levels found in the rule.¹⁰ The Auto-Ex Enhancements Committee could delegate its authority under the rule to one or more Floor Governors. If a Governor acts pursuant to delegated authority, the Committee would have to meet promptly to review the Governor's decision.

Auto-Ex would be unavailable when the spread in the Amex Published Quote is 30 cents or more. The Exchange represents that this is intended to prevent automatic executions at

disadvantageous prices to the incoming electronic order.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,¹¹ in general, and Section 6(b)(5) of the Act,¹² 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 a 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 and dealers. The Exchange believes that the proposed rule change will speed the execution of small orders for Nasdaq stocks on the Amex. The Exchange also believes that the proposal will facilitate the comparison and settlement of trades, since Auto-Ex transactions result in "locked-in" trades.

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

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposal, in fact, will enhance competition among markets and thereby benefit investors by allowing the Exchange to provide Auto-Ex for Nasdaq stocks.

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

The Exchange has neither solicited nor received written comments on 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 such 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-2003-16 and should be submitted by May 22, 2003.

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

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register** to permit application of the Auto-Ex technology to Nasdaq stocks at the earliest time possible. 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.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁴ because it helps remove impediments to, and perfects the mechanisms of, a free and open market and a national market system. Specifically, the Commission believes that the proposed rule change does not raise any significant regulatory issues in view of the fact that the Exchange already provides Auto-Ex for options and ETFs, and the instant proposal seeks to extend existing Auto-Ex technology to another type of security traded on the Exchange. As a result, there are no unique regulatory issues that the Commission has not previously considered. In addition, the Exchange is proposing to implement Auto-Ex on a temporary basis until its enhanced Auto-Ex technology is available.

Furthermore, upon commencement of the Amex trading Nasdaq securities, the Commission received a substantial number of complaints that the Amex's trading of Nasdaq securities without Auto-Ex functionality was disrupting the Nasdaq marketplace generally. To

⁹ See Commentary .03 to Amex Rule 128A, "Contract Made on Acceptance of Bid or Offer." The Exchange has assured the Commission that the circumstances in which Auto-Ex is not available will be identical to the circumstances in which Auto-Ex is not available for ETFs and that the disengagement of Auto-Ex for Nasdaq securities will work in the same fashion as the disengagement of Auto-Ex for ETFs. Telephone conference among William Floyd-Jones, Associate General Counsel, Amex; Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission; and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (April 16, 2003).

¹⁰ The Auto-Ex Enhancements Committee is an existing committee of the Exchange consisting 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.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).