

investment objectives, strategies, techniques, investment risks and limitations of each Acquired Fund and their compatibility with those of the corresponding Acquiring Fund; (b) the investment advisory and other fees paid by each Acquiring Fund and the projected expense ratio of each Acquiring Fund as compared to those of the corresponding Acquired Fund; (c) the terms and conditions of each Reorganization Agreement; and (d) the anticipated tax consequences of the Reorganizations for the Funds and their shareholders. In addition, the Forum Board considered: (a) The small asset size of each Acquired Fund; (b) the likelihood that each Acquired Fund's service providers may not be able to maintain their current fee waivers; and (c) the fact that the Reorganizations would permit shareholders to own shares in a new fund without realizing tax consequences that would be present if the Acquired Funds were to liquidate.

6. The Reorganizations are subject to certain conditions, including that: (a) the shareholders of each Acquired Fund will have approved the Reorganizations; (b) the Funds will have received opinions of counsel concerning the tax-free nature of the Reorganizations; and (c) applicants will have received exemptive relief from the Commission to permit the Reorganizations. The Reorganization Agreements may be terminated and the Reorganizations abandoned at any time prior to the Closing Date by the Boards. Applicants agree not to make any material changes to the Reorganization Agreements without prior Commission approval.

7. Registration Statements on Form N-14 with respect to the Reorganizations were filed with the Commission on September 8, 2000. Proxy solicitation materials were mailed to shareholders of the Acquired Funds on November 1, 2000. A shareholders meeting of the Acquired Funds is scheduled for December 1, 2000.

#### Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power

to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

3. Applicants state that Stratevest Group is investment adviser to the Stratevest Core Fund and Stratevest Group holds of record more than 25% of the outstanding voting securities of the Forum Equity Fund. In addition, applicants state that, on or before the Reorganization, Stratevest Group will hold of record more than 25% of the outstanding voting securities of the both the Forum Bond Fund and the Stratevest Bond Fund. Because of these relationships and ownership positions, the Acquired Funds and their corresponding Acquiring Funds may be deemed affiliated persons for reasons other than those set forth in rule 17a-8 and therefore unable to rely on the rule.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b). Applicants note that the Boards, including all of the Independent Trustees, found that participation in the Reorganizations is in the best interests of each Fund and its shareholders and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganizations. Applicants also note that the Reorganizations will be based on the Funds' relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43660; File No. SR-Amex-00-57]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Increase to One Hundred the Maximum Permissible Number of Equity and Index Option Contracts Executable Through AUTO-EX

December 4, 2000.

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 November 28, 2000, 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 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

The Amex proposes to increase to one hundred the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, AUTO-EX. The text of the proposed rule change is available at the Office of the Secretary, 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, 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 Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In 1985, the Exchange implemented the AUTO-EX system, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entitled into the Amex Order File ("AOF"). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to AUTO-EX, was recently increased to allow for the entry of orders of up to 250 option contracts.<sup>3</sup> Generally, however, AUTO-EX is only permitted to execute equity option orders and index option orders of up to seventy-five contracts.<sup>4</sup> Thus, market and marketable limit orders of more than seventy-five contracts are generally routed by AOF to the specialist's book.

The Exchange now proposes to increase to one hundred the maximum permissible number of equity and index option contracts in an order that can be executed through the AUTO-EX system. It is proposed that this increase to one hundred in permissible order size for AUTO-EX be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. Currently, the Amex posts applicable quote size parameters on its web page. Generally, these parameters provide that displayed quotes are for twenty contracts for equity options and for thirty contracts for index options and are set on a class-by-class basis. However, pursuant to Exchange Rule 958A, the order size for AUTO-EX will remain at ten contracts for equity and index options, or such larger size currently in effect and as indicated on

<sup>3</sup> See Securities Exchange Act Release No. 42128 (November 10, 1999), 64 FR 63836 (November 22, 1999).

<sup>4</sup> See Securities Exchange Act Release No. 43516 (November 3, 2000), 65 FR 69079 (November 15, 2000). While the maximum permissible number of contracts in an index option order executable through AUTO-EX is generally seventy-five contracts, there are a few exceptions: The Institutional, Japan and S&P MidCap 400 Indexes allow ninety-nine contract orders. The Exchange proposes to increase the applicable parameter from ninety-nine to one hundred for the Institutional, Japan and S&P MidCap 400 indices to eliminate any potential for confusion over the permissible parameters applicable to AUTO-EX eligible orders for both equity and index options.

the Exchange's web page.<sup>5</sup> The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increase.

The Exchange represents that AUTO-EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other, non-emergency situations for certain option classes. The Exchange believes that automatic executions of orders for up to one hundred contracts will allow for the quick, efficient execution of public customer orders.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)<sup>6</sup> of the Act in general and furthers the objectives of section 6(b)(5)<sup>7</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

<sup>5</sup> Amex Rule 958A, referred to as the "Firm Quote Rule," requires Exchange specialists to sell (buy) at least ten (10) contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading post where the option class is located for trading.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

The Commission invites interested persons 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. 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 the Amex. All submissions should refer to File No. SR-Amex-00-57 and should be submitted by January 3, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43666; File No. SR-CBOE-00-34]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc., Permitting the Implementation of the Exchange's Rapid Opening System in Conducting Rotations in Options on the S&P 100 Index**

December 4, 2000.

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 October 5, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange")

<sup>8</sup> 17 CFR 200.30(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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