

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44924; File No. SR-Amex-2001-84]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

October 11, 2001.

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 October 9, 2001, 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 and II 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. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in detail in Item II.A. below. 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 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 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

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions approved by the Commission on July 11, 2001.³ Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.⁴ The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crown can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer order on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crown in response to his initial request for a market—and the crown then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crown in response to his initial request for a market, and the trading crown subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to

³ See Securities Exchange Act Release No. 44538 (July 11, 2001), 66 FR 37507 (July 18, 2001). The Commission's approval in July 2001 permitted the reinstatement, after a brief lapse, of a pilot program that was originally approved on June 2, 2000, and subsequently extended on two occasions. See Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); and 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001).

⁴ Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.⁵ However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the sixteen months since the pilot program was first implemented, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with Commission⁶ concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

In order to allow the pilot program to be extended without significant interruption, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to Section 19(b)(2) of the Act.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

⁵ Amex trading floor practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seek to codify specialist allocation practices. See Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

⁶ See File No. SR-Amex-00-49, available for inspection at the Commission's Public Reference Room.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4

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

The Exchange believes that the proposed rule change will impose no 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. Solicitation of Comments

Interest 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 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 the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-Amex-2001-84 and should be submitted by November 13, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In its original approval of the pilot program,¹¹ the Commission detailed its reasons for finding its substantive features consistent with the Act, and in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.¹² The Commission has previously approved rules on other exchanges that establish substantially similar programs

on a permanent basis,¹³ and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will extend the pilot program without significant interruption while revisions are considered, and does not raise any new regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on an accelerated basis as a pilot program through January 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44928; File No. SR-BSE-2001-05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Boston Stock Exchange, Inc. Relating to the Generic Listing and Trading Standards of Trust Issued Receipts Pursuant To Rule 19b-4(e) Under the Securities Exchange Act of 1934

October 12, 2001.

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 August 10, 2001, the Boston Stock Exchange, Inc. ("BSE" 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 October 2, 2001, the Exchange filed

Amendment No. 1 to the proposed rule change.³ On October 10, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to approve the proposed rule change, as amended, on an accelerated basis.

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

The Exchange proposes to amend BSE Chapter XXIV-A, ("Trust Issued Receipts" (hereinafter, "TIRs")), to provide generic standards that permit the listing and trading, or the trading pursuant to unlisted trading privileges ("UTP"), of TIRs pursuant to Rule 19b-4(e) under the Act. In addition, the Exchange proposes to adopt eligibility requirements for component securities that are represented by a series of TIRs pursuant to distribution or other corporate event. Below is the text of the proposed rule change. Proposed new language is italicized.

* * * * *

Chapter XXIV-A—Trust Issued Receipts

* * * *Interpretation and Policies*

.02 *The Exchange may approve a series of Trust Issued Receipts for listing pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the component securities satisfies the following criteria:*

(a) *Eligibility Criteria for Component Securities Represented by a Series of Trust Issued Receipts:*

(i) *Each Component Security of the Trust Issued Receipt must be registered under Section 1 of the Exchange Act;*

(ii) *Each Component Security of the Trust Issued Receipt must have a minimum public float of at least \$150 million;*

(iii) *Each Component Security of the Trust Issued Receipt must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security;*

³ See Letter from Esther M. Radovsky, Staff Attorney, BSE, to Lisa N. Jones, Attorney, Division of Market Regulation ("Division"), Commission (October 2, 2001) ("Amendment No. 1"). Amendment No. 1 amends the proposed rule text to reflect that the underlying security is of the Trust Issued Receipt rather than the HOLDER product, and therefore replaces the original filing in its entirety.

⁴ See Letter from Esther M. Radovsky, Staff Attorney, BSE, to Lisa N. Jones, Attorney, Division, Commission (October 9, 2001) ("Amendment No. 2"). Amendment No. 2 amends the proposed rule text to replace the term "Underlying Securities" with "Component Securities," and corrects a typographical error.

¹⁰ In approving this proposal, the commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ See *supra*, note 3.

¹² 15 U.S.C. 78f(b)(5) and (b)(8).

¹³ See, e.g., Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.