open account advances with or without interest, (d) loans, and (e) Guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from: (a) Financings authorized in this proceeding, (b) any appropriate future debt or equity securities issuance authorization obtained by National Grid Transco from the Commission, and (c) other available cash resources, including proceeds of securities sales by Nonutility Subsidiaries under rule 52. Applicants state that, to the extent that National Grid Transco provides funds or Guarantees directly or indirectly to an Intermediate Subsidiary that are used for the purpose of making an investment in any FUCO or a Rule 58 Subsidiary, the amount of the funds or Guarantees will be included in National Grid Transco's ''aggregate investment'' in those entities, as calculated in accordance with rule 53 or rule 58, as applicable.

National Grid Transco requests authorization to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries, and the activities and functions related to such investments. To effect any such consolidation or other reorganization, National Grid Transco may wish to either contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary (including a newly formed Intermediate Subsidiary) or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. National Grid Transco requests authorization to consolidate or otherwise reorganize, under one or more direct or indirect Intermediate Subsidiaries, National Grid Transco's ownership interests in existing and future Nonutility Subsidiaries. Applicants state that these transactions may take the form of a Nonutility Subsidiary selling, contributing, or transferring the equity securities of a subsidiary or all or part of a subsidiary's assets as a dividend to an Intermediate Subsidiary or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of a subsidiary, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable U.S. or foreign laws and accounting requirements. In addition, in the event that proxy solicitations are necessary with respect to any corporate reorganization, Applicants state that they will seek Commission approvals as necessary under section 6(a)(2) and 12(e) of the Act through the filing of a declaration.

National Grid Transco requests authorization to make expenditures on Development Activities, as defined above, in an aggregate amount of up to $600 million. National Grid Transco proposes a ''revolving fund'' for permitted expenditures on Development Activities. Thus, Applicants propose, to the extent a Nonutility Subsidiary in respect of which expenditures for Development Activities were made subsequently becomes a FUCO or qualifies as an ''energy-related company'' under Rule 58, the amount so expended will cease to be considered an expenditure for Development Activities, but will instead be considered as part of the ''aggregate investment'' in such entity under rule 53 or 58, as applicable.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–2068 Filed 9–2–04; 8:45 am]

**BILLING CODE 8010–01–P**

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50283; File No. SR–Amex–2003–82]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Relating to Auto-Match

August 27, 2004

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 September 9, 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 Amex. On August 16, 2004, the Amex amended the proposed rule change.[3] 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 Exchange proposes to add Commentary .04 to Amex Rule 933 for the purpose of enhancing the Auto-Match feature of the Amex Order Display Book (''AODB'') and to amend Amex Rule 590 to include the failure to sign on and use Auto-Match in the Minor Rule Violation Fine System. Proposed new text is *italicized*, and proposed deletions are [bracketed].

* * * * *

Rule 590. Minor Rule Violation Fine Systems

Part 1 General Rule Violations

(a)–(f) No Change.

(g) The Enforcement Department may impose fines according to the following schedule for the rule violations listed below:

• *Failure to sign on and use the Auto-Match feature of the Amex Options Display Book*

* * * * *

Rule 933. Automatic Execution of Options Orders

(a) No Change.

(b) Broker-dealer orders entered through the Exchange's order routing system will not be automatically executed against orders in the limit order book *unless permitted on a class-by-class basis by the appropriate Options Floor Procedure Committee*. Broker-dealer orders may interact with orders in the limit order book only after being re-routed to the Amex Options Display Book (AODB) for execution *unless permitted to be automatically executed on a class-by-class basis by the appropriate Options Floor Procedure Committee*.

(c) through (h) No Change.

Commentaries

.01 through .03 No Change.

---

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 13, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange modified proposed Commentary .04 to Amex Rule 933 by providing that orders of a broker-dealer that submitted a customer order for placement on the limit order book, orders from affiliates of a broker-dealer, or orders solicited by a broker-dealer from member or non-member broker-dealers may not execute against the customer limit order on the limit order book, unless the customer limit order is exposed on the book for at least 30 seconds. The Exchange also represented that, similar to the Exchange's automatic execution system (''Auto-Ex''), orders executed through Auto-Match will be at the current national best bid or offer (''NBBO'') so that such orders do not trade through the NBBO.

*.04. Auto-Ex eligible orders that by-pass Auto-Ex pursuant to Rule 933(f)(i)(F) will be automatically matched and executed with orders in the limit order book representing the best bid or offer (''Auto-Match''). Specialists are required to use the Auto-Match feature for all option classes in which such specialist is registered. The failure to sign on to Auto-Match is a rule violation subject to the Minor Rule Violation Plan set forth in Rule 590(g). The Auto-Match feature operates in the following manner:*

- *If the size of the by-passed Auto-Ex eligible order is less than the size of the customer limit order representing the best bid or offer in the limit order book (the ''Auto-Match Order''), the entire Auto-Ex eligible order will be executed against the Auto-Match Order.*
- *If the size of the by-passed Auto-Ex eligible order is greater than the size of the Auto-Match Order, the Auto-Ex eligible order will be executed against the Auto-Match Order for the number of contracts of the Auto-Match Order. The remaining contracts of the Auto-Ex eligible order would then be routed to the specialist for manual handling or subject to Quick Trade, if applicable.*
- *Auto-Match will not be engaged if Auto-Ex is disengaged due to market delays, unusual markets or system malfunctions pursuant to Rule 933(f)(i)(A)–(D).*
- *In classes of options where broker-dealer orders are permitted to be automatically executed against orders in the limit order book pursuant to Rule 933(b) above, neither proprietary orders of an order entry firm that submitted a customer order for placement in the limit order book, orders from any affiliated firm with such order entry firm, or orders solicited by the order entry firm from members or non-member broker-dealers, may execute against the customer order on the book unless the customer order on the book is exposed for at least thirty (30) seconds. It shall be a violation of this Rule for any member or member organization to be party to any arrangement designed to circumvent this Rule by providing an opportunity for a customer, member or non-member broker-dealer to execute immediately against an agency order delivered to the Exchange, whether such orders are delivered electronically or represented in the trading crowd by a member or member organization.*

*.05 For purposes of the Rule, the term ''order entry firm'' means a member organization of the Exchange that is able to route orders through the Exchange's order routing system.*

* * * * *

## 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. 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

In April 2000, the Exchange enhanced the AODB to provide for automatic matching and execution of limit orders on the specialist's book representing the displayed best bid or offer in select option classes (''Auto-Match''). The Auto-Match functionality provides that limit orders residing on the AODB are automatically matched and executed with market or marketable limit orders that have by-passed the Exchange's Auto-Ex at the limit order's displayed best bid or offer.[4]

As originally proposed, Auto-Match was to be used in selected less-active option classes.[5] At that time, the Exchange indicated that after it had gained experience with Auto-Match, the program would be reviewed in consultation with the membership to determine whether Auto-Match should be expanded to additional option classes.[6] The Exchange represents that Auto-Match has never been used or expanded as originally intended. The Exchange believes that the proposed enhancements to Auto-Match and the evolving nature of the options market supports an expansion of the feature as detailed below.

The Exchange submits that an expansion of Auto-Match is necessary given the current competitive environment, and therefore, believes the limited nature of Auto-Match should be expanded to provide faster, more efficient execution of market and marketable limit orders as well as more efficient handling of limit orders on the specialist's book. As a result, the Exchange proposes to add Commentary .04 to Amex Rule 933 in order to significantly enhance the current Auto-Match feature as follows.

First, Auto-Match would be expanded to all option classes traded on the Exchange. Second, specialist participation in Auto-Match would be mandatory. Third, Auto-Match would be enhanced to provide the ability to automatically match and *partially execute* an incoming Auto-Ex eligible order when the disseminated limit order is for less contracts than the incoming Auto-Ex eligible order. In such a situation, the remaining contracts of the incoming Auto-Ex eligible order would be routed to the specialist AODB ACK Box[7] for manual handling. Fourth, Auto-Match would be disengaged if the Exchange's Auto-Ex system is disengaged or operated in a manner other than the normal manner, due to market data delays, unusual markets, or system malfunctions pursuant to Amex Rule 933(f)(i)(A)–(D). Finally, in classes of options where broker-dealer orders are permitted to be automatically executed against orders in the limit order book pursuant to proposed Amex Rule 933(b), the Exchange proposes that neither proprietary orders of an order entry firm that submitted a customer order for placement in the limit order book, orders from any affiliated firm with such order entry firm, or orders solicited by the order entry firm from members or non-member broker-dealers could execute against the customer order on the book, unless the customer order on the book is exposed for at least thirty (30) seconds.[8] Furthermore, the Exchanges proposes that it would be a violation for any member or member organization to be party to any arrangement designed to circumvent this rule by providing an opportunity for a customer, member, or non-member broker-dealer to execute immediately against an agency order delivered to the Exchange, whether such orders are delivered electronically or represented in the trading crowd by a member or member organization.[9] The Exchange believes that these changes to Auto-Match would benefit market

[4] Auto-Ex is by-passed pursuant to Amex Rule 933(f)(i)(F) in the following situations: (1) Whenever the bid or offer in a specific option series represents a limit order on the specialist's book; (2) whenever a crossed or locked market causes an inversion in the quote; and (3) 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).

[5] *See* Securities Exchange Act Release No. 42652 (April 7, 2000), 65 FR 20235 (April 14, 2000).

[6] *Id.*

[7] The ''Acknowledgement Box'' or ''ACK Box'' is a feature of the AODB that displays incoming market executable limit orders as well as any other orders directed by filter settings. Orders in the ACK BOX are displayed in the trading crowd by means of overhead screens.

[8] *See* Amendment No. 1, *supra* note 3.

[9] *Id.*

participants by providing greater certainty and efficiency in the handling of options orders.

As previously stated, the AODB is the specialist's electronic book which provides for the handling of options orders and the executing and reporting of options transactions. Limit orders that better the current displayed bid or offer become the Amex's displayed best bid or offer, and it is at these prices that market orders to buy or sell are executed. However, when the displayed best bid or offer is represented by a limit order, market and marketable limit orders sent through the Amex Order File (''AOF'') to Auto-Ex for execution at the displayed bid or offer will by-pass Auto-Ex and be sent directly to the AODB for handling and execution by the specialist with the limit order as contra-party to the trade.[10] The Auto-Ex system is by-passed in these situations in order to prevent the specialist and any registered options traders (''ROTs'') signed on as contra-parties to transactions executed on Auto-Ex from trading ahead of customer limit orders on the specialist's book, in violation of Amex Rules 950(c) and (d).

The Auto-Match feature currently operates as follows. If the customer limit order representing the best bid or offer displayed in the AODB (the ''Auto Match Order'') is a greater size than the inbound order, the entire incoming order is executed against the Auto-Match Order. The remaining contracts on the book continue to reside on the AODB until canceled, replaced by a more competitive bid or offer, or completely executed. If the inbound order is greater than the Auto-Match Order represented on the AODB, the entire order is routed to the specialist for manual handling and by-passes Auto-Match. For example, if the best bid is represented by a limit order to buy 10 contracts in an option class whose Auto-Ex eligible size is 20 contracts, a market order of 20 contracts to sell will be routed to the AODB with the entire order of 20 contracts executed by the specialist without the use of the Auto-Match feature.[11] The new proposal will provide that if the size of an incoming order is greater than the Auto-Match Order, Auto-Match would automatically match and execute the limit orders residing on the AODB with the incoming order. Any remaining contracts would be allocated via Quick Trade, if applicable, to the ROTs and specialist,[12] or routed to the specialist for manual handling.

Since the introduction of Auto-Match in April 2000, there have been no option classes that have employed the Auto-Match system. Specialists have chosen not to use Auto-Match based on the belief that the inability to provide partial executions renders the system unattractive. For example, if an inbound order exceeds the size of the Auto-Match Order, the current system will send the entire order to the specialist for manual handling. Because an eligible Auto-Ex order size can be as large as 500 contracts (1,000 contracts for the QQQ option), Auto-Match, in many cases, will not operate because the Auto-Match Order will be less than the incoming order.

Therefore, the Exchange's proposal would modify Auto-Match to provide a partial execution, so that if the inbound order is greater than the Auto-Match Order, Auto-Match would execute the Auto-Match Order and route the remaining contracts to the specialist AODB ACK Box for manual handling. As noted above, the Quick Trade function of AODB, if applicable, would automatically allocate the remaining contracts to the ROTs and specialist based upon a pre-set allocation ratio. The Exchange represents that its staff would conduct periodic reviews to ensure that specialists are employing Auto-Match. In connection with these reviews, any failure to sign on and use Auto-Match would be a violation of Amex Rule 590 and handled by the Exchange's Enforcement Department as part of the Minor Rule Violation Fine System. Finally, the Exchange proposes to permit certain broker-dealer Auto-Ex orders to execute against orders in the limit order book via Auto-Match.[13] In classes of options where broker-dealer orders would be permitted to be automatically executed against orders in the limit order book pursuant to Amex Rule 933(b), the Exchange's proposal would prohibit proprietary orders of an order entry firm that submitted a customer order for placement in the limit order book, orders from any affiliated firm with such order entry firm, or orders solicited by the order entry firm from members or non-member broker-dealers from executing against the customer order on the book, unless the customer order on the book is exposed for at least thirty (30) seconds.[14]

The Exchange believes that the proposed revision to Auto-Match would provide for faster, more efficient executions of market and marketable limit orders, as well as more efficient handling of limit orders on the specialist's book. More importantly, it would also assure that the limit order on the specialist's book would retain its priority over the specialist and ROTs. Thus, the proposed rule change would benefit customers using the Auto-Ex system, as well as those customers whose orders are on the specialist's book.

2. Statutory Basis

The Exchange believes that its proposed rule change, as amended, is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(5) of the Act,[16] in particular, because 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange believes that the proposed rule change, as amended, 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, as amended.

[10] As discussed above, this process of routing the Auto-Ex order to the limit order book and executing it against a customer limit order in the book is automated via Auto-Match. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and Kelly Riley, Assistant Director, Division, Commission (August 27, 2004).

[11] The Quick Trade feature of AODB, if applicable, automatically allocates trades to ROTs and the specialist. If there are remaining contracts of an Auto-Ex eligible order after Auto-Match is completed, Quick Trade would distribute the remaining excess among the ROTs and specialist. *See* Securities Exchange Act Release No. 45974 (May 22, 2002), 67 FR 37886 (May 30, 2002) and 45180 (December 20, 2001) 66 FR 67585 (December 31, 2001).

[12] For example, assume that the best bid is represented by a limit order to buy 20 contracts in an option class in which the Auto-Ex eligible size is 50 contracts. A market order of 50 contracts to sell would by-pass Auto-Ex and be routed to the AODB. 20 contracts would be matched and executed with the limit order on the AODB, and the remaining 30 contracts would be allocated through Quick Trade to the specialist and ROTs according to the allocation ratios set forth in the Amex Rule. *See* Commentary .07 to Rule 950(d).

[13] Amex proposes that the appropriate Options Floor Procedure Committee would determine in which classes broker-dealer orders can be automatically executed against orders in the limit order book.

[14] *See* Amendment No. 1, *supra* note 3.

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

[16] 15 U.S.C. 78f(b)(5).

**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 Amex consents, the Commission will:

(A) By order approve the 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. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2003–82 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2003–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 also will be available for inspection and copying at the principal offices of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2003–82 and should be submitted on or before September 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–2067 Filed 9–2–04; 8:45 am]

**BILLING CODE 8010–01–P**

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50287; File No. SR–BSE–2004–25]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the Boston Stock Exchange, Inc. Relating to Its Specialist Performance Evaluation Program

August 27, 2004.

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 June 21, 2004, the Boston Stock Exchange, Inc. (''BSE'' 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 BSE. On July 26, 2004, BSE submitted Amendment No. 1 to the proposed rule change.[3] On August 25, 2004, BSE submitted Amendment Nos. 2[4] and 3[5] to the proposed rule change. 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**

BSE seeks to amend its rules concerning its Specialist Performance Evaluation Program (''SPEP''). Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

**Chapter XV**

**Specialists**

*Specialist Performance Evaluation Program*

SEC. 17

(a) All Specialists shall be subject to regular [performance] evaluation [designed to identify areas of performance needing improvement]. The Specialist Performance Evaluation Program shall be administered by the Exchange, subject to the supervision of the Market Performance Committee. *The Market Performance Committee will determine, from time to time as it deems necessary, which measures under Rule 11Ac1–5 (''Rule 5'') of the Act shall be used to evaluate Exchange specialists, and the threshold levels of performance against which specialist will be evaluated in each of the relevant Rule 5 measurements. Measurements and threshold levels will be communicated to all members via Floor Memoranda on a periodic basis, at least thirty days in advance, at least each time a new Rule 5 measurement is chosen, or a new threshold established. Specialists will be evaluated for competitive stock allocation purposes and any other purposes for which the Market Performance Committee deems it necessary and/or prudent to have objective standards by which it can evaluate all Exchange specialists equally.* Any Specialist whose performance is below acceptable levels established by the Market Performance Committee shall be subject to specific improvement actions as determined by the Market Performance Committee as set forth in paragraphs 2156.10 through 2156.80.

(b) In the event that the performance of a Specialist is below acceptable performance levels, notice of such fact shall be given to the Specialist.

(c) Set forth below are the conditions warranting performance improvement action:

(i) Any Specialist who receives a deficient score in one objective measure in any review period shall be deemed to have a deficient performance, and shall

---

[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 John Boese, Vice President, Chief Regulatory Officer, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 22, 2004 and accompanying Form 19b–4 (''Amendment No. 1''). Amendment No. 1 replaced and superceded the originally filed proposed rule change.

[4] *See* letter from John Boese, Vice President, Chief Regulatory Officer, BSE, to Nancy Sanow, Assistant Director, Division, Commission, dated August 18, 2004 (''Amendment No. 2''). Amendment No. 2 replaced and superceded BSE Rule Chapter XV, Section 17, Paragraph (a) of the previously filed proposed rule change.

[5] *See* letter from John Boese, Vice President, Chief Regulatory Officer, BSE, to Nancy Sanow, Assistant Director, Division, Commission, dated August 19, 2004 (''Amendment No. 3''). Amendment No. 3 replaced and superceded BSE Rule Chapter XV, Section 17, Paragraph (a) of the previously filed proposed rule change.