

contracts and variable life insurance policies ("Owners") who have allocated assets to that sub-account) or, in the case of a Portfolio whose public shareholders (or Owners through a sub-account of a registered separate account) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of that Portfolio to the public (or to Owners through a sub-account of a registered separate account).

2. Each Portfolio relying on the requested order will hold itself out to the public as employing the management structure described in the application. In addition, each Portfolio will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. Such prospectus will prominently disclose that the Manager has the ultimate responsibility (subject to oversight by the Board) to oversee the Advisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Adviser, the Manager will furnish shareholders (or, if the Portfolio serves as a funding medium for a sub-account of a registered separate account, Owners who have allocated assets to that sub-account) all information about the new Adviser that would be included in a proxy statement, including any change in such disclosure caused by the addition of the new Adviser. The Manager will satisfy this condition by providing shareholders (or Owners) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Manager will not enter into an advisory agreement with any Affiliated Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, then by the Owners who have allocated assets to that sub-account).

5. At all times, a majority of each Board will be Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then-existing Independent Directors.

6. When an Adviser change is proposed for a Portfolio with an Affiliated Adviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board minutes, that the change is

in the best interests of the Portfolio and its shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Portfolio and the Owners who have allocated assets to that sub-account), and does not involve a conflict of interest from which the Manager or the Affiliated Adviser derives an inappropriate advantage.

7. The Manager will provide general management services to each Fund and Portfolio, including overall supervisory responsibility for the general management and investment of each Portfolio's assets, and, subject to review and approval by the Board, will: (a) Set each Portfolio's overall investment strategies, (b) evaluate, select, and recommend Advisers to manage all or part of a Portfolio's assets; (c) allocate and, when appropriate, reallocate a Portfolio's assets among multiple Advisers, (d) monitor and evaluate the performance of the Advisers, and (e) implement procedures reasonably designed to ensure that the Advisers comply with each Portfolio's investment objectives, policies, and restrictions.

8. No Director or officer of a Fund, or director, manager or officer of the Manager will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in any Adviser, except for: (a) Ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either an Adviser or an entity that controls, is controlled by or under common control with an Adviser.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45413; File No. SR-Amex-2001-76]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Obligations of Specialists and Registered Options Traders

February 7, 2002.

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> notice is hereby given that on September 12, 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 Amex filed amendments to the proposed rule change on December 17, 2001<sup>3</sup> and January 18, 2002.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Amex proposes to amend Exchange Rules 950, 958 and 958A pertaining to the obligations of specialists and registered options traders. The text of the proposed rule change is set forth below. Additions are in *italics*; deletions are in *brackets*.

#### American Stock Exchange, LLC; Proposed Rule Change

##### Section 5. Floor Rules Applicable to Options

##### Rule 950 Rules of General Applicability

(a) through (m) No change.

(n) The provisions of Rule 170 and Commentaries .03 and .04 thereto, shall apply to exchange option transactions.

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

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

<sup>3</sup> The Amex submitted a new Form 19b-4, which replace and supersedes the original filing in its entirety ("Amendment No. 1").

<sup>4</sup> Letter from Clarie P. McGrath, Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division of Market Regulation ("Division"), Commission, dated January 16, 2002 ("Amendment No. 2"). Amendment No. 2 amends proposed Amex Rules 950 and 958 to clarify that "large order" means order larger than the size communicated or disseminated pursuant to Exchange Rule 958 or larger than the Exchange's auto-ex eligible size. Amendment No. 2 also make a technical correction to proposed Amex Rule 958(h)(iii).

In addition, the following Commentary shall also apply:

Commentary

.01 No change.

.02 *Specialists and registered options traders are required to compete with each other to improve the quoted markets in all series of option classes which they trade. Unless otherwise provided for in Exchange rules, it shall be a violation of just and equitable principles of trade for specialists and registered options traders to determine by agreement the spreads or prices at which they will trade any option class, or the allocation of orders in any option class. In complying with this Rule, the specialist and registered option traders must make independent decisions to determine the spreads or prices at which they will quote and trade any option class. There are, however, certain specific circumstances where to make fair and orderly markets that are competitive with other exchanges and responsive to the needs and expectations of investors, some communication among the specialist and traders may be necessary and appropriate. Therefore, notwithstanding the foregoing:*

(a) *Specialists are expected to participate in and support Exchange-sponsored automated systems such as automatic quote and execution systems or Exchange-approved equivalents. The variables in the formula used to generate automatically updated quotations for each option class and or series will be determined independently by the specialist. The specialist shall disclose to all registered option traders in an option class the following variables of the formula used to generate automatically updated market quotations for each option class and/or series: option pricing calculation model, volatility, interest rate, and dividends (both declared and anticipated). The specialist may receive input from the registered options traders on any one or all of these variables provided, however, it is within the specialist's sole discretion to make the final, independent decision in determining the variables to be used in the automated quote system. The registered options traders, however, are not required to give input on the variables to the specialist. The Exchange shall have the discretion to exempt specialists using an Exchange-approved proprietary automated quotation updating system from having to disclose proprietary information concerning the variables (but not the variables themselves) used by those systems;*

(b) *The obligation of the specialists to make competitive markets does not preclude the specialists and registered options traders from making a collective response to a request for a market, provided the member representing such order requests such response and the size of the order is larger than the size communicated or disseminated pursuant to Rule 958A or is larger than the Auto-Ex eligible size parameter.<sup>5</sup> With respect to orders sent through the Exchange's order routing systems that are larger than the size disseminated pursuant to Rule 958A, it is presumed that the member has requested a collective response. The allocation of contracts executed in accordance with this paragraph done in accordance with the Exchange's specialist and registered options trader participation policy; and*

(c) *In conjunction with their obligation as the responsible broker or dealer pursuant to Exchange Rule 958A and Rule 11Ac1-1 under the Securities Exchange Act of 1934, specialists and registered options traders may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to the Exchange pursuant to paragraph (c)(i) of Rule 958A.*

\* \* \* \* \*

Rule 958 Options Transactions of Registered Traders

No Registered Trader shall initiate an Exchange option transaction on the Floor for any account in which he has an interest except in accordance with following provisions:

(a) through (g) No change.

(h) *Registered options traders and specialists are required to compete with each other to improve the quoted markets in all series of option classes which they trade. Unless otherwise provided for in Exchange rules, it shall be a violation of just and equitable principles of trade for registered options traders and specialists to determine by agreement the spreads or prices at which they will trade any option class, or the allocation of orders in any option class. In complying with this Rule, the registered option traders and specialist must make independent decisions to determine the spreads or prices at which they will quote and trade any option class. There are, however, certain specific circumstances where to make*

<sup>5</sup> This requirement would apply to the greater of the size communicated or disseminated pursuant to Rule 958 or the Auto-Ex eligible size parameter. The Exchange plans to file an amendment clarifying this point. Telephone call between Claire P. McGrath, Vice President and Deputy General Counsel, Amex, and Sonia Patton, Special Counsel, Division, Commission (February 5, 2002).

*fair and orderly markets that are competitive with other exchanges and responsive to the needs and expectations of investors, some communication among the specialist and registered options traders may be necessary and appropriate. Therefore, notwithstanding the foregoing:*

(i) *Registered options traders are expected to participate in and support Exchange-sponsored automated systems such as automatic quote and execution systems or Exchange-approved equivalents. The variables in the formula used to generate automatically updated quotations for each option class and or series will be determined by the specialist. The specialist shall disclose to all registered option traders in an option class the following variables of the formula used to generate automatically updated market quotation for each option class and/or series: option pricing calculation model, volatility, interest rate, and dividends (both declared and anticipated). The specialist may receive input from the registered options traders on any one or all of these variables, provided, however, that it is within the specialist's sole discretion to make the final, independent decision in determining the variables to be used in the automated quote system. The registered options traders, however, are not required to give input on the variables to the specialist. The Exchange shall have the discretion to exempt specialists using an Exchange-approved proprietary automated quotation updating system from having to disclose proprietary information concerning the variables (but not the variables themselves) used by those systems;*

(ii) *The obligation of registered options traders to make competitive markets does not preclude registered options traders and specialists from making a collective response to a request for a market provided the member representing such order requests such response and the size of the order is larger than the size communicated or disseminated pursuant to Rule 958A or is larger than the Auto-Ex eligible size parameter.<sup>6</sup> With respect to orders sent through the Exchange's order routing systems that are larger than the size disseminated pursuant to Rule 958A, it is presumed that the member has requested a collective response. The allocation of contracts executed in accordance with this paragraph will be done in accordance with the Exchange's*

<sup>6</sup> Id.

*specialist and registered options trader participation policy; and*

(iii) *In conjunction with their obligation as the responsible broker or dealer pursuant to Exchange Rule 958A and Rule 11Ac1-1 under the Securities Exchange Act of 1934, specialists and registered options traders may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to the Exchange pursuant to paragraph (c)(i) of Rule 958A.*

\* \* \* \* \*

#### Rule 958A. Application of the Firm Quote Rule

(a) Definitions—(i) For purposes of this rule the terms “aggregate quotation size”, “best bid and best offer”, “bid and offer”, “quotation size”, “quotation vendor”, “reported security”, “listed option”, “option class”, “option series” and “trading rotation” shall have the meanings set forth in SEC Rule 11Ac1-1.

(ii) For purposes of this rule and SEC Rule 11Ac1-1 as applied to the Exchange and its members, the term “responsible broker or dealer” shall mean, with respect to any bid or offer for any listed option made available by the Exchange to quotation vendors, the specialist and any registered options traders constituting the trading crowd in such option series. The specialist and any registered options traders shall collectively be the responsible broker or dealer to the extent of the aggregate quotation size specified. *In conjunction with their obligation as the responsible broker or dealer, specialists and registered options traders may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to the Exchange pursuant to paragraph (c)(i) of this rule. The allocation of contracts executed in accordance with this rule will be done pursuant to the Exchange’s specialist and registered options traders participation policy.*

(b) Through (d) No change.

\* \* \* \* \*

#### Commentary

.01 No specialist or registered options trader shall be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by

the Exchange or any quotation vendor, then the specialist and registered options traders [who is] responsible for the published bid or published offer shall be obligated [to the extent] as set forth in paragraph (c) of Rule 11Ac1-1 but only to the extent of ten contracts.

.02 Absent unusual market conditions, the responsible broker or dealer shall honor any bid or offer then being displayed by quotation vendors which is erroneous, up to the quotation size then being so displayed, which has been displayed for six minutes or more. Provided, however, that the [specialist] the responsible broker or dealer shall not be required to honor such a bid or offer which is erroneous as to either price or size or both if:

(i)–(iv)—No change.

#### 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Exchange Rules 950, 958 and 958A to codify its interpretation that unless otherwise provided for in Exchange rules it is a violation of just and equitable principles of trade for specialists and registered options traders (“traders”) to determine by agreement the spreads or prices at which they will trade any option class, or the allocation of orders in any option class.<sup>7</sup> Thus, specialists and traders are required to compete with each other to

improve the quoted markets in all series of option classes which they trade. In meeting this obligation, the specialist and each trader must make independent decisions concerning what markets to quote at any given time and cannot determine by agreement what the quoted market, bid/ask differential or option prices should be. The Exchange believes that there are, however, certain specific circumstances where, in order to make fair and orderly markets that are competitive with other exchanges and responsive to the needs and expectations of investors, some communication among the specialist and traders may be necessary and appropriate. According to the Exchange, these circumstances arise: (1) In connection with the specialist’s establishment of parameters used by the Exchange’s automated quotation updating system (known as X-TOPS) to automatically generate options quotations in response to changes in the market for the underlying security or index; (2) in responding to customer requests for markets in size, such that the collective efforts of the specialist and traders are necessary in order to be able to fill any resulting order to buy or sell options; and (3) whenever the specialist and traders, in order to fulfill their obligations pursuant to Rule 11Ac1-1 under the Act and Amex Rule 958A, and to be competitive with other exchanges, collectively agree as to the best bid, best offer and aggregate quotation size. The following is a description of the nature and extent of the joint action among the specialist and traders that is permitted under each of these circumstances.

###### X-TOPS Parameters

Automated quotation updating systems, which are relied upon by the specialist and traders to provide a single immediately updated quotation for each option series, utilize option valuation formulas to generate options quotations based on a number of variables. These variables include the price of the underlying stock, time remaining to expiration, interest rates (or “cost to carry”, the amount of interest on the money used to pay for the options position during the period prior to expiration of the option series), dividends (both declared and anticipated) and volatility. It is the specialist’s obligation to determine for each option class the variables used in the X-TOPS formula. However, the quotations generated and displayed by X-TOPS result in firm quote obligations of the specialist and traders to buy or sell options at quoted prices and sizes. For this reason, the Exchange believes

<sup>7</sup>The Amex is submitting the proposed rule change pursuant to subparagraph IV.B.j of the Commission’s September 11, 2000 Order, which requires that certain options exchanges, including the Amex, adopt new, or amend existing, rules to make express 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 \* \* \*.” See Order Institution 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).

that input from the registered options traders to the specialist regarding the variables used in the X-TOPS formula is necessary and appropriate. Proposed Commentary .02 to Exchange Rule 950(n) and proposed paragraph (h) to Exchange Rule 958 reflect this by stating that the specialist (i) shall disclose to all registered option traders in an option class the variables of the formula used to generate automatically updated market quotations for each option class and/or series, and (ii) may receive input from the registered options traders on any one or all of these variables provided, however, that it is within the specialist's sole discretion to make the final independent decision in determining the variables to be used in the X-TOPS formula. Those specialists using an Exchange-approved proprietary system to calculate and generate quotes may be exempt by the Exchange from having to disclose proprietary information concerning the variables (but not the variables themselves) used by their systems.

#### Joint Responses to Requests for Markets

When a request for a market to buy or sell option contracts in sizes larger than the greater of the Auto-Ex eligible size or the size communicated or disseminated pursuant to Exchange Rule 958A is submitted to the specialists and traders,<sup>8</sup> the Exchange believes that it is typically the case that the customer on whose behalf the request is made would want to know promptly at what single price all of the options represented by the request can be bought or sold. Often in order to compete effectively with other marketplaces also trading the option and with the over-the-counter market in similar products, the Exchange believes that the specialist and traders must collectively provide a response to this kind of request. Proposed Commentary .02 to Exchange Rule 950(n) and proposed new paragraph (h) to Exchange Rule 958 would expressly permit a collective response to the member provided the member requests such a collective response. With respect to orders sent through the Exchange's order routing systems that are larger than the size disseminated pursuant to Exchange Rule 958, it would be presumed that the member has requested a collective response.

In addition, the specialist will sometimes agree to transact the full size of the options order at a specific price and subsequently allocate portions of the order to participating registered options traders. If or when a trade is

executed, the contracts will be allocated in accordance with the Exchange's specialist and registered options traders participation policy.<sup>9</sup>

#### Firm Quote Guarantees

Currently, Amex Rule 958A obligates specialists and traders to be firm for (i) customer orders up to the quotation size being disseminated, and (ii) broker-dealer orders, up to the size established and periodically published by the Exchange. Rule 11Ac1-1 under the Act anticipates that exchanges will disseminate one automatically generated quote for a trading crowd, which necessitates collective action on behalf of the specialist and traders to communicate size to the Exchange. If or when a trade is executed, the contracts will be allocated in accordance with the Exchange's specialist and registered options traders participation policy.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>10</sup> in general and furthers the objectives of Section 6(b)<sup>11</sup> in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, 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 Amex consents, the Commission will:

<sup>9</sup> See Securities Exchange Act Release No. 42964 (June 20, 2000) 65 FR 39972 (June 28, 2000) which proposes to codify current practices regarding the participation in option trades executed on the Exchange by registered options traders and specialists.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

(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, as amended, 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 Room. Copies of such filings will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-2001-76 and should be submitted by March 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-3495 Filed 2-13-02; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45417; File No. SR-Amex-00-47]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Amendment of Exchange Rule 933

February 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 17, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange

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

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

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

<sup>8</sup> See *supra* note 5.