

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 business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

Amex has requested that the Commission waive the usual five-business-day notice period and the usual 30-day pre-operative waiting period. The Commission notes that this proposal simply extends the existing pilot program and does not alter the pilot in any way. As a result, the Commission believes that it is consistent with the protection of investors and the public interest to waive the five-business-day notice period and accelerate the operative date so that the pilot can continue without delay and because the proposal raises no new regulatory issues. Therefore, the Commission designates that the proposal become operative immediately.<sup>13</sup> This pilot extension will expire on June 19, 2004.

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-Amex-2003-107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail

but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48975; File No. SR-Amex-2003-44]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Percentages Used To Allocate Executed Options Contracts Between the Specialist and Registered Options Traders

December 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 14, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") 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 the Exchange. On November 18, 2003, Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 17, 2003 ("Amendment No. 1"). In Amendment No. 1, Amex made technical corrections to the proposed rule text and amended the purpose section of the proposal to reflect the re-institution of the Exchange-sponsored payment for order flow program.

proposed rule change, as amended, from interested persons.

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

Amex proposes to amend Amex Rules 933 and 950 to revise the percentages used to allocate executed contracts between the specialist and registered options traders. In addition, the Exchange is correcting the paragraph reference to the allocation provisions in Amex Rule 933 from (d) to (h).

Below is the text of the proposed rule change, as amended. Deleted language is in brackets. Proposed new language is *italicized*.

\* \* \* \* \*

#### Rule 933 Automatic Execution of Options Orders

(a) through (g) No change.

[(d)] (h)(i) Options orders executed through Auto-Ex shall be automatically allocated on a rotating basis to the specialist and to each trader that has signed on to Auto-Ex. Auto-Ex trades of ten contracts or less are allocated to each Auto-Ex participant as set forth below. If an Auto-Ex trade is greater than ten contracts, the Auto-Ex system divides the execution into lots of ten or fewer contracts and allocates a lot to each Auto-Ex participant. Each lot is considered a separate trade for purposes of allocating trades within Auto-Ex. The rotation is designed to provide that the allocation of Auto-Ex trades between the specialist and traders signed on to Auto-Ex in a given *equity* option class is as follows:

<i>Number of traders signed on to Auto-Ex</i>	<i>Approximate number of trades allocated to the specialist</i>	<i>trades allocated to the traders signed on to Auto-Ex (as a group)</i>
1 .....	60% ....	40%
2 .....	40% ....	60%
3 or more .....	30% ....	70%

*In addition, for options on Exchange Traded Funds, Trust Issued Receipts and Indexes, the allocation of Auto-Ex trades between the specialist and traders signed on to Auto-Ex is as follows:*

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> For purposes only of 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).