

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 Exchange 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 currently imposes transactions charges for transactions in equity options executed on the Exchange by Exchange specialists and Exchange registered options traders ("ROTs"). The current charges for Exchange specialist and ROTs in equity options are \$0.25 per contract side, consisting of an options transaction fee of \$0.15, an options comparison fee of \$0.05 and an options floor brokerage fee of \$0.05. The Exchange proposes to reduce the aggregate equity options transaction fee for Exchange specialists and ROTs from the current level of \$0.25 per contract side to \$0.20 per contract side effective December 2, 2004. Non-member market makers, *i.e.*, market makers registered in the same option class on another option exchange, will continue to be charged the current aggregate transaction fee of \$0.30 per contract side. The new aggregate equity options transaction fee for Exchange specialists and ROTs will consist of an options transaction fee of \$0.10 per contract side, an options comparison fee of \$0.05 per contract side and options floor brokerage fee of \$0.05 per contract side.

The Exchange believes that the proposed reduction in the equity options transaction fee will benefit the Exchange by providing greater incentive to Exchange specialists and ROTs to competitively quote their markets in comparison to the markets made by other options exchanges. The Exchange also believes that the reduction in the equity options transaction fee will help to maintain the existing floor operations of member firms at the Amex.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> in particular, regarding the equitable allocation of reasonable dues, fees and other charges among exchange

members and other persons using exchange facilities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2) thereunder,<sup>7</sup> because the proposed rule change establishes or changes a due, fee or other charge applicable only to a member of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.<sup>8</sup>

**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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-97 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on January 6, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-97. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2004-97 and should be submitted on or before February 3, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5-116 Filed 1-12-05; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50999; File No. SR-Amex-2003-90]

**Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Relating to the Amendment of Exchange Rule 153**

January 7, 2005.

**I. Introduction**

On October 9, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to amend Amex Rule 153 relating to the creation of an electronic order audit trail. On December 15, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 22, 2004, for a 15-day comment period, which expired on January 6, 2005.<sup>3</sup> This order approves the proposed rule change, and Amendment No. 1 thereto, on an accelerated basis.

## II. Background

The proposed rule change is intended to fulfill certain of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against the Amex, Chicago Board Options Exchange, Inc., Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc. (collectively "Options Exchanges") for failure to comply with their own rules and to enforce compliance with their own rules by their members and persons associated with their members<sup>4</sup> as is required by section 19(g) of the Act.<sup>5</sup> The Order found that the Options Exchanges impaired the operations of the options market by: (1) Following a course of conduct under which they refrained from multiple listing a large number of options; and (2) inadequately discharging their obligations as self-regulatory organizations by failing adequately to enforce compliance with (a) certain of their rules, including order handling rules, that promote competition as well as investor protection, and (b) certain of the rules prohibiting anticompetitive conduct, such as harassment, intimidation, refusals to deal and retaliation directed at market participants who sought to act competitively. In addition, the Commission found that the Options Exchanges failed to enforce compliance with their trade reporting rules, which promote transparency of the market and facilitate surveillance and enforcement

of other exchange rules and the Federal securities laws.

As part of the Order, the Options Exchanges agreed to, and were ordered to comply with, a variety of undertakings. Among other things, they agreed to, and were ordered to, design and implement an accurate, time-sequenced, consolidated options audit trail system ("COATS") that would enable the Options Exchanges to reconstruct markets promptly, effectively surveil them, and enforce order handling, firm quote, trading reporting and other rules. The Options Exchanges were required to complete this undertaking in five phases. The Options Exchanges have completed the first four phases. The final phase of the undertaking to implement COATS requires that each exchange incorporate into its audit trail all non-electronic orders. This proposed rule change addresses that aspect of the undertaking.

## III. Description of Proposed Rule Change

Amex Rule 153(b) currently requires members and member organizations to systematize "immediately upon receipt" orders, and modifications or cancellations of orders, "that are eligible for input into the Exchange's electronic order processing facilities" if such orders are not already systematized in the Exchange's electronic order processing facilities.<sup>6</sup> To comply with the COATS standard for an accurate time sequencing of option orders, transactions and quotations, in the instant filing, the Exchange proposes that members and member organizations would be required to systematize, prior to representation, either in BARS or in the Order Ticket enhancement to BARS described below, those options orders and modifications and cancellations of such orders that are not already systematized in an Amex system. The obligation to systematize orders prior to representation would commence on January 10, 2005.

In the case of an order that is not systematized when it reaches the Exchange, Amex proposes that a floor broker or a broker's clerk would be required to systematize the order by: (1) Opening an Order Entry Template ("OET") on the Exchange's BARS booth or hand held terminal; (2) entering the order terms into the OET; and (3) transmitting the order to the Amex Order File ("AOF"). The first keystroke in the OET would be captured by the Exchange's systems at the time of order receipt. Brokers and their clerks also

would be required to enter information relating to any modification, cancellation or execution of an order into BARS. The Exchange would then incorporate order and execution information in the AOF into the COATS file.

In addition to entering a non-system order directly into BARS, the Amex has designed an enhancement to the BARS system (called "Order Ticket") to facilitate order systemization by floor brokers and their clerks. The Exchange anticipates that the Order Ticket enhancement will be available by the end of the first quarter of 2005. The Order Ticket enhancement would allow floor brokers and their clerks to create electronic, time stamped, handwritten order tickets which would be saved by the Exchange as JPEG files.

A broker or clerk using the proposed BARS Order Ticket enhancement would select a new "Order Ticket" button on the booth or hand held BARS terminal, which would create a blank image template on a screen that exists on both the booth and hand held BARS terminals. Brokers and their clerks would write on the screen with a stylus and record order terms just as if they were using a paper order ticket. A person using the Order Ticket enhancement would be required to record the following order terms on the ticket prior to representing the order in the trading crowd:

- Buy/Sell;
- Symbol;
- Quantity;
- Call/Put (calls would be assumed unless "P" is written);
- Expiration;
- Strike (fractions would be assumed, e.g., "22½" would be written as "22");
- Price term (a limit order would be assumed if a price were written, e.g., "1.20" would mean a 1.20 limit. Market orders would be blank or represented by a dash);
- Contingencies (if applicable, e.g., NH, AON, FOK, IOC, stock);
- Open/Close (close would be assumed unless "O" is written);
- Customer/Firm/Member Market Maker/Non-Member Market Maker (customer would be assumed unless "F", "P" or "N" is written);
- Give-up.

At the first mark on the template, the Order Ticket would be automatically time stamped by the Exchange's systems to the nearest second. When the broker or clerk finishes entering the information on the Order Ticket, he or she would be required to hit a "save" button, and the Order Ticket would be assigned a specific sequence number. Once the "save" button is hit, the Order

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

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

<sup>3</sup> See Securities Exchange Act Release No. 50866 (December 16, 2004), 69 FR 76798.

<sup>4</sup> See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3-10282 (the "Order").

<sup>5</sup> 15 U.S.C. 78s(g).

<sup>6</sup> See Securities Exchange Act Release No. 45794 (April 22, 2002), 67 FR 20849 (April 26, 2002).

Ticket could not be modified and would be stored by the Exchange as a JPEG file.

Once the order is systematized in Order Ticket, the member or member organization that accepted the order would be required to transfer the order terms into BARS so that a record of the order may be maintained in the Exchange's AOF system and any trade information submitted to comparison. In order to enter the order into BARS, a floor broker or clerk would open a BARS OET on a saved Order Ticket by selecting a new OET button within the image. This would cause both the time stamp and the sequence number from the Order Ticket to be automatically transferred from the Order Ticket to the OET. The transfer of the time stamp and sequence number would be done by the Exchange's systems and could not be modified by the broker or clerk. The broker or clerk then would be required to enter the required order terms into the OET and transmit the order to AOF. The broker or clerk also would be required to enter any information pertaining to a modification or cancellation of an order, or the execution of an order, directly into BARS from where it would be transmitted to AOF. Information pertaining to order modifications and cancellations would be required to be systematized prior to representation of the revised order in the crowd.

The Exchange further proposes that any proprietary system approved by the Exchange on the Exchange's trading floor which receives orders would be considered an Exchange system for the purpose of systematizing those options orders and modifications and cancellations of such orders that are not already systematized in an Amex system prior to representing the orders in the crowd. Any proprietary system approved by the Exchange would be required to have the functionality to comply with the requirements of COATS.

Under the proposed rule change, orders for FLEX options and accommodation trades would not have to be systematized prior to representation. Information about these orders would be required to be submitted to the Exchange on trade date no later than 10 minutes after the close of trading. The Exchange would maintain information submitted to it pertaining to FLEX options and accommodation trades in the COATS format.

#### IV. Discussion

After careful consideration, 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.<sup>7</sup> In particular the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>8</sup> which requires among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that the rules as proposed should allow the Exchange to comply with its obligations under the Order in that they will result in the creation of an audit trail that incorporates manual orders sent to Amex. Specifically, the proposed rule change requires that Amex members enter certain order details immediately upon receipt, prior to representation of the order, into BARS or in the Order Ticket enhancement to BARS for later integration into COATS, which the Commission believes should result in an accurate, time-sequenced record of orders.

The Commission notes that the Exchange has acknowledged the need for effective and proactive surveillance for activities such as trading ahead and front-running in connection with the creation of its audit trail. The Exchange represents that it currently conducts automated surveillance for such activities and will incorporate a review of order systematization as part of such surveillance. The Exchange also states that it intends to implement supplementary surveillance and examination programs related to the systematization of orders requirement promptly after this requirement is instituted, which are designed to address, among other things, trading ahead and front-running. The Commission views effective surveillance as critical to the integrity of COATS and expects that the Exchange will inform the Commission of any problems it encounters in conducting effective surveillance.

The Commission finds good cause for accelerating approval of the proposed rule change and Amendment No. 1 thereto, prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change was noticed for a 15-day

<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

comment period and no comments were received. The Commission believes that it is appropriate to accelerate approval of the proposed rule change and Amendment No. 1 thereto so that the rule may be implemented on a timely basis to ensure prompt compliance with the undertakings contained in the Commission's Order.

#### V. Conclusion

For all of the aforementioned reasons, 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.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-Amex-2003-90) and Amendment No. 1 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-127 Filed 1-12-05; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50994; File No. SR-CBOE-2004-90]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to a Delay of the Operative Period for Rule 6.45A(c)(iii)

January 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> notice is hereby given that on December 28, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to delay implementation of recently approved CBOE Rule 6.45A(c)(iii). The text of the

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78(b)(1).