

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44594; File No. SR-Amex-2001-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Prohibition of the Entry of Certain Limit Orders and Electronically Generated Orders Into the Exchange's Order Routing System

July 26, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 4, 2001, the American Stock Exchange LLC (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 16, 2001, the Exchange submitted Amendment No. 1 to the proposal.³ 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 Amex proposes to amend Rules 1000, 1000A and 1200 to restrict the entry of certain limit orders and orders that are created and communicated electronically without manual input into the Exchange's order routing and execution systems. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed an 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In February 2001, the Commission issued a notice of filing and immediate effectiveness of a proposed rule change submitted by the Exchange that restricted the entry of certain option limit orders and option orders created and communicated electronically without manual input into the Exchange's electronic order routing and delivery systems.⁴ The Exchange is not proposing to adopt the same restrictions for some of the other equity derivative products it currently trades. Specifically, the Exchange proposes that the new rules would apply to the following equity derivative products: Exchange Traded Funds ("ETFs") such as Standard & Poors Depository Receipts ("SPDRS"), DIAMONDS and Nasdaq 100 Tracking Stock ("QQQ"), and Trust Issued Receipts ("TIRs" such as Holding Company Depositor Receipts ("HOLDRS").

The proposed amendments to Amex Rules 1000, 1000A and 1200 would restrict the entry of certain limit orders and orders that are created and communicated electronically without manual input into the Exchange's electronic order routing and delivery system (Amex Order File—"AOF"), which routes orders of up to 99,900 shares of each equity derivative to the Exchange's electronic order execution and processing systems (*i.e.*, Point of Sale Specialist's Book), under certain circumstances as described below.

a. Limit Orders

Under the proposed rule, members, acting as either principal or agent, would be prohibited from entering limit orders into the electronic order routing system if such orders are for the account or accounts of the same or related beneficial owners, and the limit orders are entered in such a manner that the member or the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such securities on a regular or continuous basis. The proposed rules provide that in determining whether a member or beneficial owner effectively is operating as market maker, the Exchange would consider, among other

things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same security; the multiple acquisition and liquidation of positions in the security during the same day; and the entry of multiple limit orders at different prices in the same security.

b. Electronically Created and Communicated Orders

The Exchange also proposes to adopt rules that prohibit members from entering orders that are created and communicated electronically without manual input, if such orders are eligible for execution through the Exchange's automatic execution system.⁵ The Exchange would consider orders entered by customers or associated persons of members to involve manual input if the terms of the order are entered into an order-entry screen or there is a manual selection of a displayed order against which an off-setting order should be sent. The Exchange notes that under the proposed rules, members would not be prohibited from electronically communicating to the Exchange orders entered by customers into front-end communication systems (*e.g.*, Internet gateways, online networks, etc.).

The Exchange states that its business model depends upon specialists and registered options traders ("ROTs") who act as market makers, for competition and liquidity. The Exchange believes that to encourage participation by these market makers, it needs to ensure that other members, and their customers, cannot use benefits granted to them, such as automatic execution, priority of bids and offers and firm quote guarantees for customer orders, to compete on preferential terms within the Exchange's automated systems. The Exchange represents that the proposed rule would prevent members who are not specialists or ROTs from reaping the benefits of market making activities without any of the concomitant obligations, such as providing continuous quotations during all market conditions. The Exchange represents that the proposed rule is designed to prevent certain members and customers from obtaining an unfair advantage by acting as unregistered specialists and/or ROTs while having priority over the specialists and/or ROTs by virtue of their customer status.

The Exchange believes that permitting members or customers to enter multiple limit orders to such an extent that they are effectively acting as market makers in an option, while at the same time giving them priority over all other

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Claire McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 13, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected technical errors in the proposed prohibition on orders that are created and communicated electronically without manual input to state that such orders may not be entered into the Exchange's order routing system if they are eligible for automatic execution.

⁴ See Securities Exchange Act Release No. 43938 (February 7, 2001), 66 FR 10539 (February 15, 2001).

⁵ See Amendment No. 1, *supra* note 3.

orders on the book, gives such members and customers an inordinate advantage over other market participants. In addition, the Exchange believes that allowing electronically generated and communicated orders to be routed directly through the Exchange systems and to Auto-Ex would give customers with such electronic systems a significant advantage over specialists and registered traders. The Exchange represents that these circumstances reduce the incentive to engage in market making on the Exchange reducing liquidity and competition and could under cut the Exchange's business model.

Lastly, the Exchange notes that computer generated orders can still be sent to the Exchange for execution; however, they may not be sent for automatic execution through the Exchange's order routing system.⁶ Instead, such orders will be routed to the trading crowd and represented in open outcry.

2. Basis

The proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(5)⁸ 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, 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 does not believe that the proposed rule change 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.

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. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2001-27 and should be submitted by August 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44604; File No. SR-Amex-2001-43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changed by the American Stock Exchange LLC Withdrawing From the Joint-Exchange Options Plan

July 27, 2001.

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 28, 2001, 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. 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 Amex proposes to withdraw its participation in the Joint-Exchange Options Plan ("JEOP") effective upon the approved by the Commission of the Options Listing Procedures Plan ("OLPP").

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. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In September 1991, the Commission approved the JEOP,³ which provided specific procedures for the selecting, listing, challenging, and arbitrating the eligibility of new standardized equity options. At the end of last year, the current options exchanges⁴ and the Options Clearing Corporations ("OCC") began discussions on replacing the JEOP.⁵ On January 11, 2001, the five

³ The Amex, Chicago Board Options Exchange, Inc. ("CBOE"), New York Stock Exchange, Inc., Pacific Exchange, Inc. ("PCX"), and Philadelphia Stock Exchange, Inc. ("Phlx") each filed the JEOP as a proposed rule change. See Securities Exchange Act Release No. 29698 (September 17, 1991) 56 FR 48594 (September 25, 1991).

⁴ The International Securities Exchange ("ISE"), which began trading standardized options in 2000, in adopted elements of the JEOP as part of its rules.

⁵ The Commission directed the Amex, the CBOE, the PCX, and the Phlx to amend the JEOP to eliminate advance notice to other markets of the intention to list a new or existing option; to eliminate any provisions of the JEOP that prevent a market from commencing to list or trade any option listed on another market or an option that another market has expressed an intent to list; and

⁶ See Amendment No. 1, *supra* note 3.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 2540.19b-4.