

order at an improved price relative to the APQ unless such execution would result in a trade-through with respect to the price of an away market that is a participant in the Intermarket Trading System ("ITS").<sup>7</sup> If a trade-through would result, the order is routed to the specialist for processing through the Amex electronic order book.

For example, assume that Auto-Ex is programmed to execute an order at the Amex bid plus two ticks. If the Amex bid were 90, and an away ITS market were bidding 90.01, an incoming sell order would be automatically executed on Amex at 90.02. Continuing with this example, if the away market were bidding 90.02, an incoming sell order would be automatically executed on Amex at 90.02 (matching the away market). If the away market were bidding 90.03, the incoming sell order would not be automatically executed. Instead, it would be routed to the specialist for electronic processing through the Amex electronic order book.

The amount of price improvement that the system provides, both when the Amex establishes the NBBO and when it does not, is determined by the Auto-Ex Enhancements Committee ("Committee") upon the request of a specialist and may differ among ETFs. 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, respectively. The Exchange believes that the amount of price improvement will vary among securities based upon factors such as the width of the spread, the volatility of the underlying basket of securities underlying the ETF, and liquidity of available hedging vehicles. The amount of price improvement may be adjusted intra-day by the Committee.

As detailed in Amex Rule 128A, Auto-Ex for ETFs with price improvement is unavailable when the spread is at a specified minimum and maximum variation that may be adjusted security to security. The Committee determines, upon the request of a specialist, the minimum and maximum spreads at which Auto-Ex is unavailable. As further provided by Amex Rule 128A, Auto-Ex is also unavailable with respect to incoming sell orders when the Amex bid is for 100 shares, and similarly unavailable with

respect to incoming buy orders when the Amex offer is for 100 shares.

Orders that are otherwise Auto-Ex eligible orders are also routed to the specialist, and not automatically executed, in situations where the specialist in conjunction with a Floor Governor or two Floor Officials determine that quotes are not reliable and the Exchange is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes. Members and member organizations are notified when the Exchange has determined that quotes are not reliable prior to disengaging Auto-Ex.

Specialists and Registered Options Traders ("ROT's") that sign onto the system are automatically allocated the contra side of Auto-Ex trades for ETFs. Due to the automatic price improvement feature, the specialist and ROTs that sign onto Auto-Ex for ETFs are deemed to be on parity for purposes of allocating the contra side of ETF Auto-Ex trades. Amex Rule 128A incorporates the following methodology for the allocation of the contra side to Auto-Ex ETF trades:

Number of ROTs signed on to Auto-Ex in a crowd	Appropriate number of trades allocated to the specialist throughout the day ("target ratio percent")	Approximate number of trades allocated to ROTs signed on to Auto-Ex throughout the day ("target ratio percent")
1 .....	60	40
2-4 .....	40	60
5-7 .....	30	70
8-15 .....	25	75
16 or more	20	80

At the start of each trading day, the sequence in which trades are allocated to the specialist and ROTs signed onto Auto-Ex is randomly determined. Auto-Ex trades then are automatically allocated in sequence on a rotating basis to the specialist and to the ROTs that have signed onto the system so that the specialist and the crowd achieve their "target ratios" over the course of a trading session. If an Auto-Ex eligible order is greater than 100 shares, Auto-Ex divides the trade into lots of 100 shares each. Each lot is considered a separate trade for purposes of determining target ratios and allocating trades within Auto-Ex.

Round lot orders delivered to the post electronically for 2,000 shares or less are eligible for Auto-Ex for ETFs. Orders for an account in which a market maker in ETFs registered as such on another market has an interest are ineligible for Auto-Ex for ETFs. The Exchange

represents that, if orders for such market makers were eligible for Auto-Ex with price improvement, Amex specialists and ROTs would be unable to make markets with the proposed liquidity for other investors. (Orders for Amex ROTs are ineligible for Auto-Ex for ETFs pursuant to Commentaries .04 and .05 to Amex Rule 111 and Amex Rule 950(c).)<sup>8</sup>

The specialist may request the Exchange to increase the maximum size of Auto-Ex eligible orders. Under Amex Rule 128A, such requests are reviewed by the Committee, which approves, disapproves, or conditionally approves such requests. Amex Rule 128A directs the Committee to balance the interests of investors, the specialist, ROTs in the crowd, and the Exchange in determining whether to grant a request to increase the size of Auto-Ex eligible orders. The Committee also may consider requests from the specialist or ROTs to reduce the size of Auto-Ex eligible orders, balancing the same interests that it would consider in reviewing a request to increase the size of Auto-Ex eligible orders. The Committee, however, is not permitted to reduce the size of Auto-Ex eligible orders below 2,000 shares.

In addition, under Amex Rule 128A, the Committee may delegate its authority to one or more Floor Governors. Amex Rule 128A provides, however, that the Committee must meet promptly to review a Floor Official's decision in the event that a Floor Governor acts pursuant to its delegated authority.

Amex Rule 128A further provides that, in the event of system problems or unusual market conditions, a Floor Governor is permitted to reduce the size of Auto-Ex eligible orders below 2,000 shares or increase the size of Auto-Ex eligible orders up to 5,000 shares. Any such change is temporary and lasts only until the end of the unusual market condition or the correction of the system problem. Members and member organizations are notified when the size of Auto-Ex eligible orders is adjusted due to system problems or unusual market conditions.

<sup>8</sup> The Commission notes that, pursuant to Amex Rule 128A, Auto-Ex eligible orders for any account in which the same person is directly or indirectly interested may be entered only at intervals of ten seconds or more between the entry of each such order in an ETF. Under Amex Rule 128A, member and member organizations are responsible for establishing procedures to prevent orders for any account in which the same person is directly or indirectly interested from being entered at intervals of less than ten seconds with respect to an ETF. Amex has proposed to eliminate this ten-second "speed bump" while allowing it to be reinstated if conditions so warrant. See Securities Exchange Act Release No. 48004 (June 9, 2003), 68 FR 35741 (June 16, 2003) (notice of File No. SR-Amex-2003-28).

the Exchange's order processing systems and is unavailable to the specialist.

<sup>7</sup> The number of trading increments designated for price improvement when the Amex establishes the NBBO may be different than the number of increments designated for price improvement when Amex does not establish the NBBO. *Id.*