issuers and other persons using its facilities.

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 that is not necessary in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

Because the foregoing proposed 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, the proposed rule change has become effective pursuant to section 19(b)(3)(A) [15] of the Act and Rule 19b–4(f)(6) [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission accelerate the operative date. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will enable the Amex to continue suspension of its exchange transaction charges, and allow for the reinstitution of a previously suspended customer transaction fee at one-fourth its original level as of April 1, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[17]

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

V. 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 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-2003–22 and should be submitted by May 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47673; File No. SR–Amex–2003–08]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change by the American Stock Exchange LLC To Increase to Five Hundred Contracts the Maximum Permissible Number of Equity and Index Option Contracts Executable Through Auto-Ex

April 14, 2003.

I. Introduction

On February 10, 2003, the American Stock Exchange LLC (''Amex'' 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 increase to 500 contracts the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, Auto-Ex. On March 10, 2003, the proposed rule change was published for public comment in the **Federal Register**.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

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

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

In 1985, the Exchange implemented the Auto-Ex system, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File (''AOF''). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to Auto-Ex, allows for the entry of orders of up to 2500 option contracts.[4] Auto-Ex, however, is only permitted to execute equity option orders and index option orders of up to 250 contracts.[5] As a result, market and marketable limit orders of more than 250 contracts are routed by AOF to the specialist's book.

The Exchange now proposes to increase to 500 contracts the maximum permissible number of equity and index option contracts in an order that can be executed through the Auto-Ex system. It is proposed that this increase to 500 contracts in permissible order size for Auto-Ex be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. Currently, the Amex posts applicable quote size parameters on its web page and represents that it will continue to do so. The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increase.

Under Commentary .03 to Amex Rule 933,[6] the Exchange is permitted to

[3] *See* Securities Exchange Act Release No. 47429 (March 3, 2003), 68 FR 11418.

[4] *See* Securities Exchange Act Release No. 44065 (March 12, 2001), 66 FR 15513 (March 19, 2001).

[5] See Securities Exchange Act Release No. 45628 (March 22, 2002), 67 FR 15262 (March 29, 2002). The Amex notes that the Auto-Ex guarantee size for Nasdaq-100 Tracking Stock (''QQQ'') options is up to 2,000 contracts for the two near-term expiration months and 1,000 contracts for all other expiration months. *See* Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002).

[6] *See* Amex Rule 933, Commentary .03; *see also* Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002).

increase the size of Auto-Ex eligible orders for classes of multiply-traded options to match the automatic execution order size of any other options exchange, provided that the Exchange files with the Commission a proposed rule change pursuant to Section 19(b)(3)(A) of the Act.[7] In April 2002, pursuant to Amex Rule 933, Commentary .03 and Section 19(b)(3)(A) of the Act, the Amex filed a proposed rule change with the Commission to increase its Auto-Ex eligible order size for QQQ options to up to 2,000 contracts for the two near-term expiration months and 1,000 contracts for all other expiration months in order to match Primary Market Makers' size guarantees in QQQ options on the International Securities Exchange, Inc. (''ISE'').[8] Since April 29, 2002, the Exchange represents that it has established an Auto-Ex eligible order size of 1,000 contracts for all QQQ options series. The Exchange states that, to date, it is unaware of any increased risks to market participants and the marketplace as a result of the greater Auto-Ex eligible order size for QQQ options.

The Exchange also believes that the current Auto-Ex eligible order size of up to 250 contracts for all other options classes at the Exchange has similarly not created greater financial risks or other known system difficulties. The Exchange has set the Auto-Ex order size to the 250-contract maximum in a number of actively-traded option classes that, the Exchange believes, are the classes with the greatest liquidity and trading interest. The Exchange notes that options in Microsoft Corporation (MSFT) and General Electric Co. (GE) have Auto-Ex order sizes of 250 contracts. The Exchange states that market participants have further indicated that even larger sizes would provide greater benefits to their customers and proprietary trading strategies. The Exchange maintains that an increase in the permissible size of orders executable through Auto-Ex will provide more efficient executions due to the speed of execution obtained by Auto-Ex versus manual handling. The Exchange states that customers and other market participants are increasingly demanding that the Exchange automatically execute larger option order sizes that in the past would have received manual handling. The Exchange believes that an increase in the Auto-Ex eligible order size of up to 500 contracts will meet this demand of the marketplace.

The Exchange's Auto-Ex system provides that all customer and broker-dealer market and marketable limit orders within the appropriate size parameters are executed at the prevailing best bid or offer, with both the specialist and registered options traders (''ROTs'') as the contra-party to the transaction. Auto-Ex trades are automatically allocated on a rotating basis to the specialist and to each ROT that has signed on to Auto-Ex.[9] If an Auto-Ex trade is greater than ten contracts, the Auto-Ex system divides the execution into lots of ten or fewer contracts and allocates a lot to each Auto-Ex participant.[10] Accordingly, for actively-traded option classes in large trading crowds, the Auto-Ex allocation of executed contracts into lots of 10 contracts operates so that an Auto-Ex size of 250 contracts would be spread out among several ROTs, thereby significantly reducing the potential financial risk that a single ROT may incur. The Exchange believes that an increase of the Auto-Ex eligible size to 500 contracts will not significantly increase the financial risks of ROTs for such actively-traded option classes.

The Exchange believes that market participants desire and will support an increase in Auto-Ex eligible sizes of up to 500 contracts. The Exchange represents that, as of April 29, 2002, it has established an Auto-Ex size of 1,000 contracts for all QQQ options series. The Amex believes that the proposed increase in Auto-Ex eligible size for all other options is necessary in order for the Exchange to address market demands and for the purpose of competing effectively with other options exchanges that may not be so restricted.

The Amex notes that the Chicago Board Options Exchange, Inc. (''CBOE'') has received regulatory approval, with respect to option classes that disseminate quotations with size, to automatically execute orders in such options through its RAES system up to the disseminated size, which may be larger than 250 contracts.[11] Furthermore, the Amex notes that the ISE automatically executes a customer order for the disseminated quote size once such order hits the available option quote.[12] The Amex notes that, as a result, the disseminated size for a particular option quote is the actual size of an order that will be automatically executed. Accordingly, the Amex believes that, based on competitive considerations, an increase in the maximum Auto-Ex eligible order size will provide customers with increased opportunities for better and more efficient executions.

The Exchange represents that Auto-Ex has been successful in enhancing execution and operational efficiencies for certain option classes. The Exchange believes that automatic executions of orders for up to 500 contracts will allow for the quick, efficient execution of public customer orders, as well as broker-dealer orders on a case-by-case basis consistent with the Exchange's recent ability to provide automatic executions of broker-dealer transactions.[13]

III. Discussion

After careful review, 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 and, in particular, the requirements of section 6 of the Act.[14] Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions, 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.[15]

While increasing the maximum order size limit from 250 contracts to 500 contracts for automatic execution eligibility by itself does not raise concerns under the Act, the Commission believes that this increase

[7] 15 U.S.C. 78s(b)(3)(A).

[8] *See* Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002). The Amex rule change with respect to maximum Auto-Ex size for the QQQ options was filed with the Commission as a proposed rule change effective on filing pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A).

[9] At the start of each trading day, the order in which trades are allocated to the specialist and traders signed on to Auto-Ex is randomly determined.

[10] For example, an option class that allows up to 50 contracts to be executed through Auto-Ex would have a trade of 25 contracts divided into lots of 10, 10 and 5. *See* Securities Exchange Act Release No. 47229 (January 22, 2003), 68 FR 5060 (January 31, 2003) (File No. SR–Amex–00–30).

[11] *See* Securities Exchange Act Release No. 45676 (March 29, 2002), 67 FR 16478 (April 5, 2002) (CBOE File No. 2001–70); *see also* CBOE Rule 6.8 (c)(v) and Commentary .09 to CBOE Rule 6.8.

[12] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000). The ISE operates an electronic marketplace where orders and quotes are entered into a central order book. Trades are then executed automatically when orders and quotes match.

[13] *See* Securities Exchange Act Release No. 46479 (September 10, 2002) 67 FR 58654 (September 17, 2002).

[14] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

raises collateral issues that the Amex will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for Auto-Ex. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed on to the Amex's Auto-Ex system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price; however, these risks are somewhat offset by the fact that the Exchange's Auto-Ex system allocates executed contracts into lots of 10 contracts among the specialist and any ROTs logged onto Auto-Ex.

In addition, when the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through Auto-Ex, the greater the risk market makers must be willing to accept. The Commission does not believe that, because Amex floor governors or senior floor officials determine to approve orders as large as 500 contracts as eligible for Auto-Ex, Amex floor governors or senior floor officials or Amex staff should disengage Auto-Ex more frequently by, for example, declaring an ''unusual market condition.'' Disengaging Auto-Ex can negatively affect investors by making it slower and less efficient to execute their orders.[16] It is the Commission's view that the Amex, when increasing the maximum size of orders that can be sent through Auto-Ex, should not disadvantage all customers—the vast majority of whom enter orders for less than 500 contracts—by making their automatic execution systems less reliable.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).[17]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Amex–2003–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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[16] *See* Amex Rule 933(f)(i), specifying the circumstances in which Auto-Ex may be disengaged or operated in a manner other than the normal manner.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47664; File No. SR–PCX–2003–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto Regarding the Maximum Permissible Number of Nasdaq-100 Tracking Stock (''QQQ'') Option Contracts Executable Through the Exchange's Automatic Execution System (''Auto-Ex'')

April 10, 2003.

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 March 27, 2003, the Pacific Exchange, Inc. (''Exchange'' or ''PCX'') 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 PCX. The proposed rule change has been filed by the PCX as a ''non-controversial'' rule change under rule 19b–4(f)(6) under the Act.[3] On April 7, 2003, the PCX filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

PCX proposes to amend its rules to increase to 2,000 contracts in the first two near term expiration months, and to 1,000 contracts for all other expiration months, the maximum permissible number of QQQ option contracts in an order that can be executed through Auto-Ex.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*.

* * * * *

Automatic Execution System

Rule 6.87(a)–(b)(5)—No change.

(6) The OFTC or its delegate consisting of two Floor Officials shall determine the size of orders that are eligible to be executed on Auto-Ex. The OFTC or its delegate, two Floor Officials, may approve requests of the Lead Market Makers to execute orders on Auto-Ex in sizes greater than 20 contracts. Although the order size parameter may be changed on an issue-by-issue basis by the OFTC or its delegate, two Floor Officials, the maximum order size for execution through Auto-Ex is as follows:

(A) Equity Options: the maximum order size for execution through Auto-Ex for equity options is 250 contracts *except for options on the Nasdaq-100 Tracking Stock (QQQ) in which case, the maximum order size will be 2,000 contracts in the first two (2) near term expiration months and 1,000 contracts for all other expiration months;*

(B) Index Options: the maximum order size for execution through Auto-Ex is 250 contracts.

(7)—No change.

(c)–(p)—No change.

Commentary .01–.08—No change.

* * * * *

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 PCX 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 PCX 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 increase the maximum order size eligibility for Auto-Ex in the first two near term expiration months in QQQ options to 2,000 contracts and to 1,000 contracts

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 4, 2003. In Amendment No. 1, PCX amended the proposed rule text of the proposed rule change to reflect the current rule language of PCX rule 6.87.