

2003, 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, II, and III below, which Items have been prepared by the Exchange. 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 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

Amex seeks 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. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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, the Proposed Rule Change

1. Purpose

On June 19, 2001, the Commission approved the Exchange's proposal to permit the automatic execution of orders for Exchange Traded Funds ("ETFs") on a six-month pilot program basis.⁵ The Exchange most recently

extended the pilot for an additional six months on December 4, 2002.⁶ As part of the most recent extension of the Auto-Ex for ETFs pilot, the Exchange reduced from 30 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. 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.

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. The Exchange, accordingly, is proposing 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.) The Exchange would 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 would 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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(5)⁸ 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 also believes that the proposed rule change will facilitate the use of Auto-Ex by order flow providers by eliminating a compliance burden on them. Finally, the Exchange asserts that the proposal also facilitates 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

Amex 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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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. 44449 (June 19, 2001), 66 FR 33724 (June 25, 2001), (SR-Amex-2001-29).

⁶ See Securities Exchange Act Release No. 47105 (December 30, 2002), 68 FR 592 (January 6, 2003), (SR-Amex-2002-99).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).