traded on the NYSE. However, because the ABS Securities are similar to those repackaging transaction, except that the Trust will own more than one corporate debt obligation (in this case, also Treasury Securities or GSE Securities) and, in the single repackaging transactions, there is no need for an Interest Distribution Agreement because the timing of the payment of interest on the underlying debt obligation matches the obligation to distribute interest on the repackaged securities, there are several issues regarding the trading of this type of product that the Exchange must address.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the ABS Securities. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the ABS Securities. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the ABS Securities.

The Commission notes that the ABS Securities are dependent upon the individual credit of the issuers of the Underlying Securities. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the ABS Securities. In addition, the Exchange's ''Other Securities'' listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.[27] The Commission notes that the Exchange has represented that the ABS Securities will be listed in $1000 denominations with its existing debt floor trading rules applying to the trading. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.[28]

Due to the pass-through and passive nature of the ABS Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in Section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in Sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. Thus, the ABS Securities will conform to the initial listing guidelines under Section 107A and continued listing guidelines under Sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the ABS Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the ABS Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Securities meet the Exchange's Section 107A listing requirements (in the case of Treasury securities, the Exchange will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A), the Underlying Securities will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to Section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of ''B'' or equivalent from an NRSRO. Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of $100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market venders such Bloomberg, L.P., or through websites such as *www.investinbonds.com* (for Underlying Corporate Bonds) and *http://publicdebt.treas.gov* and *http://www.govpx.com* (for Treasury Securities and GSE Securities, respectively).

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other equity-linked instruments currently listed and traded on the Amex,[29] and other asset-backed securities currently listed and traded on the NYSE.[30] The Commission believes that the ABS Securities will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the ABS Securities promptly. Additionally, the ABS Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act[31] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

Is it therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–Amex–2003–25) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10789 Filed 4–30–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47729; File No. SR–Amex–00–30]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Accelerating Approval to Amendment No. 7 to the Proposed Rule Change by the American Stock Exchange LLC Relating to the Allocation of and Participation in Options Trades

April 24, 2003.

I. Introduction

On May 30, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to 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 relating to the allocation of and participation in options trades. The proposed rule

[27] *See* Company Guide Section 107A.

[28] The ABS Securities will be registered under Section 12 of the Act.

[29] *See supra* note 10.

[30] *See, e.g., supra* note 11.

[31] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[32] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[33] 17 CFR200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

change was published for comment in the **Federal Register** on June 28, 2000.[3] On August 25, 2000, August 30, 2001, February 19, 2002, April 22, 2002, September 16, 2002, and December 20, 2002, respectively, the Amex filed Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change.[4] These amendments were published for comment in the **Federal Register** on January 31, 2003.[5] The Commission received no comments on the proposed rule change, as amended. On April 3, 2003, Amex filed Amendment No. 7 to the proposed change.[6] This order approves the proposed rule change, as amended; grants accelerated approval to Amendment No. 7; and solicits comments from interested persons on that amendment.

II. Description of Proposal

The Amex proposes to codify in Rule 933(d), Commentary .06 to Rule 950(d), and Commentary .03 to Rule 950(n), current practices regarding the participation in option trades executed on the Exchange by registered options traders and specialists and the allocation of those trades to the appropriate party. The proposed rule change also would provide clarity concerning the allocation of an options trade among the specialist and registered options traders when a customer order is on parity.

A. Specialist Participation

Generally, Amex Rule 126 (made applicable to options trading by Amex Rule 950 (d)) provides that when bids (offers) are made simultaneously, all such bids (offers) are on parity, and any securities sold (bought) in execution of such bids (offers) are to be divided as equally as possible between those on parity up to the participants' stated or generally known sizes.

The Amex states, however, that a practice has developed in Amex trading crowds in many option classes to give the specialist a greater than equal share when he or she is on parity with registered options traders. The Exchange proposes to codify this practice.

The proposed rule change would set forth that the size of the specialist's participation in the number of option contracts executed is based on the number of traders on parity.[7] The proposed distribution of option contracts between the specialist and the traders on parity is as follows:

Number of traders on parity	Approximate number of option contracts (in percent)	
	Allocated to the specialist	Allocated to the traders (as a group)
1	60	40
2–4	40	60
5–7	30	70
8–15	25	75
16 or more	20	80

B. Allocation of Contracts Among Registered Options Traders

Once the specialist has determined and deducted his or her portion of the trade depending upon the number of traders on parity, the proposed rule change provides that he or she would allocate the remaining contracts to the registered options traders.

As a preliminary matter, the proposed rule change sets forth that registered options traders must announce, either at the start of the trading day, upon entry into the trading crowd, or prior to the dissemination of a quotation, the number of contracts for which they are willing to participate.[8] When it is the specialist's obligation to allocate the trade,[9] he or she would allocate the portion of the order allotted to the registered options traders as a group based on the following provisions:

1. If all participants have equal stated sizes, their participations will be equal.

2. If participants' stated sizes are not equal, their participations will depend upon whether the number of executed contracts left to be allocated exceeded the participants' aggregate stated sizes.

3. If the number of executed contracts left to be allocated does not exceed the participants' aggregate stated sizes, the specialist will allocate the executed contracts equally, unless a participant's stated size is for an amount less than an equal allocation. In such case, the smallest sizes will be allocated first, until the number of executed contracts remaining to be allocated require an equal allocation.

4. If the number of executed contracts left to be allocated does exceed the participants' aggregate stated sizes, the specialist will allocate the executed contracts by first allocating to each participant the number of executed contracts equal to each participant's stated size, with the remainder being allocated based on the percentage a participant's stated size is of the participants' aggregate stated size.[10]

The proposed rule change provides further that in the event a specialist or registered options trader declined to accept any portion of the available contracts, any remaining contracts would be apportioned among the remaining participants who bid or offered at the best price at the time the market was established in accordance

[3] *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[4] Amendment Nos. 1 and 2 concerned the allocation of an order when a customer order is on parity with the specialist and/or a registered options trader. Amendment Nos. 3, 4, and 5 provided further clarity on trade allocation, and were submitted by Amex in compliance with Section IV.B.j. of the Commission's Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000)(''Order''). Section IV.B.j. of the Order requires that respondent options exchanges adopt new, or amend existing, rules to set forth any practice or procedure ''whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class.'' Amendment No. 6 made minor revisions to the proposal.

[5] *See* Securities Exchange Act Release No. 47229 (January 22, 2003), 68 FR 5060 (January 31, 2003) (''January 2003 Notice'').

[6] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division of Market Regulation (''Division''), Commission, dated April 2, 2003. Amendment No. 7 added proposed rule text permitting a registered options trader to direct his or her participation to a competing public order in the trading crowd. Although the narrative section of the January 2003 Notice indicated that a registered options trader, in addition to a specialist, could direct his or her participation in this manner, the proposed text of the rule omitted reference to a registered options trader. *See infra* at note and accompanying text. Amendment No. 7 further amended the proposed rule text to clarify how registered options traders would allocate the order of a registered options trader among themselves when the specialist is not participating, but a floor broker representing a customer order did seek to participate. *See infra* at note and accompanying text. Amendment No. 7 also made a technical correction to the rule text.

[7] Commentary .06(i) to Rule 950(d). The percentages indicated above would apply only when the specialist and/or registered options traders are on parity and would not include situations where a customer order is also on parity with the specialist and registered options traders. *See infra* Section II.C.

In addition, neither the specialist nor a registered options trader would be allocated more executed contracts than the number of contracts representing the specialist's or the registered options trader's portion of the aggregate quotation size that the responsible broker or dealer would be obligated to communicate to the Exchange pursuant to Exchange Rule 958A(c), except when the number of executed contracts to be allocated exceeded the aggregate quotation size disseminated for that options series. Commentary .06(i) to Rule 950(d).

[8] Commentary .03(a)(i)-(ii) to Rule 950 (n). The Exchange represents that these generally known sizes would be aggregated into the size disseminated by the Exchange pursuant to Amex Rule 958A so that the disseminated quote in each option series would reflect the level of participation by the specialist and each registered options trader. While the specialist would not be required to announce his or her size to the crowd, that size could be determined from the disseminated quote size.

[9] *See infra* Section II.D. on responsibility for allocating trades.

[10] *See* January 2003 Notice for an elaboration of these provisions, including examples of their application.

with the provisions described above.[11] In such instance, the Exchange represents, the specialist's participation would be based upon one less registered options trader participating and the allocation among the registered options traders would be increased proportionately.[12]

C. Customer Orders and Specialist and Registered Options Traders on Parity

As indicated above,[13] the allocation of an incoming order differs when a customer order is also on parity with the specialist and registered options traders. By way of background, Amex Rules 155 and 111 set forth the obligations and responsibilities of specialists and registered options traders when they handle or interact with customer orders.[14] Amex Rule 155 requires a specialist to yield precedence to orders entrusted to him or her as agent before executing a purchase or sale at the same price for an account in which he or she has an interest. Commentary .07 to Amex Rule 111 provides that a registered options trader, in establishing or increasing a position, may not retain priority over or have parity with an off-floor order (*i.e.*, a customer order). Thus, as explained by Amex,[15] Rules 155 and 111 require that, when the specialist as agent receives a customer marketable limit order, the specialist and any registered options trader establishing or increasing a position must yield precedence to the customer order. A registered options traders closing or reducing a position and a specialist not acting in an agency capacity can be on parity with a customer order.

The proposed rule change clarifies that when a customer order is competing on parity[16] for an incoming order, the specialist would allocate executed contracts on an equal basis to the customer and to the specialist and/or any registered options traders on parity with the customer. Any contracts that remained would be allocated, as between the specialist and the registered options traders as a group, in accordance with the percentages set forth in the table above.[17]

Further, although, as discussed above, Exchange Rules 111 and 115 do not require the specialist and registered options traders to yield priority in all circumstances to a customer order, the proposed rule change permits the specialist or a registered options trader to direct some or all of their participation to competing public orders (*i.e.*, competing orders for the accounts of non-broker-dealers) in the crowd.[18]

D. Responsibility for Allocating Trades

The proposed rule change sets forth that, for trades in which the specialist is participating, it is the specialist's responsibility to allocate executed contracts among all the participants in the trade.[19] The specialist would be required to allocate the contracts according to the allocation method described above.

The proposed rule change further specifies the party who would be responsible for allocating a trade that occurs without the participation of a specialist. When a floor broker is representing the contra-side of the trade, the floor broker would be required to distribute the contracts equally among the participating registered options traders, unless a registered options trader's portion of the disseminated quote size is less than an equal distribution. In the latter case, the registered options trader would be given a less than equal distribution and the remaining contracts would be allocated equally among the remaining participants to the trade.[20]

When neither the specialist nor a floor broker representing a customer as the contra-side of the trade is participating in the trade,[21] the registered options traders would allocate the executed contracts among themselves and other participants on parity in accordance with the same provisions setting forth allocations by the specialist.[22] The Amex represents that in these situations, as well as others, registered options traders are only required to participate up to their portion of the Exchange's disseminated quote size.[23]

E. Auto-Ex Trades

The proposed rule change also codifies Amex's procedures regarding the allocation of options trades executed through the Exchange's Auto-Ex system.[24] Such trades are automatically allocated on a rotating basis to the specialist and to each trader who has signed on to Auto-Ex, with the specialist receiving a larger than equal share. Under the proposed rule change, the rotation would be designed to provide that Auto-Ex trades over the course of a day in a given option class are allocated, as between the specialist and traders signed on to Auto-Ex for that class, in approximately the same percentages that the specialist and traders are allocated their respective portions of non-Auto-Ex trades—*i.e.*, depending upon the number of traders participating—as set forth in the table in Section II.A. above.[25]

III. Discussion

After careful consideration, the Commission has determined to approve the proposed rule change.[26] For the

[11] Commentary .03(iv) to Rule 950(n). The Exchange states that if a specialist or registered options trader declined an allocation or ''backed away'' from his disseminated size in whole or in part, he or she would be in violation of the firm quote rule (see Amex Rule 958A), investigated, and sanctioned accordingly. See January 2003 Notice. However, Commentary .03(iv) would also apply when the size of the incoming order exceeded the disseminated size and one or more registered options traders were not willing to participate in a size larger than their disseminated size.

[12] *See* January 2003 Notice.

[13] *Supra,* note .

[14] Rule 155 is made applicable to options trading by Rule 950(a) and Rule 111 is made applicable to options trading by Rule 950(c).

[15] *See* January 2003 Notice.

[16] A specialist can be on parity with a customer only when the specialist is not representing the customer's order.

[17] Commentary .06(ii) to Rule 950(d) and Commentary .03(a)(iii)(A) to Rule 950(n). Commentary .03(a)(iii) provides that the allocations are to be made ''to the extent mathematically possible'' according to the method set forth in the rule.

[18] Commentary .03(a)(v) to Rule 950(n) as amended by Amendment No. 7. *See supra* note .

[19] Commentary .03(a) to Rule 950(n).

[20] Commentary .03(b) to Rule 950(n).

[21] *See* Amendment No. 7, in which Amex amended the proposed text of Commentary .03(b) so that it refers to a situation where neither the specialist nor a floor broker representing a customer ''as the contra-side of the trade'' is participating in the trade. The intent of the added language is to clarify that this provision relates to a situation in which the bid or offer being filled is that of a registered options trader, not of a customer represented by a floor broker. If, in such a situation, a floor broker representing a customer seeks to participate with the other traders in the crowd in filling the first trader's order, the traders would allocate the contracts among themselves and the floor broker in accordance with the rule governing how a specialist allocates an order, as indicated above. Amendment No. 7 also included the phrase ''and other participants on parity'' to clarify that a floor broker representing a customer in this manner would be included in the allocation. Telephone conversation between Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, and Ira Brandriss, Special Counsel, Division, Commission, on March 31, 2003.

[22] *See* Commentary .03(a)(iii) to Rule 950(n).

[23] *See* Amex Rule 958A.

[24] Auto-Ex automatically executes public customer market and marketable limit orders of a minimum of 10 and a maximum of 500 contracts, generally, in equity and index options. *See* Securities Exchange Act Release No. 47429 (March 3, 2003), 68 FR 11418 (March 10, 2003). In Nasdaq-100 Tracking Stock (''QQQ'') options, the maximum Auto-Ex size is 2,000 contracts for the two near-term expiration months, and 1,000 contracts for all other expiration months. See Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002). Both the specialist and registered options traders are contra-parties to the trades executed on the Auto-Ex system. If an Auto-Ex trade is greater than ten contracts, Auto-Ex divides the execution into lots of ten or fewer contracts and allocates a lot to each Auto-Ex participant.

[25] Rule 933(d). Further details are described in the January 2003 Notice.

[26] In approving this proposed rule change, the Commission has considered its impact on

reasons discussed below, 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.[27]

The proposed rule change would codify the existing practice in many Amex options trading crowds to give the specialist a greater than equal share when on parity with registered options traders, specifying the extent of a specialist's enhanced participation according to the number of traders on parity as discussed above.[28] The Exchange believes that it is necessary to provide an enhanced participation in order to attract and retain specialists that are willing to accept the added responsibilities imposed on specialists and the costs that are incurred in meeting these obligations.[29] The Exchange also believes that such enhanced participations are necessary for it to remain competitive with other exchanges that currently offer enhanced participation to their specialists and primary market makers, and to give specialists the ability to attract order flow to the Exchange and its customers with tighter, more competitive markets.[30]

The Commission believes that such participation guarantees are reasonable and are within the business judgment of the Exchange, as long as such advantages do not restrain competition and do not harm investors. The Commission notes that the proposed enhanced participations would not exceed 40 percent of an order (except when there is only one registered option trader on parity with the specialist). The Commission has found with respect to participation guarantees in other contexts that a maximum guarantee of 40 percent (where more than one trader is on parity with the specialist) is not inconsistent with statutory standards of competition and free and open markets.[31]

The Commission further believes that the proposed rules set forth a reasonable method to be used by the specialist in allocating the remaining contracts among the registered options traders.[32] This method is based on the size of each individual trader's interest as announced in advance.[33] The Commission also believes that the proposed method for the allocation of contracts that are declined by a specialist or registered options trader is fair and reasonable.[34]

When a specialist represents a customer order, such as when a customer order is in the specialist's limit order book, the specialist must yield to the customer order. The proposed rule change provides an articulated sequence for allocating a trade in a situation where a customer order is on parity with the specialist and registered options traders. Specifically, the proposed rule change stipulates that the specialist must first allocate contracts on an equal basis to the customer and those participants on parity with the customer, before dividing the remainder of the order among the specialist and registered options traders who are not on parity.[35] The Commission believes this provision to be reasonable, given the Exchange's longstanding rules that permit a specialist or a registered options trader closing a position to be on parity with a customer.[36] At the same time, the proposed rule change would make clear that specialists and/or registered options traders may direct some or all of their participation to competing public orders, codifying a practice described by the Exchange of accommodating customer orders in this manner.[37] The Commission believes that such accommodation of public customers is both reasonable and appropriate.

The Commission believes that it is reasonable to assign responsibility for allocating a trade generally to the specialist,[38] by virtue of the specialist's central role in the execution of trades and his or her awareness of the generally known sizes of registered options traders in the crowd and of customer interest. It is further reasonable, in the Commission's view, to assign the responsibility of allocation to the floor broker when the floor broker is representing the order that is being filled, and to the registered options traders when such traders are trading among themselves.[39] The Commission notes that while registered options traders would allocate the order among themselves in accordance with the same provisions that govern allocation by a specialist, a floor broker would be obligated to distribute the contracts among the traders on parity on an equal basis. The Commission believes it is reasonable to make this distinction in order to permit the floor broker, who may not be as conversant with the respective sizes of participating traders, to expeditiously allocate the order in an equitable manner.

The Commission further believes that the proposed rule regarding the allocation of Auto-Ex trades,[40] which would award the specialist and traders signed on to Auto-Ex throughout the day percentages that are the approximate equivalent of their respective entitlements in non-Auto-Ex trades, is a reasonable manner in which to apportion such trades.

The Commission finds good cause, consistent with Sections 6(b)(5)[41] and 19(b)(2)[42] of the Act, for approving Amendment No. 7 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 7 corrected the proposed rule text to reflect a proposed change that was described in the narrative portion of the January 2003 Notice, but was omitted from the proposed rule's text as published. The corrected version states that a registered options trader, as well as a specialist, may direct his or her participation to a competing public order.[43] As already noted above, the Commission believes that such accommodation of public customer orders is reasonable and appropriate.[44] Amendment No. 7 also clarified that when a transaction occurs without the participation of a specialist, and the bid or offer of a registered options trader is being filled, the registered options traders seeking to participate would include in the allocation a floor broker representing a customer order who was also seeking to

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5). Section 6(b)(5) of the Act requires that the rules of an exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[28] *Supra* Section II.A.

[29] *See* January 2003 Notice.

[30] *Id.*

[31] *See, e.g.*, Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398; and 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) at notes 96–99 and accompanying text.

[32] *Supra* Section II.B.

[33] *Id.*

[34] *Supra* notes—and accompanying text.

[35] *Supra* Section II.C.

[36] The Commission notes that the Amex has filed a proposed rule change that would provide that a specialist or registered options traders may not have priority over or be on parity with a public customer order. *See* File No. SR–Amex–2003–07, available at the Amex and at the Commission's Public Reference Room.

[37] *See* January 2003 Notice.

[38] Section II.D. above.

[39] *Id.*

[40] *Supra* Section II.E.

[41] 15 U.S.C. 78f(b)(5).

[42] 15 U.S.C. 78s(b)(2).

[43] *See supra* at text accompanying note .

[44] *Supra* at text accompanying note.

participate, in accordance with the same method that governs how a specialist allocates an order. As noted above, the Commission believes that this method is reasonable, and that the revision in Amendment No. 1 adds clarity to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 7, including whether Amendment No. 7 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 Amex. All submissions should refer to File No. SR–Amex–00–30 and should be submitted by May 22, 2003.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–Amex–00–30), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–10790 Filed 4–30–03; 8:45 am]

BILLING CODE 8010–01–P

[45] 15 U.S.C. 78s(b)(2).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47728; File No. SR–Amex–2003–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange LLC Relating to Automatic-Execution for Nasdaq National Market Securities

April 23, 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 March 13, 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 and II below, which Items have been prepared by the Exchange. On April 3, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

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

The Exchange seeks to extend its existing Automatic Execution System (''Auto-Ex'') to Nasdaq National Market System stocks (''Nasdaq stocks'') admitted to trading pursuant to 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 Privilege Basis (the ''OTC/UTP Plan'').[4] The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

* * * * *

Automatic Execution For Nasdaq National Market Securities (Temporary)

Rule 118A–T. (a) An Auto-Ex eligible order in a Nasdaq National Market System security will be executed automatically at the Amex Published Quote (''APQ'') for such security in accordance with the provisions of this rule.

(b) An Auto-Ex eligible order for a Tier 1 Nasdaq National Market security must be a round lot, or partial round lot (''PRL''), market or marketable limit order for 1,000 shares or less received by the Exchange electronically. An Auto-Ex eligible order for a Tier 2 Nasdaq National Market security must be a round lot, or PRL, market or marketable limit order for 500 shares or less received by the Exchange electronically. For purposes of this Rule, a ''Tier 1'' Nasdaq National Market security is a stock with an average daily consolidated trading volume of over 10 million shares during the preceding calendar quarter, and a ''Tier 2'' Nasdaq National Market security is a stock with an average daily consolidated trading volume of 10 million shares or less during the preceding calendar quarter.

(c) The specialist will be the contra side to each Auto-Ex execution. In the event that the specialist trades as a result of an automatic execution at a price at which the specialist could have executed one or more limit orders on the book, the specialist shall immediately execute any such limit orders at the price of the Auto-Ex trade to the extent such booked orders would have been executed had the incoming order not been executed automatically.

(d) An Auto-Ex eligible order will be routed to the specialist and will not be

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Amex provided anticipated implementation dates, stating that the Amex proposes to implement the proposed rule change before the end of May 2003 on a temporary basis until it implements its enhanced Auto-Ex technology in the fourth quarter of 2003. *See* April 2, 2003, letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission.

[4] The OTC/UTP Plan was initially approved in 1990. *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990). It has subsequently been amended. *See* also Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995); 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997), 62 FR 36586 (July 8, 1997); 39505 (December 31, 1997), 63 FR 1515 (January 9, 1998); 40151 (July 1, 1998), 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001); 44552 (July 13, 2001), 66 FR 37712 (July 19, 2001); 44694 (August 14, 2001), 66 FR 43598 (August 20, 2001); 44804 (September 17, 2001), 66 FR 48299 (September 19, 2001); 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001); 46381 (August 19, 2002), 67 FR 164 (August 23, 2002); 46729 (October 25, 2002), 67 FR 212 (November 1, 2002).