

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, when an order on the Amex is not eligible for automatic execution through Auto-Ex,³ the specialist is required to manually address and execute the order. The Exchange is proposing to amend Amex Rule 941(e)⁴ in order to provide that Linkage Orders⁵ may be automatically executed in certain cases even if Auto-Ex is not available for non-Linkage Orders.

The proposed amendment to Amex Rule 941(e) will allow the Exchange to automatically execute certain Linkage Orders even though the Exchange's Auto-Ex system has been disengaged or by-passed as a result of (i) an influx of orders or (ii) when a locked market has caused an inversion in the quote. Under these circumstances, an Exchange specialist would be able to provide an automatic execution for a Linkage Order even though a non-Linkage Order would continue to be ineligible for Auto-Ex.

The Amex is proposing this change because with respect to Linkage Orders, especially in those option classes experiencing high volume and activity, manual handling of such orders in situations when Auto-Ex is not available has created difficulty for specialists in meeting their regulatory obligations under Amex Rule 941(e).⁶ The result

³ Amex Rule 933(f)(i) sets forth the situations where Auto-Ex may be disengaged or operated in a manner other than the normal manner. The circumstances of Auto-Ex disengagement outlined in the Rule include market data delays, unusual markets, unusual market conditions, system malfunctions, influx of order executions and for certain market activity such as book bids or offers and locked or crossed markets.

⁴ Amex Rule 941(e) entitled "Receipt of Linkage Orders," sets forth the manner in which Linkage Orders will be executed given the Exchange's disseminated quotation and the size of the particular order.

⁵ "Linkage Order" means an order routed through the Linkage as permitted under the Linkage Plan. There are three types of Linkage Orders as follows: (i) "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) "Principal Order," which is an order for the principal account of an Eligible Market Maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and (iii) "Satisfaction Order," which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

⁶ Amex Rule 941(e) provides that if a Linkage Order is not eligible for automatic execution, the specialist must address the order within 15 seconds

has been that a portion of all Linkage Orders received by the Amex have not been executed. The Exchange believes that this proposal permitting an automatic execution for certain orders that would otherwise be ineligible for an automatic execution will help to increase the Exchange's executions of Linkage Orders.

The Amex, along with the other options exchanges, launched Phases I and II of the Linkage on January 31, 2003 and April 25, 2003, respectively. Phase I is limited to automatic executions while Phase II was expanded to include manual handling of Linkage Orders and satisfaction liability. Pursuant to an exemption granted by the Commission on May 30, 2003, the deadline for final implementation of Phase II of the Linkage Plan has been extended until June 27, 2003.⁷ The Exchange believes that the proposal will help specialists execute a larger percentage of their Linkage Orders consistent with the Plan.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general and furthers the objectives of Section 6(b)(5)⁹ 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest 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 proposed rule change will impose no burden on competition.

to provide an execution for at least the Firm Customer Quote Size or Firm Principal Quote Size, respectively. See also The Plan for the Purpose of Creating and Operating an Intermarket Options Market Linkage (the "Linkage Plan" or "Plan"), Securities Exchange Act Release No. 47297 (January 31, 2003), 68 FR 6526 (February 7, 2003).

⁷ See letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael Ryan, Executive Vice President and General Counsel, Amex, Joanne Moffic-Silver, General Counsel and Corporate Secretary, Chicago Board Options Exchange, Inc., Kathryn L. Beck, Senior Vice President, General Counsel and Corporate Secretary, Pacific Exchange, Inc. and Lanny Schwartz, Executive Vice President and General Counsel, Philadelphia Stock Exchange, Inc., dated May 30, 2003.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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

The foregoing proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act¹⁰ and paragraph (f)(6) of Rule 19b-4 thereunder.¹¹ Consequently, because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) may not become operative prior to thirty (30) days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii) the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange seeks to have the thirty (30) day waiting period waived in order for this proposed rule change to be operative immediately. Consistent with the protection of investors and the public interest, the Commission has determined to make the proposed rule change operative as of the date of this order.¹³ The Commission believes that the proposed rule change will assist specialists in automatically executing a greater number of their Linkage Orders, consistent with the final

¹⁰ 15 U.S.C. 78s(b)(3)(A)(i).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² The Commission has waived the requirement that the Exchange provide written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

¹³ For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).