

Institution and settlement of injunctive actions; and
Formal orders of investigation.

The subject matter of the Closed Meeting scheduled for Thursday, July 17, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;
Institution and settlement of injunctive actions; and
Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942-7070.

Dated: July 8, 2003.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48126; File No. SR-Amex-2003-61]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Six-Month Extension of the Exchange's Pilot Program for Automatic Execution of Orders for Exchange Traded Funds

July 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on June 17, 2003, the American Stock Exchange LLC ("Exchange" or "Amex") 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 Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex seeks a six-month extension of Amex Rule 128A to continue its pilot program for the automatic order execution feature ("Auto-Ex") for Exchange Traded Funds ("ETFs").

The text of the proposed rule change is available at 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, 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. Amex 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, adopted as Amex Rule 128A, to implement an automatic execution system for ETFs on a six-month pilot program basis.³ On December 20, 2001, June 17, 2002, and December 30, 2002, the pilot was extended for consecutive terms of six months.⁴ The Exchange now seeks to extend the pilot for an additional six months.

Since 1986, the Exchange has had an Auto-Ex feature for eligible orders in listed options. The Chicago Board Options Exchange, Philadelphia Stock Exchange, and Pacific Exchange established similar Auto-Ex features at about the same time as Amex, and the newest options exchange, the International Securities Exchange, also features automatic order execution. Auto-Ex, accordingly, has been a standard feature of the options markets for a number of years.

In 1993, Amex commenced trading Standard and Poor's Depository Receipts' ("SPDRs"), the first ETF to be listed and traded on Amex. ETFs are individual securities that represent a fractional, undivided interest in a portfolio of securities. Currently, more than 100 ETFs are listed on Amex. Like an option, an ETF is a derivative security, and, according to Amex, its

price is a function of the value of the portfolio of securities underlying the ETF. Thus, the Exchange asserts that, as is the case with options, it is not the price discovery market for ETFs, and that the price discovery market is the market or markets where the underlying securities trade.

The Exchange is now proposing to extend its current Auto-Ex technology for an additional six months to ETFs listed under Amex Rules 1002, 1002A, and 1202. Amex represents that this will continue to provide investors that send eligible orders to the Exchange with faster executions than they otherwise would receive. The Exchange believes that many investors desire rapid executions in trading securities that are priced derivatively since the value of the underlying instruments may fluctuate during order processing. Amex, moreover, will continue under the pilot extension to incorporate a price improvement algorithm into Auto-Ex for ETFs, which Amex expects will provide investors with better execution prices on their orders. The price improvement algorithm works in the following manner:

When Amex establishes the National Best Bid or Offer ("NBBO"), Auto-Ex is programmed to execute eligible incoming ETF orders at the Amex Published Quote ("APQ") plus a programmable number of trading increments with respect to the Amex bid, and less a programmable number of trading increments in the case of the Amex offer.⁵ For example, if the APQ were 90.10 to 90.20, and the APQ constituted the NBBO, incoming sell orders might be automatically executed at 90.12 (the Amex bid plus two ticks) and incoming buy orders might be executed at 90.18 (the Amex offer less two ticks).

If Amex does not establish the NBBO, Auto-Ex is programmed to execute eligible incoming ETF orders at or better than the NBBO up to a specified number of trading increments relative to the APQ.⁶ Auto-Ex executes an eligible

⁵ The term "establish," as used in Amex Rule 128A, means that the APQ is currently at the NBBO, regardless of whether Amex was the first exchange to be at that price. See Securities Exchange Act Release No. 44449 (June 19, 2001), 66 FR 33724 (June 25, 2001).

⁶ Amex represents that once an order that is Auto-Ex eligible is sent to the Exchange, the person that initiated the order has no control over its execution. This is the case regardless of whether the order is executed by Auto-Ex or is executed by the specialist because Auto-Ex is unavailable. If the order is routed to the specialist for handling because Auto-Ex is unavailable, the specialist does not know if the order is for the account of a broker-dealer or for the account of a customer. This information is in

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 44449 (June 19, 2001), 66 FR 33724 (June 25, 2001) (approval of File No. SR-Amex-2001-29).

⁴ See Securities Exchange Act Release Nos. 45176, 66 FR 67582 (December 31, 2001); 46085, 67 FR 42836 (June 25, 2002); and 47105, 68 FR 592 (January 6, 2003) (notices of filing and immediate effectiveness of File Nos. SR-Amex-2001-105, SR-Amex-2002-42, and SR-Amex-2002-99, respectively).