2. Rule 3a–5(b)(3)(i) under the Act, in relevant part, defines a ''company controlled by the parent company'' to mean any corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act, or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a) of the Act. The Bank does not fit, and after the proposed Merger and Conversion still will not fit, within the definition of ''company controlled by the parent company'' because it derives its non-investment company status from section 3(c)(3) of the Act. Consequently, the outstanding securities of a COC LLC would be owned by a company that does not meet the requirements of rule 3a–5(b)(1)(i) under the Act. In addition, to the extent a Finance Subsidiary makes loans to or makes or holds investments in the Bank, that Finance Subsidiary would not meet the definition of a ''finance subsidiary'' under rule 3a–5 because it would be financing an entity that does not meet the definition of a company controlled by the parent company as required by rule 3a–5(b)(1)(ii) under the Act. The COC LLCs also do not fit within the definition of ''company controlled by the parent company'' because they would, after giving effect to requested relief, be exempted by order under section 6(c) of Act rather than by the rules or regulations under section 3(a) of the Act. Consequently, a COC Trust that holds or makes investments in securities of a COC LLC would not meet the requirement in rule 3a–5(a)(6) under the Act.

3. Applicants request exemptive relief to permit the Finance Subsidiaries to finance the operations of the Bank, which is excluded from the definition of investment company by virtue of section 3(c)(3), and to permit the Bank to own all outstanding voting ownership interests of each COC LLC. In addition, Applicants request exemptive relief to permit each Finance Subsidiary to make loans to or make or hold investments in a COC LLC that relies on an order issued under section 6(c) of the Act. Applicants state that neither the Bank nor the Finance Subsidiaries will engage primarily in investment company activities, and that each Finance Subsidiary's primary business purpose will be to engage in financing activities that will provide funds for COFC and the Bank.

4. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that its exemptive request meets the standards set out in section 6(c) of the Act.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Each Finance Subsidiary will comply with all of the provisions of rule 3a-5 under the Act, except: (1) the Bank will not meet the portion of the definition of ''company controlled by the parent company'' in rule 3a–5(b)(3)(i) under the Act solely because it is excluded from the definition of investment company under section 3(c)(3) of the Act; and (2) each Finance Subsidiary will be permitted to make loans to or make or hold investments in corporations, partnerships, and joint ventures that do not meet the portion of the definition of ''company controlled by the parent company'' in rule 3a(b)(3)(i) under the Act solely because (i) they are excluded from the definition of investment company under section 3(c)(3) of the Act or (ii) they are a COC LLC that does not meet the definition of ''company controlled by the parent company'' in rule 3a-5(b)(3)(i) under the Act solely because it is relying on an order issued under section 6(c) of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–806 Filed 1–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 14, 2002:

A closed meeting will be held on Tuesday, January 15, 2002, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Tuesday, January 15, 2002, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 8, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–805 Filed 1–8–02; 4:37 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45241; File No. SR–Amex–2002–01]

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

January 7, 2002.

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 January 3, 2002, the American Stock Exchange LLC (''Amex'' of ''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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 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 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, which was originally approved by the Commission in June 2000, was most recently extended in October 2001, and is due to expire on January 7, 2002.[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 crowd 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 orders 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 crowd in response to his initial request for a market—and the crowd 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 crowd in response to his initial request for a market, and the trading crowd 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 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 year and a half 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 the Commission[6] 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 Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] 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.

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

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 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

[3] The pilot program, originally approved on June 2, 2000, was subsequently extended on two occasions, reinstated after a brief lapse in July 2001, and extended again in October 2001. *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); 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001); 44538 (July 11, 2001) 66 FR 37507 (July 18, 2001); and 44924 (October 11, 2001), 66FR 53456 (October 22, 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.

[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 seeks 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).

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–2002–01 and should be submitted by February 1, 2002.

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 April 7, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–759 Filed 1–10–02; 8:45 am]

BILLING CODE 8010–01–M

[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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45244; File No. SR–CBOE–00–56]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change, To Allow Certain Orders Entered Through the Exchange's Order Routing System To Automatically Trade Against Orders in the Exchange's Customer Limit Order Book

January 7, 2002.

I. Introduction

On November 13, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow certain orders entered through the Exchange's Order Routing System (''ORS'') to automatically trade against orders in the Exchange's customer limit order book. The proposed rule change was published in the **Federal Register** on June 4, 2001.[3] The Commission received one letter and one e-mail, submitted by the same commenter, regarding the proposed rule change.[4] On October 1, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.[5]

This order approves the proposed rule change, accelerates approval of Amendment No. 1, and solicits comments from interested persons on the amendment.

II. Description of the Proposed Rule Change

The CBOE's Automated Book Priority System (''ABP'') allows an order entered into the Exchange's Retail Automatic Execution System (''RAES'') to trade directly with an order on the Exchange's customer limit order book when the best bid (offer) on the Exchange's book is equal to the prevailing market bid (offer).[6] However, orders entered into the RAES system are subject to size limitations. The Exchange now proposes to expand the application of the ABP system to allow booked orders to trade directly with incoming marketable public customer orders routed through ORS which, because of their larger size, are ineligible for RAES.[7]

Currently, when a non-RAES eligible order is entered into the Exchange's ORS and the best bid (offer on the Exchange's book is equal to the prevailing market bid (offer), the order is routed to a Floor Broker's terminal, a work station in the crowd, or the order-sending firm's booth. CBOE submits that this helps ensure that such orders are handled and executed in a manner consistent with CBOE Rule 6.45, which provides that bids or offers displayed on the customer limit order book are entitled to priority over other bids or offers at the same price. However, CBOE states that once an order is so routed, it becomes subject to market risk, as there may be some delay between the time the order is rerouted and the time it is actually filled in open outcry. CBOE believes that in times of extreme market volatility this delay could have a significant effect on the price at which the order is executed.

Under the proposal, an incoming marketable public customer ORS order would be automatically executed against a customer limit order in the book that represents or equals the prevailing best bid (offer) up to the size of that booked order. Any remaining balance of the ORS order would then be instantly rerouted through the ORS as if it were a new order, which could, among other things, include handling under CBOE's RAES Rule (Rule 6.8). The proposed rule change also provides that no automatic execution would take place at a price inferior to the current best bid (offer) in any other market.

The proposed change would be contained in proposed new Rule 6.8.B. The new rule would further provide that the appropriate Floor Procedure Committee (''FPC'') could determine

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44356 (May 25, 2001), 66 FR 30033 (June 4, 2001) (''Notice'').

[4] *See* Letter to the Secretary, Commission, dated June 3, 2001, and e-mail submitted to the Division of Market Regulation, Commission, dated June 4, 2001, from Mike Ianni (''Ianni Comments'')

[5] *See* Letter from Angelo Evangelou, Attorney, CBOE, to Andrew Shipe, Attorney, Division of Market Regulation, Commission, dated September 28, 2001 (''Amendment No. 1''). In Amendment No. 1, the CBOE clarified that the authority to exempt an option class from the provisions of the proposed rule change during unusual market conditions could be delegated by the Chairman of the appropriate Floor Procedure Committee only to another member of that Committee.

[6] *See* Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999).

[7] CBOE represents that the term ''marketable public customer order'' means a market or marketable limit order that is not for an account in which a member, non-member participant in a joint-venture with a member, or any non-member broker-dealer (including foreign broker-dealer) has an interest. E-mail from Angelo Evangelou, Attorney, CBOE, to Andrew Shipe, Attorney, Division, Commission, dated December 26, 2001.