

received after a pre-opening notification or indication.<sup>15</sup>

In response to the issue of further fragmentation of the NMS, the Amex provided an illustration in which a riskless principal transaction by a market maker on other ITS participant markets may result in a double printing of trades and a misleading appearance of activity in a stock.<sup>16</sup> The Amex states that the practice, along with the generation of tape revenue for the regional exchange, which is used to subsidize cash payments for order flow arrangements, may lead to further fragmentation in the market. However, the Amex opined the proposal would reduce fragmentation and enhance price discovery at openings and re-openings because the proposal is designed to help provide more accurate pricing at the opening.<sup>17</sup>

Finally, the Amex noted that the proposal made no changes in the procedures for handling specific customer orders or net imbalances or agency interest.<sup>18</sup> If a specialist on a regional market is unable to execute the agency orders, he or she may send the orders via an ITS commitment to the Amex at no charge to the regional specialist and those orders will be treated as any other customer orders at the Amex. The Amex believes that the proposal will neither impede price discovery nor increase market fragmentation so long as the regional specialist continues to send orders that the regional specialist is either unable or unwilling to execute, to the Exchange via ITS.<sup>19</sup> The Amex also noted that the proposal would only affect the occasional regional specialist proprietary order.<sup>20</sup>

#### IV. Discussion

After careful review, the Commission finds that the proposal is consistent with the requirements of Section 6(b) of the Act in general,<sup>21</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>22</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 respect to facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market

system, and in general, to protect investors and the public interest.<sup>23</sup>

The Commission also finds that the changes are consistent with Section 11A(a)(1)(D) of the Act,<sup>24</sup> in that the linking of markets for qualified securities though communication and data processing facilities should help to foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders.

In determining that the proposed procedures that apply to orders entered on the Exchange before the Amex specialist issues an ITS pre-opening notification or indication through the Consolidated Tape are reasonable and consistent with Section 6(b)(5)<sup>25</sup> and 11A(a)(1)(D)<sup>26</sup> of the Act, the Commission has considered carefully the Commenter's concerns that the proposed procedure place an unnecessary burden on competition, hinder transactions in securities, create obstacles to price discovery and restrict rather than promote a free and open market. The Commission is not persuaded by these arguments. The proposed procedures should reduce the imbalances of buy or sell orders at openings or re-openings, and decrease the market risk on the Amex specialist, thus helping to facilitate orderly openings and re-openings. In addition, the orders of market makers in other ITS participant markets entered before an indication or pre-opening notification has been sent will be treated in a manner comparable to the manner such orders would be handled pursuant to the ITS Plan if they were entered after an indication or pre-opening notification.

The Commission also has considered carefully the Commenter's concern of further market fragmentation because of discrimination against regional exchange specialists. The Commission believes that the proposed procedures will help to contribute to enhance execution of orders and foster cooperation and coordination with other ITS participant markets because the proposal is designed to promote accurate pricing at the opening; orders of market makers in other ITS participant markets would be executed in accordance with the current procedures if the Amex specialist does

not issue a notice or indication before the opening or re-opening. The proposal does not make any changes to the Amex's current procedures of handling specific customer orders or net imbalances of agency interest.

#### V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposal, as amended (SR-Amex-99-16), be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-32892 Filed 12-26-00; 8:45 am]

BILLING CODE 8010-01-M

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43737; File No. SR-Amex-00-42]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to the Auto-Ex By-Pass Provisions

December 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 9, 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 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 American Stock Exchange LLC proposes to allow options orders to bypass Auto-Ex when the best bid or offer is represented by either a registered trader or a floor broker.

#### 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

<sup>15</sup> See note 12, *supra*, p. 1.

<sup>16</sup> See note 12, *supra*, pp. 2-3.

<sup>17</sup> See note 12, *supra*, p. 2.

<sup>18</sup> See note 12, *supra*, p. 2. These are two of the three types of orders that PCX sends to the Amex.

<sup>19</sup> See note 12, *supra*, p. 2.

<sup>20</sup> See note 12, *supra*, p. 2.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 78k-1(a)(1)(D).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78k-1(a)(1)(D).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

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

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

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.

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

1. Purpose

The automatic execution system at the Exchange (known as "Auto-Ex") provides the options investor with an important and useful tool in today's trading environment. Since the system's implementation in 1985—for a limited number of option classes and for small orders of 10 contracts or less—the Commission has approved the system's expansion to all option classes traded and recently has approved an increase of the maximum permissible order size to 75 contracts.<sup>3</sup> Auto-Ex provides the investor with an efficient means of getting a rapid, guaranteed execution of a market or marketable limit order. In the often fast-moving and volatile environment of options trading, a guaranteed and rapid execution clearly has value to an investor. In fact, an assured execution in a rapidly changing market and the avoidance of the potential downside risk of missing the market has benefited investors during the last 15 years. In addition, automatic executions have reduced the costs of trades generally and have enabled traders, specialists and the Exchange itself to better manage the tremendous volume of transactions that our markets now regularly experience.

To operate efficiently, Auto-Ex provides that all customer market and marketable limit orders within the appropriate size parameters be executed at the prevailing best bid or offer with either the specialist or a registered options trader as the contra-party to the transaction. The specialist in each option class must sign on and remain on Auto-Ex every trading day; registered trades, on the other hand, are not obligated either to sign on or remain on Auto-Ex in the option classes they trade. When registered traders have signed on to Auto-Ex in a particular option class, however, orders automatically executed through the system are distributed to the specialist and registered traders on a

random rotating basis. Thus, a registered trader who improves the market is not assured of being the contra-party on an Auto-Ex execution at that better bid or offer because it may not be that registered traders' turn to receive the Auto-Ex transaction.

The Exchange is proposing to expand its auto-Ex by-pass feature to encourage further registered trades to improve the quotation. Currently, the by-pass feature provides that whenever the bid or offer in a specific series represents a customer limit order on the specialists' book, or a better bid or offer is being disseminated by another options exchange, market and marketable limit orders eligible for an Auto-Ex execution by-pass the system and are routed instead to the specialist for handling. Expanding this by-pass feature to include situations where a registered options trader improves the quotation would ensure that registered options traders are the contra-party to any market or marketable limit order that, without the by-pass feature, would have been executed by the Auto-Ex system. Registered traders will now be assured that when they improve the quotation in a given option series they can be the contra-party to transactions at the improved bid or offer for Auto-Ex eligible market and marketable limit orders in addition to the larger size non-Auto-Ex eligible orders for which they currently compete. If the registered trader chooses to use this feature, the size of their bid or offer will have to be at least the guaranteed Auto-Ex size (*i.e.*, currently 10 to 75 contracts, depending on the options class).

The Exchange also proposes that this feature be expanded to floor brokers representing customer orders in the trading crowd. When Auto-Ex was first developed in 1985, floor brokers and their customers objected to transactions occurring on Auto-Ex while orders they represented in the trading crowd went unexecuted. Floor brokers withdrew these objections when they recognized the benefits of Auto-Ex executions of small market and marketable limit orders. However, if registered traders can cause orders to by-pass Auto-Ex, floor brokers may believe that their customers' interests are not being served and, therefore, brokers also need the capability of having orders by-pass Auto-Ex. Thus, floor brokers can improve either the bid or the offer and be assured that their customers will be the contra-party to any market or marketable limit orders that would otherwise have been automatically executed through Auto-Ex. Floor brokers choosing to use this feature will have to bid or offer for at least the

guaranteed Auto-Ex size (*i.e.*, currently 10 to 75 contracts, depending on the options class).

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> and Section 6(b)(5),<sup>5</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 Exchange does not believe that the proposed rule change will impose any inappropriate 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.

**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 self-regulatory organization consents, the Commission will:

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

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

**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. Copies of the submission, all subsequent amendments, all written statements

<sup>3</sup> The maximum Auto-Ex size for eligible orders was recently increased from 50 to 75 contracts. See Securities Exchange Act Release No. 43516 (November 3, 2000), 65 FR 69079.

<sup>4</sup> 15 U.S.C. 78f(b).

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

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-00-42 and should be submitted by January 17, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-32894 Filed 12-26-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43738; File No. SR-ISE-00-26]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange LLC, Relating to Minimum Activity Fees

December 18, 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 December 7, 2000, the International Securities Exchange LLC ("Exchange" or the "ISE") 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. 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 Exchange is proposing changes to its fees regarding inactive memberships. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, 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 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 IV below. The ISE 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

Currently not all of the Exchange's Primary Market Maker ("PMM") memberships have begun trading in their assigned group of options ("bins"). The Exchange is proposing that PMMs will be subject to a \$100,000 monthly fee if the PMM has not yet opened the bin for trading. Once a bin is opened for trading, there will be a \$50,000 per month minimum fee per bin. That is, if transaction charges with respect to trading in the bin do not total \$50,000 per month, the PMM will be charged a fee equal to \$50,000 minus the actual transaction charges.

These fees are structured to provide the Exchange with revenue that will, in part, help recover revenue lost due to the lack of trading. In particular, these fees will help recoup lost transaction and access charges. The Exchange will periodically reevaluate these fees to maintain the relationship between the amount of the fees and the lost revenue being recouped. These fees will become effective on January 1, 2001.

###### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirements under Sections 6(b)(4) and 6(b)(5) of the Act<sup>3</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest, as well as provide for the equitable allocation of reasonable dues, fees and other charges among its

members and other persons using its facilities.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6)<sup>5</sup> thereunder because the rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission 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.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>6</sup> normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>7</sup> permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission accelerate the implementation of the proposed rule change so that it may take effect on January 1, 2001. The ISE represented that all of the broker-dealers that currently anticipate being subject to the proposed fee are represented on ISE's board of directors, voted to adopt the proposed fee, and approved its submission to the Commission.

On this basis, the Commission believes that it is consistent with the

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>7</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78f(b)(4)-(5).