

(ii) No Change

(d) No Change

Commentary

.01 No specialist or registered options trader shall be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the specialist and registered options traders responsible for the published bid or published offer shall be obligated as set forth in paragraph (c) of Rule 11Ac1-1 but only to the extent of [ten] one contract[s].

.02 No Change

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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 Amex included statements concerning the purpose of and basis for the proposed rule change 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

In 2001, the Exchange amended the firm quote requirement in Amex Rule 958A to accommodate the application of Rule 11Ac1-1 (the "Quote Rule") under the Act.⁵ The amendments to the Commission's Quote Rule in 2000 were made to apply the firm quote requirements to the option exchanges and option market makers, thereby, requiring a corresponding revision to the rules of the options exchanges.⁶ At that time, the Amex proposed in Rule 958A that "no responsible broker or dealer shall communicate a quotation

size or aggregate quotation size for less than ten (10) contracts."

In applying the Quote Rule to the options markets, the Commission has given the options exchanges the flexibility to determine whether they will collect from responsible brokers or dealers and make available to quotation vendors the size associated with each quotation or choose instead to establish by rule the size for which their disseminated bid and offer in each option series is firm and not collect and disseminate size with each quotation. The Commission has also given the options exchanges the flexibility to disseminate quotations with sizes at which the specialist and registered traders are firm for customer accounts, and, at the same time, establish by rule a different size for which specialists and registered traders must be firm for orders from the accounts of broker-dealers.

As indicated above, the Amex previously determined that it would disseminate a size of ten (10) contracts for all of its option quotations regardless of the underlying "actual" size associated with such quote. In connection with the dissemination of option quotations, the Exchange amended and received Commission approval of Amex Rule 958A requiring that the communicated and disseminated size be a minimum of ten (10) contracts. Therefore, responsible brokers or dealers on the Amex are required to disseminate a minimum size of ten (10) contracts for all options quotations regardless of whether such quotations may represent a customer or broker-dealer order.

The operation of Amex Rule 958A in paragraph (c)(i)(A) requires that each responsible broker or dealer execute customer orders in an option series in an amount up to its published quotation size. As a result, specialists and registered options traders ("ROTs") are required to be firm for customer orders of up to 10 contracts regardless of the actual size of the customer order. Paragraph (c)(i)(B) of Amex Rule 958A provides that specialists and ROTs are obligated to be firm for the account of broker-dealer orders, including foreign broker-dealers, for at least one (1) contract.

The effect of the instant proposal will be that if the disseminated quotation on behalf of a customer order is for an order of less than ten (10) contracts, the Exchange would no longer disseminate a minimum size of ten (10) contracts, but instead, would disseminate the actual size of the associated customer order. As a result, the responsible broker or dealer would not be required to

execute a minimum size of ten (10) contracts for a customer order that has an actual size of less than ten (10) contracts. Therefore, under the proposed amendment to Amex Rule 958A, the responsible broker or dealer will now be firm to customers based upon the actual size of the order rather than an artificial minimum of ten (10) contracts.⁷ The proposed rule change also provides for a corresponding amendment to Commentary .01 to Amex Rule 958A so that the specialist and ROT responsible for the published bid or offer is obligated for one (1) contract rather than ten (10) contracts in connection with an erroneous bid or offer that is the result of an error or omission by the Exchange or a quotation vendor.

For purposes of the application of the Options Intermarket Linkage (the "Linkage"), the Amex represents that the proposal will not affect the Exchange's Linkage rules. In particular, "Firm Customer Quote Size"⁸ and "Firm Principal Quote Size"⁹ as defined in Amex Rule 940 will not be revised.¹⁰ Accordingly, the obligation of

⁷ An example of the rule's current operation is as follows: An Exchange specialist disseminates a market of 2 bid, 2.20 asked, in a particular option series at the minimum size of 10 contracts. An incoming order to buy one contract for 2.10 is entered making the new best bid and offer 2.10 bid, 2.20 asked. The Exchange disseminates 10 contracts as the size of the 2.10 bid. If a market order to sell 10 contracts is then entered in that series, the responsible broker-dealer (generally the specialist) is obligated to buy the 9 contracts at a price of 2.10. This proposal would eliminate the responsible broker or dealers obligation to be firm for the balance between the actual size of a customer limit order and ten contracts as illustrated under this example.

⁸ Exchange Rule 940(b)(7) defines "Firm Customer Quote Size" as the lesser of: (a) The number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. The number shall be at least 10.

⁹ Exchange Rule 940(b)(8) defines "Firm Principal Quote Size" as the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be at least 10.

¹⁰ See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Original Linkage Plan Approval); 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (Plan Amendment No. 1 Approval); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002) (Plan Amendments No. 2 and 3 Approval); 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (Plan Amendment No. 4 Approval); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003) (Plan Amendment No. 5 Approval); and 47297 (January 31, 2003), 68 FR

⁵ See Securities Exchange Act Release No. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001); and Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001).

⁶ See Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).