

Number of Traders on Parity (or Signed on to Auto-Ex or Quick Trade)	Approximate Percentage of Option Contracts (or Number of Trades on Auto-Ex or Quick Trade) Allocated to the Specialist	Approximate Percentage of Option Contracts (or Number of Trades on Auto-Ex or Quick Trade) Allocated to the Traders (as a group)
1	60%	40%
2	40%	60%
3 or more	30%	70%

The revised percentages for options on ETFs, Trust Issued Receipts, and Indexes are set forth below:

Number of Traders on Parity (or Signed on to Auto-Ex or Quick Trade)	Approximate Percentage of Option Contracts (or Number of Trades on Auto-Ex or Quick Trade) Allocated to the Specialist	Approximate Percentage of Option Contracts (or Number of Trades on Auto-Ex or Quick Trade) Allocated to the Traders (as a group)
1	60%	40%
2	40%	60%
3-7	30%	70%
8 or more	25%	75%

As discussed more fully in Amex's recently approved proposal to codify these percentages, the Exchange believes that it is appropriate to provide a greater participation to specialists since they have responsibilities and are subject to certain costs that registered options traders do not have. Specifically, some of these additional responsibilities and costs include paying for order flow, the fixed staffing costs committed to market making in a particular security whether it is actively traded or not, and the costs associated with participating in educational and marketing functions to attract order flow. However, for those options classes in which the Exchange has a payment for order flow program that collects a fee from registered options traders for the products set forth above, the allocation percentages will revert back to the percentages currently set forth in Amex Rule 933(h)(ii) and Commentaries .06(i)(B) and .07(ii) of Amex Rule 950(d). Finally, the Exchange is taking the opportunity to correct the paragraph reference in Amex Rule 933 from (d) to (h).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

section 6(b) of the Act⁹ in general and furthers the objectives of section 6(b)(5) of the Act¹⁰ in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

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

The Exchange believes that the proposed rule change will impose no burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

III. 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 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-Amex-2003-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of Amex. All submissions should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48995; File No. SR-Amex-2003-102]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Extend on a Six-Month Pilot Basis the Exchange's Odd-Lot Execution Procedures Applicable to Trading in Nasdaq Securities

December 24, 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 November 21, 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 December 23, 2003, the Amex amended the proposed rule change.³ The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Eric Van Allen, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 23, 2003, replacing Form 19b-4 in its entirety ("Amendment No. 1").

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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 amend paragraph (j) of Amex Rule 118 ("Trading in Nasdaq National Market Securities") and Commentary .05 of Amex Rule 205 ("Manner of Executing Odd-Lot Orders") that were implemented on a pilot program basis and to extend the pilot program for an additional six-month period ending on June 27, 2004. The text of the proposed rule change is set forth below. Proposed new language is in *italics*, and proposed deletions are in [brackets].

* * * * *

Trading in Nasdaq National Market Securities

Rule 118. (a) through (i) No change.

(j) Odd-Lot Orders—Odd-lot orders in Nasdaq National Market securities shall be executed in the following manner:

(i) Market and Executable Limit Orders—A market or executable limit order shall *be executed* [receive automatic execution], unless otherwise provided herein, at the price of the qualified national best offer (in the case of an order to buy) or qualified national best bid (in the case of an order to sell) in the security at the time the order has been received at the trading post or through the Amex Order File. *An order entered through the Amex Order File shall receive automatic execution at such price.*

All market [and executable limit] odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall receive automatic execution at the price of the first round-lot or Part of Round-Lot (PRL) transaction on the Exchange. *Executable limit odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall be executed manually at the price of the first round-lot or PRL transaction on the Exchange.*

For purposes of this subparagraph (j)(i), the qualified national best bid or offer for a Nasdaq National Market security shall mean the highest bid and lowest offer, respectively, disseminated (A) by the Exchange or (B) by another market center participating in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan"); provided, however, that the bid and offer in another such market

center will be considered in determining the qualified national best bid or offer in a stock only if (i) the quotation conforms to the requirements of Rule 127 ("Minimum Price Variations"), (ii) the quotation does not result in a locked or crossed market, (iii) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (iv) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1.

(ii) Limit Orders; Stop Orders; Stop-Limit Orders; Other Order Types—Unless otherwise provided herein, non-executable limit, stop, and stop limit orders shall be executed in accordance with Rule 205, Parts A(2), A(3), and A(4), respectively. Orders to buy or sell "at the close" shall be filled at the price of the closing round-lot sale on the Exchange. An odd-lot order received prior to the close but not filled either before the close or on the close may be filled after the close in accordance with the provisions of Rule 205, Part C(1).

(iii) Non-Regular Way Trades—Non-regular way trades shall be effected in accordance with the provisions of Rule 205, Part C(2).

(iv) Locked and Crossed Market Conditions.

(a) For market and executable limit orders entered after the opening, when the national best bid and offer is in a locked market condition (*i.e.*, the bid and offer are the same), odd-lot buy and sell orders will be executed at that locked market price.

(b) Crossed Market Condition—When a crossed market condition exists (*i.e.*, bid higher than offer) and the national best displayed bid is higher than the national best displayed offer by \$.05 or less, market [and executable limit] orders will receive automatic execution at the mean of the bid and offer prices. If the mean is in a subpenny increment, the price of execution would be rounded up to the nearest \$.01. When the national best displayed bid is higher than the offer by more than \$.05, an odd-lot *market* order will not receive automatic execution and is to be executed manually at the time a crossed market condition no longer exists, in accordance either with subparagraph (i) or (iv)(a) of this paragraph (j), as appropriate. *An executable limit order will receive automatic execution at the crossed market national best displayed bid (in the case of an order to sell) or*

at the crossed market national best displayed offer (in the case of an order to buy).

(v) No odd-lot differential may be charged on any odd-lot orders, except for non-regular way trades effected under Rule 118 (j)(iii).

(vi) Odd-lot orders in Nasdaq National Market securities are permitted to be marked ("short") and are acceptable for all order types, and Rule 7, Commentary .02 shall apply to such orders.

(k) No change.

* * * * *

Manner of Executing Odd-Lot Orders

Rule 205

Commentary

.01 through .04 No Change.

.05 Odd-lot orders in Nasdaq National Market securities shall be executed in accordance with Rule 118(j).

* * * * *

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 the basis for, the proposed rule change, as amended, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved, and the Exchange implemented, a pilot program for odd-lot order⁶ executions in Nasdaq securities transacted on the Exchange pursuant to unlisted trading privileges.⁷ Paragraph (j) of Amex rule 118 describes the Exchange's odd-lot execution procedures for Nasdaq securities, and Commentary .05 to Amex Rule 205 references the odd-lot procedures described in Amex rule 118(j).

In connection with the due diligence required for upcoming enhancements to the Exchange's automatic execution procedures for Nasdaq odd-lot orders,

⁶ An odd-lot order is an order for less than 100 shares.

⁷ See Securities Exchange Act Release Nos. 46304 (August 2, 2002), 67 FR 51903 (August 9, 2002) (SR-Amex-2002-56) and 48174 (July 14, 2003), 68 FR 43409 (July 22, 2003) (SR-Amex-2003-56).

the Exchange represents that its staff found inconsistencies between the current automatic execution procedures and the text of Amex Rule 118(j) with respect to certain order types.

Accordingly, the Exchange proposes amendments to Amex Rule 118(j) to correct these discrepancies. In addition, the Exchange proposes a six-month extension for the pilot program.

a. Amendments to Odd-Lot Execution Procedures

The Exchange proposes to amend subparagraph (j)(i) of Amex Rule 118 ("Market and Executable Limit Orders") to state that, after the opening, only odd-lot market orders and executable odd-lot limit orders received through the Amex Order file would be automatically executed at the qualified national best bid or offer. Odd-lot orders received at the trading post (e.g., handled by a floor broker) would be manually executed at the qualified national best bid or offer. Furthermore, the Exchange proposes to amend subparagraph (j)(i) of Amex Rule 118 to state that executable odd-lot limit orders entered before the opening of Exchange trading would be executed manually at the price of the first round-lot or Part of Round Lot ("PRL") transaction on the Exchange. The Amex represents that, currently, only odd-lot market orders entered before the opening are held in accumulation and receive automatic execution at the price of the first round lot or PRL transaction.

The Exchange also proposes to amend subparagraph (j)(iv)(b) of Amex Rule 118 to more accurately describe the Exchange's odd-lot execution procedures in crossed markets (i.e., where the bid is higher than the offer). In a crossed market, odd-lot market orders, but not executable odd-lot limit orders, would receive automatic executions at the mean of the bid and offer prices when the displayed national best bid is higher than the displayed national best offer by \$.05 or less. When the displayed national best bid is higher than the displayed national best offer by more than \$.05, odd-lot market orders, but not executable odd-lot limit orders, would be executed manually when the crossed market no longer exists in accordance with subparagraph (j)(i) of Amex Rule 118. Executable odd-lot limit orders would be automatically executed at the crossed market bid price (in the case of an order to sell) or at the crossed market offer price (in the case of an order to buy). For example, if the bid and offer were to be 20.10 and 20.00, respectively, an executable odd-lot sell limit order priced at 20.10 or less would be automatically executed at 20.10, and an executable odd-lot buy

limit order priced at 20.00 or higher would be automatically executed at 20.00.

b. Extension of Odd-Lot Pilot Program

In addition to the abovementioned proposed amendments to paragraph (j) of Amex Rule 118, the Exchange seeks an extension of its odd-lot pilot program for an additional six-month period ending on June 27, 2004. The program was originally approved on August 2, 2002, for a six-month period, and was extended on July 14, 2003, for an additional six-month period ending on December 27, 2003.⁸ The current odd-lot procedures have operated efficiently, and the Exchange has received no complaints or adverse comments from members or the public regarding odd-lot executions. Accordingly, the Exchange believes that it is appropriate to extend the pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,⁹ in general, and the provisions of section 6(b)(5) of the Act,¹⁰ 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, 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

No written comments were solicited or received with respect to the proposed rule change, as amended.

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

Because the foregoing proposed rule change, as amended, does not: (1) Significantly affect the protection of investors or the public interest; (ii)

impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.¹³ At any time within 60 days of the filing of the proposed rule change, as amended, 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 purpose of the Act.¹⁴

The Amex has requested that the Commission waive the 30-day operative delay. The Exchange represents that its current odd-lot procedures have operated efficiently, and that it has experienced nonoperational problems relating to odd-lot executions in Nasdaq securities under these procedures. Moreover, the Exchange states that it has received no adverse comments from its members or the public regarding such execution procedures, and believes that continued operation of the six-month pilot program beyond December 27, 2003, would continue to provide efficient execution of investors' odd-lot orders.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁵ Acceleration of the operative date will allow the Exchange to continue its pilot odd-lot execution procedures applicable to trading in Nasdaq securities without interruption for an additional six months, expiring on June 27, 2004. For these reasons, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.

In addition, the Commission requests that the Exchange report any problems or complaints from members and the

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

¹⁴ For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on December 23, 2003, the date at which the Exchange filed Amendment No. 1.

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

⁸ See *id.*

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

public regarding odd-lot execution procedures applicable to trading Nasdaq securities, and that the Amex submit any proposal to extend, or permanently approve, the pilot at least two months before the expiration of the six-month pilot.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comments letters should refer to File No. SR-Amex-2003-102. This file number should be included in the subject lien if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Exchange. All submissions should refer to File No. AR-Amex-2003-102 and should be submitted by January 21, 2004.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-32184 Filed 12-30-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48990; File No. SR-CBOE-2003-25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the Chicago Board Options Exchange, Inc. Relating to Bid-Ask Differentials

December 23, 2003.

I. Introduction

On June 20, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to permit, under certain circumstances, a bid-ask differential of no more than \$0.50 for options where the bid price is less than \$2. The CBOE filed Amendments Nos. 1, 2, and 3 to the proposal on July 3, 2003,³ September 10, 2003,⁴ and October 29, 2003,⁵ respectively.

The proposed rule change and Amendment Nos. 1, 2, and 3 were published for comment in the **Federal Register** on November 19, 2003.⁶ The Commission received no comments regarding the proposal, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Currently, the CBOE's rules establish a bid/ask differential of \$0.25 for options where the bid price is less than \$2.⁷ The CBOE proposes to amend CBOE Rule 8.7, "Obligations of Market Makers," to allow the appropriate Market Performance Committee to establish bid-ask differentials that are no more than \$0.50 wide ("double-width") for options where the bid price is less than \$2 when the primary market for the underlying security: (1) Reports a trade outside of its disseminated quote, including any Liquidity Quote;⁸ or (2)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Steve Youhn, CBOE, to Deborah Flynn, Division of Market Regulation ("Division"), Commission, dated July 2, 2003, and accompanying Form 19b-4 ("Amendment No. 1").

⁴ See letter from Steve Youhn, CBOE, to Deborah Flynn, Division, Commission, dated September 9, 2003 ("Amendment No. 2").

⁵ See letter from Steve Youhn, CBOE, to Deborah Flynn, Division, Commission, dated October 28, 2003 ("Amendment No. 3").

⁶ See Securities Exchange Act Release No. 48771 (November 12, 2003), 68 FR 65330.

⁷ See CBOE Rule 8.7(b)(iv).

⁸ The rules of the NYSE permit the dissemination, in selected securities, of a "Liquidity Bid" and a

disseminates an inverted quote (together, the "Triggering Events").

The double-width relief must terminate automatically when the Triggering Event ceases. In this regard, the CBOE states that it will program its autoquote systems to widen the quote to double the bid-ask differential automatically upon the occurrence of either of the two Triggering Events.⁹ The quotes will remain double-width until the Triggering Event ceases, when the CBOE's systems automatically will return the quote to the normal bid-ask differential. Accordingly, if the primary market's quotes invert and the CBOE quotes double-wide, the CBOE's quotes must return to normal width when the underlying market's quotes no longer are inverted. Similarly, if the primary market prints a trade outside of its disseminated quote, the CBOE may quote double-wide until the print is no longer outside of the disseminated quote (*i.e.*, until the quotes move to encompass the previous print or the next print is inside of the disseminated quote).¹⁰ A market maker will be able to utilize the double-width relief only if the market maker has an automated quotation system that returns the market maker's quotes to normal width upon the termination of the Triggering Event.¹¹ Double-width relief will not be available to market makers who must rely on manual input to restore quote values to normal width.¹²

III. Discussion

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, with the requirements of section 6(b)(5) of the Act,¹³ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.¹⁴

"Liquidity Offer" which reflect aggregated NYSE trading interest at a specific price interval below the best bid (in the case of a Liquidity Bid) or at a specific price interval above the best offer (in the case of a Liquidity Offer). See Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (File No. SR-NYSE-2002-55).

⁹ See Amendment No. 1, *supra* note 3.

¹⁰ See Amendment No. 3, *supra* note 5.

¹¹ See Amendment No. 3, *supra* note 5.

¹² See Amendment No. 3, *supra* note 5.

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ In approving this proposal, the Commission has considered the proposed rule's impact on

¹⁶ 17 CFR 200.30-3(a)(12).