

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47066; File No. SR-Amex-2002-84]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Regarding Rules Implementing the Options Intermarket Linkage Plan

December 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on October 15, 2002, 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. The Exchange submitted Amendment No. 1 to the proposed rule change on December 19, 2002.³ 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 to add Exchange rules 941 through 945 ("Options Linkage Rules") implementing the options intermarket linkage ("Linkage"). The Exchange is also proposing to clarify how its fees will apply to Linkage trades.⁴ The Options Linkage rules will become effective once the Commission approves this filing and the Exchange implements operation of the applicable provisions of the Linkage. For example, the provisions of proposed Amex rule 942 regarding order protection will not become effective until the Exchange implements Linkage operations governing Satisfaction Orders (as defined in proposed Amex rule 940) and trade-through processing.

The text of the proposed rule change is below. Deleted language is in brackets; proposed new language is italicized.

* * * * *

Rule 941. Options Intermarket Linkage

(a) Applicability

The rules in this section are applicable only to linkage orders (as defined below). In addition, except to the extent that specific rules in this section govern, or unless the context otherwise requires, the provisions of the constitution and of all other rules and policies of the Board of Governors shall be applicable to the trading of options on the Exchange.

(b) Definitions "The following terms shall have the meaning specified in this rule solely for the purpose of this section 4:

(1) "Aggrieved Party" means a member of a Participant Exchange whose bid or offer was traded-through.

(2) "Block Trade" means a trade on a Participant Exchange that:

(i) Involves 500 or more contracts and has a premium value of at least \$150,000;

(ii) Is affected at a price outside of the NBBO; and

(iii) Involves either:

(A) A cross (where a member of the Participant Exchange represents all or a portion of both sides of the trade), or

(B) Any other transaction (i.e., in which such member represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer on the Participant Exchange.

Contemporaneous transactions at the same price on a Participant Exchange shall be considered a single transaction for the purpose of this definition.

(3) "Complex Trade" means the execution of an order in an option series in conjunction with the execution of one or more related order(s) in different options series in the same underlying security occurring at or near the same time for the equivalent number of contracts and for the purpose of executing a particular investment strategy.

(4) "Crossed Market" means a quotation in which the Exchange disseminates a bid (offer) in a series of an Eligible Option Class at a price that is greater than (is less than) the price of the offer (bid) for the series then being displayed from another Participant Exchange.

(5) "Eligible Market Maker", with respect to an Eligible Option Class, means a specialist or registered options trader that:

(i) Is assigned to, and is providing two-sided quotations in, the Eligible Option Class; and

(ii) Is in compliance with the requirements of Rule 945

(6) "Eligible Option Class" means all option series overlying a security (as that term is defined in Section 3(a)(10) of the Exchange Act) or group of securities, including both put options and call options, which class is traded on the Exchange and at least one other Participant Exchange.

(7) "Firm Customer Quote Size" with respect to a P/A Order means the lesser of: (a) The number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. The number shall be at least 10.

(8) "Firm Principal Quote Size" means the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be at least 10.

(9) "Linkage" means the systems and data communications network that link electronically the Participant Exchanges for the purposes specified in the Plan.

(10) "Linkage Order" means an order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "Principal Order," which is an order for the principal account of an Eligible Market Maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

(11) "Locked Market" means a quotation in which the Exchange disseminates a bid (offer) in a series of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, from Jeffrey P. Burns, Assistant General Counsel, Amex, dated December 18, 2002 ("Amendment No. 1"). In Amendment No. 1, Amex clarified that it is retaining its interim linkage rules.

⁴ On August 10, 2001, the Amex filed SR-Amex-2001-64 proposing Linkage Rules. On September 10, 2001, and October 18, 2001, the Amex submitted Amendments No. 1 and 2, respectively. The Commission has not published that filing for comment, and concurrent with the filing of this proposed rule change, the Amex withdrew File No. SR-Amex-2001-64.

an Eligible Option Class at a price that equals the price of the offer (bid) for the series then being displayed from another Participant Exchange.

(12) "NBBO" means the national best bid and offer in an options series as calculated by a Participant Exchange.

(13) "Non-Firm" means, with respect to quotations, that members of a Participant Exchange are relieved of their obligation to be firm for their quotations pursuant to rule 11Ac1-1 under the Exchange Act.

(14) "Participant Exchange" means a registered national securities exchange that is a party to the Plan.

(15) "Plan" means the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage, as such plan may be amended from time to time.

(16) "Public Customer" means an individual or organization that is not a broker-dealer. With respect to a Linkage Order, it means an order which, if executed, results in the purchase or sale for an account in which no broker-dealer has an interest.

(17) "Reference Price" means the limit price attached to a Linkage Order by the sending Participant Exchange. Except with respect to a Satisfaction Order, the Reference Price is equal to the bid disseminated by the receiving Participant Exchange at the time that the Linkage Order is transmitted in the case of a Linkage Order to sell and the offer disseminated by the receiving Participant Exchange at the time that the Linkage Order is transmitted in the case of a Linkage Order to buy. With respect to a Satisfaction Order, the Reference Price is the bid or offer price reflecting order(s) of Public Customers disseminated by the sending Participant Exchange that was traded through, except in the case of a Trade-Through that is a Block Trade, in which case the Reference Price shall be the price of the Block Trade that caused the Trade-Through.

(18) "Third Participating Market Center Trade-Through" means a Trade-Through in a series of an Eligible Option Class that is effected by executing a Linkage Order, and such execution results in a sale (purchase) at a price that is inferior to the best bid (offer) being disseminated by another Participant Exchange.

(19) "Trade-Through" means a transaction in an options series at a price that is inferior to the NBBO.

(20) "Verifiable Number of Customer Contracts" means the number of Public Customer contracts in the book of a Participant Exchange.

Rule 942. Operation of the Linkage

By subscribing to the Plan, the Exchange has agreed to comply with, and enforce compliance by its Members with, the Plan. In this regard, the following shall apply:

(a) Pricing. Members may send P/A Orders and Principal Orders through the Linkage only if such orders are priced at the NBBO.

(b) P/A Orders.

(1) Sending of P/A Orders for Sizes No Larger than the Firm Customer Quote Size. A specialist may send through the Linkage a P/A Order for execution in the automatic execution system of a Participant Exchange if the size of such P/A Order is no larger than the Firm Customer Quote Size. Except as provided in subparagraph (b)(2)(ii) below, a specialist may not break up an order of a Public Customer that is larger than the Firm Customer Quote Size into multiple P/A Orders, one or more of which is equal to or smaller than the Firm Customer Quote Size, so that such orders could be represented as multiple P/A Orders through the Linkage.

(2) Sending of P/A Orders for Sizes Larger than the Firm Customer Quote Size. If the size of a P/A Order is larger than the Firm Customer Quote Size, a specialist may send through the Linkage such P/A Order in one of two ways:

(i) The specialist may send a P/A Order representing the entire Public Customer order. If the receiving Participant Exchange's disseminated quotation is equal to or better than the Reference Price when the P/A Order arrives at that market, that exchange will execute the P/A Order at its disseminated quotation for at least the Firm Customer Quote Size. Within 15 seconds of receipt of such order, the receiving Participant Exchange will inform the specialist of the amount of the order executed and the amount, if any, that was canceled.

(ii) Alternatively, the specialist may send an initial P/A Order for the Firm Customer Quote Size pursuant to subparagraph (b)(1) above. If the Participant Exchange executes the P/A Order and continues to disseminate the same quotation at the NBBO 15 seconds after reporting the execution of the initial P/A Order, the specialist may send an additional P/A Order to the same Participant Exchange. If sent, such additional P/A Order must be for at least the lesser of 100 contracts or the entire remainder of the Public Customer order.

In any situation where a receiving Participant Exchange does not execute a P/A Order in full, such Exchange is required to move its quotation to a price

inferior to the Reference Price of the P/A Order.

(c) Principal Orders.

(1) Sending of an Initial Principal Order. An Eligible Market Maker may send a Principal Order through the Linkage at a price equal to the NBBO. Subject to the next paragraph, if the Principal Order is not larger than the Firm Principal Quote Size, the receiving Participant Exchange will execute the order in its automatic execution system, if available, if its disseminated quotation is equal to or better than the price specified in the Principal Order when that order arrives at the receiving Participant Exchange. If the Principal Order is larger than the Firm Principal Quote Size, the receiving Participant Exchange will (a) execute the Principal Order at its disseminated quotation for at least the Firm Principal Quote Size and (b) within 15 seconds of receipt of such order, reply to the sending Participant Exchange, informing such Participant Exchange of the amount of the order that was executed and the amount, if any, canceled. If the receiving Participant Exchange does not execute the Principal Order in full, it will move its quote to a price inferior to the Reference Price of the Principal Order.

(2) Receipt of Multiple Principal Orders. Once the Exchange provides an automatic execution of a Principal Order in a series of an Eligible Options Class (the "initial execution"), the Exchange may reject any Principal Order(s) in the same Eligible Option Class sent by the same Participant Exchange for 15 seconds after the initial execution unless: (a) there is a change of price in the Exchange's disseminated offer (bid) in the series of the Eligible Option Class in which there was the initial execution; and (b) such price continues to be the NBBO. After this 15 second period, and until the sooner of (y) one minute after the initial execution or (z) a change in the Exchange's disseminated bid (offer), the Exchange is not obligated to provide an automatic execution for any Principal Orders in the same Eligible Option Class received from the Participant Exchange that sent the order resulting in the initial execution, and thus may treat any such Principal Orders as being greater than the Firm Principal Quote Size.

(d) Responses to Linkage Orders.

(1) Failure to Receive a Timely Response. A Member who does not receive a response to a P Order or a P/A Order within 20 seconds of sending the order may reject any response received thereafter purporting to report an execution of all or part of that order. The Member so rejecting the response

shall inform the Exchange Participant sending that response of the rejection within 15 seconds of receipt of the response.

(2) *Failure to Send a Timely Response.* If a Member responds to a P Order or P/A Order more than 20 seconds after receipt of that order, and the Participant Exchange to whom the Member responded cancels such response, the Member shall cancel any trade resulting from such order and shall report the cancellation to OPRA.

(e) *Receipt of Linkage Orders.* The Exchange will provide for the execution of P/A Orders and Principal Orders if its disseminated quotation is (i) equal to or better than the Reference Price, and (ii) equal to the then current NBBO. Subject to paragraph (c) above, if the size of a P/A Order or Principal Order is not larger than the Firm Customer Quote Size or Firm Principal Quote Size, respectively, the Exchange will provide for the execution of the entire order, and shall execute such order in its automatic execution system if that system is available. If the size of a P/A Order or Principal Order is larger than the Firm Customer Quote Size or Firm Principal Quote Size, respectively, the specialist must address the order within 15 seconds to provide an execution for at least the Firm Customer Quote Size or Firm Principal Quote Size, respectively. If the order is not executed in full, the Exchange will move its disseminated quotation to a price inferior to the Reference Price.

Rule 943. Order Protection

(a) *Avoidance and Satisfaction of Trade-Throughs.*

(1) *General Provisions.* Absent reasonable justification and during normal market conditions, Members should not effect Trade-Throughs. Except as provided in paragraph (b) below, if a Member effects a Trade-Through with respect to the bid or offer of a Participant Exchange in an Eligible Option Class and the Exchange receives a Satisfaction Order from an Aggrieved Party, either:

(i) the Member who initiated the Trade-Through shall satisfy, or cause to be satisfied, the Aggrieved Party by filling the Satisfaction Order in accordance with subparagraph (a)(2) below; or

(ii) if the Member elects not to do so (and, in the case of Third Participating Market Center Trade-Through, the Member obtains the agreement of the contra party that received the Linkage Order that caused the Trade-Through), then the price of the transaction that constituted the Trade-Through shall be corrected to a price at which a Trade-

Through would not have occurred. If the price of the transaction is corrected, the Member correcting the price shall report the corrected price to OPRA, notify the Aggrieved Party of the correction and cancel the Satisfaction Order.

(2) *Price and Size.* The price and size at which a Satisfaction Order shall be filled is as follows:

(i) *Price.* A Satisfaction Order shall be filled at the Reference Price. However, if the Reference Price is the price of an apparent Block Trade that caused the Trade-Through, and such trade was not, in fact, a Block Trade, then the Member may cancel the Satisfaction Order. In that case, the Member shall inform the Aggrieved Party within three minutes of receipt of the Satisfaction Order the reason for the cancellation. Within three minutes of receipt of such cancellation, the Aggrieved Party may resend the Satisfaction Order with a Reference Price of the bid or offer that was traded through.

(ii) *Size.* An Aggrieved Party may send a Satisfaction Order up to the size of the Verifiable Number of Customer Contracts that were included in the disseminated bid or offer that was traded through. Subject to subparagraph (2)(i) above and paragraph (b) below, a Member shall fill in full all Satisfaction Orders it receives following a Trade-Through, subject to the following limitations:

(A) If the number of contracts to be satisfied exceeds the size of the transaction that caused the Trade-Through, the size of the Satisfaction Order(s) that must be filled with respect to each Participant Exchange(s) shall be limited to the size of the transaction that caused the Trade-Through, and the remainder of any Satisfaction Order(s) shall be canceled;

(B) If the transaction that caused the Trade-Through was for a size larger than the Firm Customer Quote Size with respect to any of the Participant Exchange(s) traded through, the total number of contracts to be filled, with respect to all Satisfaction Orders received, shall not exceed the size of the transaction that caused the Trade-Through. In that case, the Member shall fill the Satisfaction Orders pro rata based on the Verifiable Number of Customer Contracts traded through on each Participant Exchange, and shall cancel the remainder of such Satisfaction Order(s); and

(C) Notwithstanding paragraphs (A) and (B) above, if the transaction that caused the Trade-Through occurred during the five minutes prior to the regularly-scheduled close of trading in the principal market in which the underlying security is traded, the

maximum number of contracts to be satisfied with respect to any one Participant Exchange is 10 contracts.

(3) *Rejection of Fills of Satisfaction Orders.* Within 30 seconds of receipt of notification that another Participant Exchange has filled a Member's Satisfaction Order, the Member that sent the Satisfaction Order may reject such fill, but only to the extent that either: (i) the order(s) for the customer contracts underlying the Satisfaction Order already have been filled; or (2) the customer order(s) to buy (sell) the contracts underlying the Satisfaction Order were canceled.

(4) *Protection of Customers.* Whenever subparagraph (a)(1) applies, if Public Customer orders (or P/A Orders representing Public Customer orders) constituted either or both sides of the transaction involved in the Trade-Through, each such Public Customer order (or P/A Order) shall receive:

(i) The price that caused the Trade-Through; or

(ii) The price at which the bid or offer traded through was satisfied, if it was satisfied pursuant to subparagraph (a)(1)(i), or the adjusted price, if there was an adjustment, pursuant to subparagraph (a)(1)(ii). Whichever price is most beneficial to the Public Customer order. Resulting differences in prices shall be the responsibility of the Member who initiated the Trade-Through.

(b) *Exceptions to Trade-Through Liability.* The provisions of paragraph (a) pertaining to the satisfaction of Trade-Throughs shall not apply under the following circumstances:

(1) The Member who initiated the Trade-Through made every reasonable effort to avoid the Trade-Through, but was unable to do so because of a systems/equipment failure or malfunction;

(2) The Member trades through the market of a Participant Exchange to which such Member had sent a P/A Order or Principal Order, and within 20 seconds of sending such order the receiving Participant Exchange had neither executed the order in full nor adjusted the quotation traded through to a price inferior to the Reference Price of the P/A Order or Principal Order;

(3) The bid or offer traded through was being disseminated from a Participant Exchange whose quotes were Non-Firm with respect to such Eligible Option Class;

(4) The Trade-Through was other than a Third Participating Market Center Trade-Through and occurred during a period when, with respect to the Eligible Option Class, the Exchange's quotes were Non-Firm; provided, however, that,

unless one of the other conditions of this paragraph (b) applies, during any such period: (i) Members shall make every reasonable effort to avoid trading through the firm quotes of another Participant Exchange; and (ii) it shall not be considered an exception to paragraph (a) if a Member regularly trades through the firm quotes of another Participant Exchange during such period;

(5) The bid or offer traded through was being disseminated by a Participant Exchange during a trading rotation in the Eligible Option Class;

(6) The transaction that caused the Trade-Through occurred during a trading rotation;

(7) The transaction that caused the Trade-Through was the execution of a Complex Trade;

(8) In the case of a Trade-Through other than a Third Participating Market Center Trade-Through, a Satisfaction Order with respect to the Trade-Through was not received by the Exchange from the Aggrieved Party promptly following the Trade-Through and, in any event, (i) except in the final five minutes of trading, within three minutes from the time the report of the transaction(s) that constituted the Trade-Through was disseminated over OPRA, and (ii) in the final five minutes of trading, within one minute from the time the report of the transaction(s) that constituted the Trade-Through was disseminated over OPRA; or

(9) In the case of a Third Participating Market Center Trade-Through, a Satisfaction Order with respect to the Trade-Through was not received by the Exchange promptly following the Trade-Through. In applying this provision, the Aggrieved Party must send the Exchange a Satisfaction Order within three minutes from the time the report of the transaction that constituted the Trade-Through was disseminated over OPRA. To avoid liability for the Trade-Through, the Member receiving such Satisfaction Order must cancel the Satisfaction Order and inform the Aggrieved Party of the identity of the Participant Exchange that initiated the Trade-Through within three minutes of the receipt of such Satisfaction Order (within one minute in the final five minutes of trading). The Aggrieved Party then must send to the Participant Exchange that initiated the Trade-Through, a Satisfaction Order within three minutes of receipt of the cancellation of the initial Satisfaction Order (within one minute in the final five minutes of trading).

(c) Responsibilities and Rights Following Receipt of Satisfaction Orders.

(1) When a Member receives a Satisfaction Order, that Member shall respond as promptly as practicable pursuant to Exchange procedures by either:

(i) Specifying that one of the exceptions to Trade-Through liability specified in paragraph (b) above is applicable and identifying that particular exception; or

(ii) Taking the appropriate corrective action pursuant to paragraph (a) above.

(2) If the Member who initiated the Trade-Through fails to respond to a Satisfaction Order or otherwise fails to take the corrective action required under paragraph (a) within three minutes of receiving the notice of a Satisfaction Order, and the Exchange determines that:

(i) There was a Trade-Through; and

(ii) None of the exceptions to Trade-Through liability specified in paragraph (b) above were applicable;

Then, subject to the next paragraph, the Member who initiated the Trade-Through shall be liable to the Aggrieved Party for the amount of the actual loss resulting from non-compliance with paragraph (a) and caused by the Trade-Through.

If either (a) the Aggrieved Party does not establish the actual loss within 30 seconds from the time the Aggrieved Party received the response to its Satisfaction Order (or, in the event that it did not receive a response, within four minutes from the time the Aggrieved Party sent the Satisfaction Order) or (b) the Aggrieved Party does not notify the Exchange Participant that initiated the Trade-Through of the amount of such loss within one minute of establishing the loss, then the liability shall be the lesser of the actual loss or the loss caused by the Trade-Through that the Aggrieved Party would have suffered had that party purchased or sold the option series subject to the Trade-Through at the "mitigation price."

The "mitigation price" is the highest reported bid (in the case where an offer was traded through) or the lowest reported offer (in the case where a bid was traded through), in the series in question 30 seconds from the time the Aggrieved Party received the response to its Satisfaction Order (or, in the event that it did not receive a response, four minutes from the time the Aggrieved Party sent the Satisfaction Order). If the Participant Exchange receives a Satisfaction Order within the final four minutes of trading (on any day except the last day of trading prior to the expiration of the series which is the subject of the Trade-Through), then the mitigation price shall be the price established at the opening of trading in

that series on the Aggrieved Party's Participant Exchange on the next trading day. However, if the price of the opening transaction is below the opening bid or above the opening offer as established during the opening rotation, then the mitigation price shall be the opening bid (in the case where an offer was traded through) or opening offer (in the case where a bid was traded through). If the Trade-Through involves a series that expires on the day following the day of the Trade-Through and the Satisfaction Order is received within the four minutes of trading, the "mitigation price" shall be the final bid (in the case where an offer was traded through) or offer (in the case where a bid was traded through) on the day of the trade that resulted in the Trade-Through.

(3) A Member that is an Aggrieved Party under the rules of another Participant Exchange governing Trade-Through liability must take steps to establish and mitigate any loss such Member might incur as a result of the Trade-Through of the Member's bid or offer. In addition, the Member shall give prompt notice to the other Participant Exchange of any such action in accordance with subparagraph (c)(2) above.

(d) Limitations on Trade-Throughs. Members may not repeatedly trade through better prices available on other exchanges, whether or not the exchange or exchanges whose quotations are traded through are Participant Exchanges, unless one or more of the provisions of paragraph (b) above are applicable. In applying this provision:

(1) The Exchange will consider there to have been a Trade-Through if a Member executes a trade at a price inferior to the NBBO even if the Exchange does not receive a Satisfaction Order from an Aggrieved Party pursuant to subparagraph (a)(1);

(2) The Exchange will not consider there to have been a Trade-Through if a Member executes a Block Trade at a price inferior to the NBBO if such Member satisfied all Aggrieved Parties pursuant to subparagraph (a)(2) following the execution of the Block Trade; and

(3) The Exchange will not consider there to have been a Trade-Through if a Member executes a trade at a price inferior to the quotation being disseminated by an exchange that is not a Participant Exchange if the Member made a good faith effort to trade against the superior quotation of the non-Participant Exchange prior to trading through that quotation. A "good faith effort" to reach a non-Participant Exchange's quotation requires that a

Member at least had sent an order that day to the non-Participant Exchange in the class of options in which there is a Trade-Through, at a time at which such Non-Participant Exchange was not relieved of its obligation to be firm for its quotations pursuant to Rule 11Ac1-1 under the Exchange Act, and such Non-Participant Exchange neither executed that order nor moved its quotation to a price inferior to the price of the Member's order within 20 seconds of receipt of that order.

Rule 944. Locked Markets

(a) *Eligible Market Maker Locking or Crossing a Market. An Eligible Market Maker that creates a Locked Market or a Crossed Market shall unlock (uncross) that market or shall direct a Principal Order through the Linkage to trade against the bid or offer that the Eligible Market Maker locked (crossed).*

(b) *Members Other than an Eligible Market Maker Locking or Crossing a Market. A Member other than an Eligible Market Maker that creates a Locked Market or a Crossed Market shall unlock or (uncross) the market.*

Rule 945. Limitation on Principal Order Access

A specialist or registered options trader shall not be permitted to send Principal Orders in an Eligible Option Class through the Linkage for a given calendar quarter if the specialist or registered options trader effected less than 80 percent of its volume in that Eligible Option Class on the Exchange in the previous calendar quarter (that is, the specialist or registered options trader effected 20 percent or more of its volume by sending Principal Orders through the Linkage). This "80/20" is represented as follows:

$$\frac{X}{X+Y}$$

"X" equals the total contract volume the specialist or registered options trader effects in an Eligible Option Class against orders of Public Customers on the Exchange during a calendar quarter (a) including contract volume effected by executing P/A Orders sent to the Exchange through the Linkage, but (b) excluding contract volume effected by sending P/A Orders through the Linkage for execution on another Participant Exchange. "Y" equals the total contract volume the specialist or registered options trader effects in such Eligible Option Class by sending Principal Orders through the Linkage during that calendar quarter.

* * * * *

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.

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

1. Purpose

The Exchange is proposing its Options Linkage Rules in connection with the implementation of the Options Linkage Plan ("Plan") previously approved by the Commission on July 28, 2000,⁵ and subsequently amended on June 27, 2001,⁶ and May 30, 2002.⁷ The proposed Options Linkage rules also incorporate recent amendments to the Plan that are currently being approved and filed by each options exchange.⁸ The Plan provides for an options intermarket communications linkage for the purpose of linking the various options markets in the U.S. The purpose of the Plan and related Options Linkage rules is to enable the options exchanges to establish and implement a linkage consistent with the objectives set forth

⁵ See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). The Plan was in response to a Commission order pursuant to section 11A(a)(3)(B) of the Exchange Act, 15 U.S.C. 78k-1(a)(3)(B), directing the options exchanges to file a NMS plan within 90 days to link the options markets. See Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999) ("SEC Order"). The options exchanges that are participants to the Plan include the Amex, Chicago Board Options Exchange, Inc., Pacific Exchange, Inc., Philadelphia Stock Exchange, Inc. and the International Securities Exchange, Inc. (the "options exchanges").

⁶ See Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) ("Plan Amendment No. 1 Approval").

⁷ See Securities Exchange Act Release No. 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002) ("Plan Amendments Nos. 2 and 3 Approval").

⁸ The options exchanges have filed with the Commission Joint Amendment No. 4 ("Amendment No. 4") to the Plan. The purpose of this Amendment is to effect three substantive changes governing the operation of the Linkage: (1) Establish special provisions for filling Satisfaction Orders at the end of the trading day; (2) reducing the time period that a member must wait after sending a Linkage Order from 30 seconds to 20 seconds before such member is able to trade through that market; and (3) prohibit fees for Satisfaction Orders executed through the Linkage.

in section 11A of the Exchange Act.⁹ These objectives include, but are not limited to, increasing market efficiency, enhancing competition, increasing the information available to brokers and dealers and investors, facilitating the offsetting of investors' orders and contributing to the best execution of such orders.

The SEC Order issued in October 1999 directed the options exchanges to act jointly in discussing, developing, and submitting for Commission approval an intermarket linkage plan for multiply-traded options. The Commission stated in the SEC Order that it believes a linkage among options markets will benefit investors by increasing competition among markets (and market participants) to provide the best execution of customer orders. In furtherance of this belief, the Commission ordered the options exchanges to take such joint action as is necessary to develop and implement a single linkage plan to permit the efficient transmission of orders among the various options exchanges on a nondiscriminatory basis. The SEC Order further stated that the Commission believes that a linkage of all the options exchanges on a nondiscriminatory basis is necessary to increase the opportunities for brokers to secure the best execution of their customers' orders, to ensure effective competition among options exchanges, and to further facilitate the establishment of a national market system as directed by Congress in section 11A of the Exchange Act.¹⁰

The development of the Plan raised a number of significant issues including, but not limited to: (1) Whether member firms should determine to which exchange they send their orders, or whether orders should be sent to a linkage system first and then routed to the exchange that has posted the best quote; (2) whether there should be any limitation on market maker or member firm principal access to the linkage; (3) whether there should be limits on the size and types of linkage eligible orders; (4) whether orders routed through the linkage system should be able to access an exchange's automatic execution system; (5) whether a trade-through rule should apply during trading rotations and non-firm quote (or fast market) conditions; and (6) whether there should be an exemption from the trade-through rule for block size trades. The proposed Options Linkage Rules address each of these issues in turn.

Proposed Amex rule 941 sets out the definitions specific to the linkage.

⁹ 15 U.S.C. 78k-1.

¹⁰ *Id.*

Moreover, existing definitions in Amex rules would also apply to the linkage as required. In general, the definitions set forth in proposed Amex rule 941 would incorporate the definitions agreed to and contained in the Plan.

Proposed Amex rule 942 concerns the operation of the linkage. This proposed Amex rule incorporates section 7 of the Plan into the Amex's rules by dictating how certain orders are handled. In particular, proposed Amex rule 942 sets forth the pricing of Linkage Orders, the manner in which both Principal Acting as Agent (P/A) Orders and Principal Orders are sent through the linkage and how the Exchange handles linkage orders it may receive. Pursuant to proposed Amendment No. 4 to the Plan, a member of the Amex may reject an execution of certain Linkage orders received more than 20 seconds after sending the order. This is a reduction from the 30 second time period currently in the Plan. In effect, this proposed Amex rule establishes the conditions pursuant to which Amex specialists and registered options traders may enter linkage orders and imposes obligations on the Exchange regarding the processing of incoming linkage orders.

Proposed Amex rule 943 is an order protection rule concerned generally with the avoidance and satisfaction of trade-throughs. This proposed Amex rule contains the trade-through provisions required under section 8(c) of the Plan. First, this rule would establish a general standard that members should avoid trade-throughs as defined in proposed Amex rule 941. If a member does effect a trade-through, the member would be responsible for satisfying a member of another exchange pursuant to paragraphs (a)(2) and (c) of proposed Amex rule 943, subject to the exceptions outlined in paragraph (b) of the proposed Amex rule. The Exchange represents that both the satisfaction procedures and the exceptions to the satisfaction requirements incorporate relevant provisions of the Plan. Paragraph (d) of proposed Amex rule 943 would establish potential regulatory liability for members who repeatedly trade through other exchanges, whether or not the exchanges' traded-through are Participants in the Plan.

Proposed Amex rule 943 also reflects pending Amendment No. 4 to the Plan, which proposes to reduce from 30 seconds to 20 seconds the time period a member must wait for a response to a linkage order. If the member does not receive the response within 20 seconds, the member could trade through the non-responding exchange without liability. In addition, proposed Amex

rule 943 also reflects pending Amendment No. 4 to the Plan, which proposes to limit liability for trade-throughs in the last few minutes of a trading day to 10 contracts per exchange. The Exchange represents that the purpose of that amendment is to provide protection for small customer orders, but also to limit the potential risk to members who may be unable to hedge options positions they assume near the close of trading.

Proposed Amex rule 944 addresses locked or crossed markets.¹¹ The Exchange represents that this proposed Amex rule implements section 7(a)(i)(C) of the Plan by indicating that locked and crossed markets should be avoided and providing procedures to unlock and uncross markets that do occur.

Proposed Amex rule 945 provides for a limitation on Principal Order access for Amex specialists and registered options traders. This proposed Amex Rule codifies the "80/20 Test" contained in Section 8(b)(iii) of the Plan. Specifically, a specialist or registered options trader on the Exchange would be restricted from sending Principal Orders through the linkage if the specialist or registered options trader effects less than 80 percent of specified order flow on the Exchange. The Exchange would apply this test on a calendar quarter basis.

With respect to the proposed fee change, the Exchange is proposing that its existing fees will apply to Principal Orders but will not impose fees on P/A Orders. The Amex currently does not impose transaction fees for customer orders, and Amex therefore believes that P/A Orders should similarly not be charged a transaction fee because such orders are essentially customer orders executed through the linkage. With respect to Principal Orders, existing transaction fees applicable to away market maker and specialist orders will apply equally to these linkage orders.

This proposal also specifies that existing Amex fees will not apply to Satisfaction Orders. Proposed Amendment No. 4 to the Plan proposes to prohibit a Participant from charging a fee to a member of another Participant that is seeking to satisfy customer orders on its book that were traded through.

¹¹ A "Locked Market" means a quotation in which the Exchange disseminates a bid (offer) in a series of an eligible option class at a price that equals the price of the offer (bid) for the series then being displayed from another participant exchange. A "Crossed Market" means a quotation in which the Exchange disseminates a bid (offer) in a series of an eligible option class at a price that is greater than (is less than) the price of the offer (bid) for the series then being displayed from another participant exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act,¹² in general, and furthers the objectives of section 6(b)(5),¹³ 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed fee change is also consistent with section 6(b)(4) of the Exchange Act¹⁴ regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities. With respect to the proposed disciplinary sanctions for engaging in a pattern of trade-throughs, the Exchange believes the proposal is consistent with section 6(b)(6) of the Exchange Act¹⁵ requiring that an exchange have rules that provide for the appropriate discipline of members for violations of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

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

The Exchange 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

The Exchange neither solicited nor received written comments 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:

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78f(b)(6).

(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, as amended, is consistent with the Exchange 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-2002-84 and should be submitted by January 17, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-32795 Filed 12-26-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47053; File No. SR-Amex-2002-107]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to an Extension of a Temporary Waiver of Associate Member Fees for Persons Trading Nasdaq Securities Admitted to Unlisted Trading Privileges Through the Exchange's Electronic Order Routing Systems

December 19, 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 December 16, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act,³ which renders the proposal effective upon filing with the Commission. 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 proposes to extend through March 31, 2003 the waiver of: (1) Membership Dues, Initiation Fee, Application Processing Fee, Initial Registration Fee and the Electronic Access Fee for new Associate Members that trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the waiver, and (2) the Electronic Access Fee for existing Associate Members that currently do not have electronic access privileges and that trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the waiver.

The proposed Fee schedule is available at the Office of the Secretary of the 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 Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend to March 31, 2003, the temporary waiver of Associate Member and Electronic Access Fees for broker/dealer firms that currently do not have electronic access to the Amex Order File ("AOF"). The waiver currently is set to expire on December 31, 2002 and applies to firms that trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the waiver. Broker/dealers that become Associate Members during the waiver period will not have to pay: (1) 2002 and 2003 dues applicable to Associate members, (2) Associate Member Initiation Fee, (3) Application Processing Fee, (4) Initial Registration Fee, and (5) the Electronic Access Fee. Existing Associate Members that currently do not have electronic access to AOF also could upgrade to electronic access privileges without paying the customary Electronic Access Fee provided they trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the fee waiver.

At the end of the waiver period, firms that become Associate Members during the waiver and trade only Nasdaq stocks through AOF would have to:

(1) Acquire a regular membership and pay the fees and dues associated with becoming a regular member,

(2) Continue their Associate Membership and pay: (i) 75% of the 2003 dues, (ii) the Associate Member Initiation Fee, (iii) Application Processing Fee, (iv) the Renewal Registration Fee, and (v) 75% of the Electronic Access Fee for 2003, or

(3) Terminate their Associate Membership.

New Associate Members that terminate their Associate Membership on or prior to March 31, 2003 will not have to pay 2002 and 2003 dues, Associate Member Initiation Fee, Application Processing Fee, Initial Registration Fee and Electronic Access Fee for 2002 and 2003.

At the end of the waiver period, firms that already were Associate Members prior to the waiver and upgraded to electronic access privileges during the waiver and traded only Nasdaq stocks through AOF would have to: (1) Acquire a regular membership and pay the fees and dues associated with becoming a regular member, or (2) pay the 2003 dues and Electronic Access Fee for 2003 applicable to Associate Members.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 200.30-3(a)(12).