

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48957; File No. SR-Amex-2003-24]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 by the American Stock Exchange LLC Relating to the Dissemination of Customer Limit Orders

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 4, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 14, 2003, the Exchange filed Amendment No. 1 to the proposal.³ On June 12, 2003, the Exchange filed Amendment No. 2 to the proposal.⁴ The Commission published the proposal, as amended, for comment in the **Federal Register** on June 26, 2003.⁵ The Commission received no comments on the proposal. On December 4, 2003, the Exchange filed Amendment No. 3 to the proposal.⁶ In Amendment No. 3, the Amex proposes to replace the proposed rule change as set forth in the original notice in its entirety. The Commission is publishing this notice of Amendment No. 3 to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, as amended, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 12, 2003 ("Amendment No. 1").

⁴ See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated June 11, 2003 ("Amendment No. 2").

⁵ Securities Exchange Act Release No. 48101 (June 26, 2003), 68 FR 39992 (July 3, 2003) ("Original Notice").

⁶ See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated December 3, 2003 ("Amendment No. 3"). In Amendment No. 3, the Exchange proposes to modify the text of the rule proposal so that customer limit orders representing the best bid or offer are disseminated in actual size if less than ten (10) contracts.

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

The Exchange proposes to permit the dissemination of customer limit orders representing the best bid or offer ("BBO") in sizes of less than ten (10) contracts. Below is the text of the proposed rule change as modified by Amendment No. 3. Proposed new language is italicized; proposed deletions are in brackets.

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Rule 958A. Application of the Firm Quote Rule

(a) No Change

(b) No Change

(c) Obligations of a Responsible Broker or Dealer—

(i) Pursuant to SEC Rule 11Ac1-1 each responsible broker or dealer for each series of each listed option class shall promptly communicate to the Exchange its best bid, best offer, quotation size and aggregate quotation size. No responsible broker or dealer shall communicate a quotation size or aggregate quotation size for less than ten contracts *with the exception that the size of customer limit orders representing the best bid or offer may be disseminated at less than ten (10) contracts, even though the responsible broker or dealer continues to have the obligation to quote a ten contract minimum.* This obligation may be fulfilled by the use of an automated quotation system.

(A) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any customer order in an option series in an amount up to its published quotation size.

(B) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any order for the account of a U.S. registered or foreign broker or dealer in a listed option in an amount up to the quotation size established and periodically published by the Exchange which quotation size shall be for at least one contract.

(C) Subject to the provisions of paragraph (d) of this Rule, each responsible broker or dealer shall comply with the Thirty Second Response provisions set forth in paragraph (d)(3) of SEC Rule 11Ac1-1.

(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 contracts *or in cases where the best bid or offer is represented by a customer limit order the actual size of such order(s) if less than ten contracts.*

.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 Exchange 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 III 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 Exchange Rule 958A to accommodate the application of the SEC Rule 11Ac1-1 (the "Quote Rule") under the Act.⁷ 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.⁸ At that time, the Amex proposed in Exchange Rule 958A that "no responsible broker or dealer shall communicate a quotation size or

⁷ 17 CFR 240.11Ac1-1; see Securities Exchange Act Release Nos. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) (notice) and 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001) (approval of File Nos. SR-Amex-2001-18; SR-CBOE-2001-15; SR-ISE-2001-07; SR-6PCX-2001-18; and SR-Phlx-2001-37).

⁸ See Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).