

immediately list and trade a new derivative securities product so long as such product is in compliance with the criteria of Rule 19b-4(e) under the Act. However, in order for the Commission to maintain an accurate record of all new derivative securities products traded through the facilities of SROs and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b-4(e), it is necessary that the SRO maintain, on-site, a copy of Form 19b-4(e) under the Act. Rule 19b-4(e) requires SROs to file a summary form, Form 19b-4(e), and thereby notify the Commission, within five business days after the commencement of trading a new derivative securities product. In addition, the Commission reviews SRO compliance with Rule 19b-4(e) through its routine inspections of the SROs.

The collection of information is designed to allow the Commission to maintain an accurate record of all new derivative securities products traded through the facilities of SROs and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b-4(e).

The respondents to the collection of information are self-regulatory organizations (as defined by the Act), including national securities exchanges and national securities associations.

Fourteen respondents file an average total of 50 responses per year, which corresponds to an estimated annual response burden of 50 hours. At an average cost per burden hour of \$239.50, the resultant total related cost of compliance for these respondents is \$11,975 per year (50 burden hours multiplied by \$239.50/hour = \$11,975).

Compliance with Rule 19b-4(e) is mandatory. Information received in response to Rule 19b-4(e) shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 60 days of this notice.

Dated: January 23, 2007.

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

#### Extension:

Rule 17a-12, SEC File No. 270-442, OMB Control No. 3235-0498.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a-12 (17 CFR 240.17a-12) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) is the reporting rule tailored specifically for OTC derivatives dealers registered with the Commission, and Part IIB of Form X-17A-5,<sup>1</sup> the Financial and Operational Combined Uniform Single ("FOCUS") Report, is the basic document for reporting the financial and operational condition of OTC derivatives dealers.

Rule 17a-12 requires registered OTC derivatives dealers to file Part IIB of the FOCUS Report quarterly. Rule 17a-12 also requires that OTC derivatives dealers file audited financial statements annually. There are currently five registered OTC derivatives dealers. The staff does not expect that any additional firms will register as OTC derivatives dealers within the next three years. The staff estimates that the average amount of time necessary to prepare and file the quarterly reports required by the rule is

<sup>1</sup> Form X-17A-5 (17 CFR 249.617).

eighty hours per OTC derivatives dealer<sup>2</sup> and that the average amount of time for the annual audit report is 100 hours per OTC derivatives dealer, for a total of 180 hours per OTC derivatives dealer annually. Thus the staff estimates that the total number of hours necessary for the five OTC derivatives dealers to comply with the requirements of Rule 17a-12 on an annual basis is 900 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 60 days of this notice.

Dated: January 24, 2007.

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55162; File No. SR-Amex-2006-106]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change as Modified by Amendment No. 1 Thereto, Relating to the Adoption of a Penny Pilot Program

January 24, 2007.

#### I. Introduction

On November 9, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission

<sup>2</sup> Based upon an average of 4 responses per year and an average of 20 hours spent preparing each response.

("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 permit certain option classes to be quoted in pennies on a pilot basis and to adopt a quote mitigation strategy. The proposed rule change was published for comment in the **Federal Register** on November 20, 2006.<sup>3</sup> The Commission received four comment letters on the proposed rule change.<sup>4</sup> On January 18, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Exchange responded to the comment letters on January 19, 2007.<sup>6</sup> This order approves the proposed rule change as modified by Amendment No. 1.

## II. Description of the Proposal

### A. Scope of the Penny Pilot Program

Amex proposes to amend its rules to permit certain option classes to be quoted in pennies during a six-month pilot ("Penny Pilot Program"), which would commence on January 26, 2007. Specifically, proposed Commentary .01 to Amex Rule 952 would set forth the parameters of the Penny Pilot Program and note that information concerning the Penny Pilot Program will be communicated to members via Regulatory Circular.

Currently, all six options exchanges, including Amex, quote options in nickel and dime increments. The minimum price variation for quotations in options series that are quoted at less than \$3 per contract is \$0.05 and the minimum

price variation for quotations in options series that are quoted at \$3 per contract or greater is \$0.10. Under the Penny Pilot Program, beginning on January 26, 2007, market participants would be able to begin quoting in penny increments in certain series of option classes.

The Penny Pilot Program would include the following thirteen options: Ishares Russell 2000 (IWM); NASDAQ-100 Index Tracking Stock (QQQQ); Semiconductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD); Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (SUNW); and Agilent Technologies, Inc. (A). The Exchange will communicate the list of options to be included in the Penny Pilot Program to its membership via Regulatory Circular.

The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, would be \$0.01 for all quotations in option series that are quoted at less than \$3 per contract and \$0.05 for all quotations in option series that are quoted at \$3 per contract or greater. The QQQQs would be quoted in \$0.01 increments for all options series.

Amex commits to deliver a report to the Commission during the fourth month of the pilot, which would be composed of data from the first three months of trading. The report would analyze the impact of penny pricing on market quality and options system capacity.

### B. Quote Mitigation Proposal

To mitigate quote message traffic, Amex has represented to the Commission that it has already implemented or intends to implement the following quote mitigation strategies.

- *Join Quote.* The Amex, through the ANTE system,<sup>7</sup> provides that registered options traders ("ROTs") may either stream their own quotes or join the specialist's disseminated quotation in some or all of his assigned classes or series ("join quote"). In order to participate in "join quote," a ROT must be physically present in the trading crowd. The purpose of allowing ROTs to piggyback on specialists' quotes is partly to reduce market data traffic by allowing ROTs to join the specialist's quote in the less actively traded series

(far out months, etc.) while auto-quoting the more actively traded series.

- *Monitoring.* The Amex actively monitors the quotation activity of its market participants. When the Exchange detects that a market participant is disseminating significantly more quotes than the average market participant, the Exchange contacts the market participant and alerts them to potentially excessive quotation activity. Often such monitoring reveals that the market participant may have internal system issues or has incorrectly set system parameters. Alerting the market participant usually leads to the market participant to take steps to reduce the number of quotes for dissemination.

- *Holdback Timers.* The Amex has the systematic ability to limit the dissemination of quotations and other changes to the Amex Best Bid or Offer ("ABBO") according to prescribed time criteria ("Holdback Timer"). For instance, if there is a change in the price of a security underlying an option, multiple market participants may adjust the price or size of their quotes. Rather than disseminating each individual change, the Holdback Timer permits the Exchange to wait until multiple market participants have adjusted their quotes and then to disseminate a new quotation. This helps to prevent the "flickering" of quotations. The Amex proposes to codify the Holdback Timer in this rule filing. As proposed in Amex Rule 958A-ANTE, the Exchange will utilize a Holdback Timer that delays quotation updates for no longer than one (1) second.

- *Delisting.* The Amex commits to the Commission that it will delist options with an average daily volume ("ADV") of less than 25 contracts. However, the Amex represented to the Commission that it has been its policy to be much more aggressive in delisting relatively inactive options, thereby eliminating the quotation traffic attendant to such listings.

## III. Discussion

After careful review of the proposal, the comment letters, and the Exchange's response thereto, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<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. 54741 (November 9, 2006), 71 FR 67176.

<sup>4</sup> See letters to Nancy M. Morris, Secretary, Commission, from Wayne Jervis, Managing Member of the General Partner, Jervis Alternative Asset Management Co. ("JAAMCO"), dated December 1, 2006 ("JAAMCO Letter"); from Christopher Nagy, Chair, Securities Industry and Financial Markets Association ("SIFMA") Options Committee, dated December 20, 2006 ("SIFMA Letter"); from Peter J. Bottini, Executive Vice-President, optionsXpress, Inc. ("optionsXpress"), dated November 17, 2006 ("optionsXpress Letter"); and from Patrick Sexton, Associate General Counsel, Chicago Board Options Exchange, Inc. ("CBOE"), dated December 12, 2006 ("CBOE Letter").

<sup>5</sup> Amendment No. 1 proposed to replace Glamis Gold, which was delisted, with Agilent Tech, Inc. in the list of options classes permitted to be quoted in pennies. Amendment No. 1 is technical in nature, and the Commission is not publishing Amendment No. 1 for public comment.

<sup>6</sup> See letter to Nancy Morris, Secretary, Commission, from Jeffrey P. Burns, Vice President and General Counsel, Amex, dated January 19, 2007. On January 23, 2007, Amex supplemented its initial response by providing additional information about its Holdback Timer. See letter to Nancy Morris, Secretary, Commission, from Jeffrey P. Burns, Vice President and General Counsel, Amex, dated January 23, 2007 (collectively "Exchange Response").

<sup>7</sup> See Securities Exchange Act Release No. 49747 (May 20, 2004), 69 FR 30344 (May 27, 2004) (SR-Amex-2003-89).

Act,<sup>9</sup> which requires, among other things, that the rules of an 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, in general, to protect investors and the public interest.

The Commission believes that the implementation of a limited six-month Penny Pilot Program by Amex and the five other options exchanges will provide valuable information to the exchanges, the Commission and others about the impact of penny quoting in the options market. In particular, the Penny Pilot Program will allow analysis of the impact of penny quoting on: (1) Spreads; (2) transaction costs; (3) payment for order flow; and (4) quote message traffic.

The Commission believes that the thirteen options classes to be included in the penny pilot program represent a diverse group of options classes with varied trading characteristics. This diversity should facilitate analyses by the Commission, the options exchanges and others. The Commission also believes that the Penny Pilot Program is sufficiently limited that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information. Nevertheless, because the Commission expects that the Penny Pilot Program will increase quote message traffic, the Commission is also approving the Exchange's proposal to reduce the number of quotations it disseminates.

In this regard, the commenters expressed concern about Amex's proposed quote mitigation strategy.<sup>10</sup> In particular, although optionsXpress generally supported Amex's Holdback Timer, it expressed concern that a longer holdback timer period could negatively impact market quality and undermine transparency in the options market.<sup>11</sup>

In addition, SIFMA recommends that all six of the option exchanges adopt a comprehensive and uniform quote

mitigation strategy.<sup>12</sup> In particular, SIFMA strongly supports the adoption of the Holdback Timer mitigation proposal as the most efficient means of reducing quotation traffic. SIFMA, however, expressed concern that the lack of uniformity among the quote mitigation proposals adopted by the exchanges will impose a burden on member firms and cause confusion for market participants, especially retail investors.

Although SIFMA urges the adoption of a uniform and comprehensive approach to quote mitigation, it does not oppose Amex's quote mitigation proposals. In fact, SIFMA acknowledges that certain of Amex's proposals, such as notifying members whose quote activity suggests systems malfunctions or wrong settings and delisting inactive series can contribute to quote mitigation. SIFMA, however, expressed its belief that these proposals do not go far enough to resolve the industry's concerns regarding systems capacity.

The Commission supports efforts to implement a uniform, industry-wide quote mitigation plan. It does not, however, believe such efforts preclude individual exchanges from initiating their own quote mitigation strategies. The Commission does not believe that Amex's proposed quote mitigation strategies will lead to confusion among market participants.

Finally, CBOE commented that it did not have a fundamental objection to Amex's use of the Holdback Timer, but sought additional information concerning how the Holdback Timer functions and how orders sent to Amex by CBOE members or by CBOE though linkage might be impacted by the Holdback Timer.<sup>13</sup> Specifically, CBOE requested additional information about the extent to which the Holdback Timer is utilized throughout the day and whether it is used uniformly in all option classes traded on Amex. In response, Amex indicated that it intends to use the Holdback Timer uniformly in all option classes.<sup>14</sup> In addition, the Amex committed to apply the Holdback Timer mechanism throughout the trading day for a period of up to, but no

more than, one second.<sup>15</sup> In further response to inquiry from CBOE, the Amex represented that it does not intend to disclose the precise length of the timer to its members, to non-members or to the other exchanges.<sup>16</sup>

In addition, CBOE inquired whether the Holdback Timer will apply only to market maker quotations and asked the Exchange to clarify what information will be delayed by the Holdback Timer. Amex clarified that the Holdback Timer will be applied when there is a change in the price and/or size of the security underlying an option. The Exchange will wait (for a period up to one second) until multiple market participants have adjusted their quotes and then will disseminate a new quotation. The Exchange will apply the Holdback Timer to all data that it sends to OPRA.<sup>17</sup> Finally, in response to CBOE's inquiry regarding the treatment of incoming marketable orders, Amex indicated that Holdback Timer only "addresses the dissemination of quote changes on the Exchange not the execution of orders."<sup>18</sup> Therefore, incoming marketable orders sent to the Exchange will automatically trade against Amex's current internal quotation that may be delayed during the one second holdback period.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-Amex-2006-106), as modified by Amendment No. 1, be, and hereby is, approved on a six-month pilot basis, which will commence on January 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>15</sup> Telephone conversation between Michael T. Bickford, Senior Vice President, Amex, and Jennifer L. Colihan, Special Counsel, Cyndi N. Rodriguez, Special Counsel, and Johnna B. Dumler, Special Counsel, Division of Market Regulation, Commission, on January 23, 2007.

<sup>16</sup> *Id.*

<sup>17</sup> See Exchange Response, *supra* note 6.

<sup>18</sup> Telephone conversation between Michael T. Bickford, Senior Vice President, Amex, and Jennifer L. Colihan, Special Counsel, Cyndi N. Rodriguez, Special Counsel, and Johnna B. Dumler, Special Counsel, Division of Market Regulation, Commission, on January 23, 2007.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

<sup>10</sup> JAAMCO did not comment directly on Amex's proposal, but rather stated its strong support for quoting in penny increments in the options market, which it believes will improve inequities in the marketplace. See JAAMCO Letter, *supra* note 4.

<sup>11</sup> See optionsXpress Letter, *supra* note 4. OptionsXpress also stated its view that current problems with the intermarket linkage will be exacerbated in the option classes participating in the Penny Pilot Program. *Id.*

<sup>12</sup> See SIFMA Letter, *supra* note 4.

<sup>13</sup> See CBOE Letter, *supra* note 4.

<sup>14</sup> Telephone conversation between Michael T. Bickford, Senior Vice President, Amex, and Jennifer L. Colihan, Special Counsel, Cyndi N. Rodriguez, Special Counsel, and Johnna B. Dumler, Special Counsel, Division of Market Regulation, Commission, on January 23, 2007. See also Exchange Response, *supra* note 6.