

registered accounting firms; and enforcing compliance with the Act. The Commission has authority to oversee the operations of the PCAOB, including but not limited to the authority to appoint or remove members of the PCAOB, to approve its budget and rules, and to entertain appeals of adverse PCAOB inspection reports and disciplinary actions.

Section 101(d) of the Act provides that, no later than 270 days after the establishment of the PCAOB, the members of the PCAOB "shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine \* \* \* that the Board is so organized and has the capacity to carry out the requirements of [the Act], and to enforce compliance with [the Act] by registered public accounting firms and associated persons thereof." The purpose of the provision was to assure that the PCAOB is prepared to undertake promptly its statutory responsibilities.

Since the appointment of its board members, the PCAOB has undertaken many actions to demonstrate its readiness to carry out the requirements of the Act. For example, it has hired or substantially completed the hiring process to fill, on a permanent or acting basis, a majority of its key positions, including the Director of Registration and Inspections and the Chief Auditor. The PCAOB has adopted by-laws and proposed for public comment a code of conduct and ethical standards for PCAOB members and staff.

The PCAOB has adopted its budget for the calendar year 2003. It also has determined and submitted to the Commission a proposed formula for the computation of an Annual Accounting Support Fee for calendar year 2003. The PCAOB has adopted, and submitted to the Commission for approval, a plan for assessment, billing and collection of registration fees, annual fees and Annual Accounting Support Fees.

The PCAOB has begun to adopt rules for the profession. For example, it has proposed rules relating to the registration of public accounting firms and has supplemented its comment process on that proposal by holding a public roundtable meeting to solicit views on issues relating to the registration of non-U.S. public accounting firms. The PCAOB has adopted interim professional standards relating to auditing, attestation, independence, quality control, and ethical conduct of auditors. These standards are the subject of a separate

Commission Order. After the date of that Order, no professional standards in these areas, as they relate to the audit of public companies, will take effect unless approved by the PCAOB under its statutory rulemaking process and published for comment and approved by the Commission. The PCAOB also has issued a policy statement setting forth a blueprint for its future standard-setting procedures, including a planned review of the interim standards.

Finally, the PCAOB has developed a plan for inspecting accounting firms. It has also prepared a plan to develop procedures and standards governing disciplinary proceedings and the imposition of sanctions against accounting firms and their associates.

As a result of these actions, but without this Order constituting approval of any specific PCAOB action, the Commission determines that the PCAOB is so organized and has the capacity to carry out the requirements of the Act and to enforce compliance with the Act by registered public accounting firms and associated persons thereof, as required by section 101(d) of the Act. Accordingly,

*It is Ordered* that the Commission hereby determines that the PCAOB has satisfied the requirements of section 101(d) of the Act.

By the Commission.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 03-10782 Filed 4-30-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47725; File No. SR-Amex-2003-17]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Market at 4 p.m. Orders for ETFs

April 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 17, 2003, 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. On April 17,

2003 the Amex amended the proposal.<sup>3</sup> 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

The Amex proposes to add Commentary .02 to Amex Rule 131 ("Types of Orders") to provide that an order in Exchange Traded Funds ("ETFs") that trade until 4:15 p.m. may be designated as "market at 4 p.m."; and Commentary .06 to Amex Rule 155 ("Precedence Accorded to Orders Entrusted to Specialists") to provide that "market at 4 p.m." orders, shall be executed at one price at 4 p.m. or as close as practicable to 4:00 p.m. and shall have priority over limit orders priced at the execution price.

#### 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, as amended. 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.

The text of the proposed rule change is below. Proposed new language is *italicized*.

\* \* \* \* \*

#### Types of Orders

##### Rule 131

\* \* \* \* \*

##### Commentary .02

*"Market at 4 p.m." orders. An order in Portfolio Depositary Receipts or Index Fund Shares that trade on the Exchange until 4:15 p.m. may be designated as "market at 4 p.m." to denote that it is a market order which is to be executed at or as close as practicable to the close of the regular equity trading session on the exchange (normally 4 p.m. Eastern Time).*

*(b) Where a member is holding simultaneously both buy and sell*

<sup>3</sup> See letter from Geraldine Brindisi, Vice-President and Corporate Secretary, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2003 ("Amendment No. 1"). In Amendment No. 1, the Amex replaced in its entirety the original proposed rule change.

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

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

"market at 4 p.m." orders, and where there is an imbalance between the buy and sell "market at 4 p.m." orders, the member shall, at 4 p.m. or as close as practicable to 4 p.m., execute the imbalance against the prevailing bid or offer on the Exchange, as appropriate. (An imbalance of buy orders would be executed against the offer. An imbalance of sell orders would be executed against the bid.) The member shall then pair off the remaining "market at 4 p.m." orders at the price of the immediately preceding sale described above.

(c) Where the aggregate size of buy "market at 4 p.m." orders equals the aggregate size of sell "market at 4 p.m." orders in a given security, the buy and sell orders shall be paired off at the midpoint of the then prevailing bid and offer in that security on the Exchange. In the event that that midpoint consists of a number including a fraction of a cent, then the price of the transaction shall be at the next higher one cent increment above the midpoint.

#### Precedence Accorded to Orders Entrusted to Specialists

##### Rule 155

No change

##### Commentary

.01 to .05 No change.

.06 Notwithstanding anything in Commentaries .03 and .04 above to the contrary, "market at 4 p.m." orders entered with the specialist in Portfolio Depositary Receipts and Index Fund Shares (see Rule 131, Commentary .02) shall be executed at one price at 4 p.m. or as close as practicable to 4 p.m. and shall have priority over limit orders priced at the execution price.

\* \* \* \* \*

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

##### 1. Purpose

Many ETFs traded on the Exchange trade until 4:15 p.m., Eastern Time, instead of the normal 4 p.m. equities closing time. Currently, market participants trading ETFs (including Portfolio Depositary Receipts and Index Fund Shares) can place market-on-close orders and receive an execution at the 4:15 p.m. closing price for ETFs trading until 4:15 p.m. According to the Amex, however, certain market participants, including institutions, arbitrageurs and professional traders, may wish to receive on such orders a "4 p.m. closing" price (the so called "cash close") at the close of trading in U.S.

equity markets. This is because ETF pricing may "drift" (i.e., change significantly) between 4 p.m. and 4:15 p.m., based on changes in index futures pricing (which close at 4:15 p.m.) or changes in the over-the-counter "cash" market for underlying index stocks that may occur after 4 p.m.

The Exchange proposes to add Commentary .02(a) to Amex Rule 131 ("Types of Orders") to provide that an order in ETFs traded until 4:15 p.m. may be designated as "market on 4 p.m." ("MCC") for execution at or as soon as practicable after the close of the regular equity trading session on the Exchange (normally 4 p.m.). Such orders could be entered until 4 p.m., and all MCC orders to buy and sell the same ETF would be paired off by the specialist and executed at one price. Commentary .02(b) of Amex Rule 131 would provide that when a member is holding simultaneously both buy and sell MCC orders, and where there is an imbalance of MCC buy and sell orders in a given ETF, the member entrusted with the orders would execute the imbalance against the prevailing bid or offer on the Exchange, as appropriate. This would mean that an imbalance of buy orders would be executed against the offer. An imbalance of sell orders would be executed against the bid. The remaining orders would be paired off at the immediately preceding sale price. Amex further proposes in Commentary .02(c) of Amex Rule 131 that where the aggregate size of buy and sell MCC orders in a given ETF is the same, then the orders would be paired off at the midpoint of the then prevailing bid and offer in that ETF on the Exchange. If the midpoint is a fraction of a cent, then the price of the transaction would be at the next higher one-cent increment above the midpoint.

The Amex further proposed adding a new Commentary .06 to Amex Rule 155 ("Precedence Accorded to Orders Entrusted to Specialists") to make clear that "market at 4 p.m." orders would be executed at one price at 4 p.m. or as close as practicable to 4 p.m. and shall have priority over limit orders priced at the execution price. Amex states that these MCC orders would be entered either with a floor broker or through the Amex Order File ("AOF"). However, Amex states that system changes to the Common Message Switch ("CMS") would be required to accommodate orders designated as MCC, and, until these changes are made, floor brokers would provide the only way to enter MCC orders.

##### 2. Statutory Basis

The Amex believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>4</sup> in general, and section 6(b)(5)<sup>5</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, 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 does not believe that the proposed rule change, as amended, 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

Written comments were neither solicited nor received with respect to the proposed rule change, as amended.

#### 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:

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 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

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

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

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 number SR-Amex-2003-17 and should be submitted by May 21, 2003.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47737; File No. SR-Amex-2003-31]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to the Rules Implementing the Options Linkage Plan

April 25, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 22, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 amend Amex Rule 941(e) to clarify that in those cases where a Linkage Order is not eligible for automatic execution, 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. Current

Amex Rule 941(e) incorrectly references Commentary .01(d) to Amex Rule 933 instead of paragraph (f)(i) of Amex Rule 933 for those situations where the Exchange's Auto-Ex system may not operate.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 to amend Amex Rule 941(e)<sup>3</sup> in order to accurately reflect the manner in which Linkage Orders<sup>4</sup> received by the Exchange will be executed when an order is not eligible for automatic execution through the Auto-Ex system ("Auto-Ex").<sup>5</sup> The Exchange adopted Amex Rule 941(e) as part of its rules for

<sup>3</sup> Amex Rule 941(e) entitled "Receipt of Linkage Orders," sets forth the manner in which Linkage Orders will be executed given the Exchange's disseminated quotation and the size of the particular order.

<sup>4</sup> "Linkage Order" means an order routed through the Linkage as permitted under the Linkage 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.

<sup>5</sup> Amex Rule 933(f)(i) sets forth the situations in which Auto-Ex may be disengaged or operated in a manner other than the normal manner. The circumstances of Auto-Ex disengagement outlined in the Rule include market data delays, unusual markets, unusual market conditions, system malfunctions, influx of order executions and for certain market activity such as book bids or offers and locked or crossed markets.

implementing The Plan for the Purpose of Creating and Operating an Intermarket Options Market Linkage (the "Linkage Plan" or "Plan").<sup>6</sup> The Exchange, along with the other options exchanges, launched Phase I of the Linkage on January 31, 2003. Phase II is expected to commence on April 25, 2003. Phase I is limited to automatic executions while Phase II of the Linkage will include manual handling of Linkage Orders and satisfaction liability.

The reference in Amex Rule 941(e) to Commentary .01(d) to Amex Rule 933 does not accurately portray the manner in which option orders may be ineligible for automatic execution through the Exchange's Auto-Ex system.<sup>7</sup> Rather, the Exchange believes that Amex Rule 933(f)(i) is the proper rule to cross-reference in Amex Rule 941(e) to identify those situations in which Auto-Ex may not be available. For example, Amex Rule 933(f)(i)(F) provides for a by-pass of Auto-Ex during the following situations: (i) Whenever the bid or offer in a specific option series represents a limit order on the specialist's book; (ii) whenever a crossed or locked market causes an inversion in the quote; or (iii) whenever a better bid or offer is being disseminated by another options exchange and the order is not eligible for automatic price matching as set forth in Commentary .01(b). Accordingly, the Amex believes that the reference in Amex Rule 941(e) to Commentary .01(d) to Amex Rule 933 should be replaced with Amex Rule 933(f)(i).

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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

<sup>6</sup> See Securities Exchange Act Release No. 47297 (January 31, 2003), 68 FR 6526 (February 7, 2003).

<sup>7</sup> Commentary .01(d) to Amex Rule 933 describes the situations in which orders for automatic price matching series or automatic price improvement series will be routed to the specialist and not automatically executed.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

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

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