

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57644; File No. SR-Amex-2008-32)

April 10, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Allocation of Executed Options Contracts

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 March 26, 2008, the American Stock Exchange LLC (“Exchange” or “Amex”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 modify the allocation in Exchange Rule 935-ANTE relating to electronically executed option contracts. The text of the proposed rule change is available on the Amex’s Web site at <http://www.Amex.com>, at the Office of the Secretary, the Amex and at the Commission’s Public Reference Room.

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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 Exchange 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange seeks to revise the allocation formula set forth in Rule 935—ANTE (“Allocation of Executed Contracts”) when a specialist is on parity for option orders of five (5) contracts or less that are delivered and executed electronically in ANTE. Specifically, the proposal provides that if the specialist is quoting at the Amex best bid or offer (the “ABBO”), after public customer market and marketable limit orders have been executed, the specialist will be entitled to receive the entire allocation of orders for five (5) contracts or less.<sup>5</sup>

Current Rule 935—ANTE provides that if the specialist is eligible for an allocation, the specialist is entitled to receive an allocation (not to exceed the size of the specialist's quote)

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<sup>5</sup> See Securities Exchange Act Release Nos. 42808 (May 22, 2000), 65 FR 34515 (May 30, 2000)(ISE Rule 713) and 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004)(Phlx Rule 1014(g)).

equal to the greater of either:

(i) the number of executed contracts to be allocated to the specialist based upon the percentages set forth below;

<b>Number of Market Participants* on Parity</b>	<b>Approximate Number of Contracts Allocated to the Specialist</b>
1	60%
2-4	40%
5-7	30%
8-15	25%
16 or more	20%

\* Not including non-broker-dealer customers

or

(ii) the number of executed contracts the specialist would be otherwise entitled to pursuant to the allocation algorithm (the “Allocation Algorithm”).

#### Allocation Algorithm

The Allocation Algorithm provides that when more than one market participant is quoting at the ABBO, the ANTE System allocates executed contracts to non-broker-dealer customers first and then to all other market participants based upon the following:

$((\text{Component A Percentage} + \text{Component B Percentage})/2) * \text{Number of Executed Contracts}$ )).

- Component A (Parity Component)—the percentage used for Component A is an equal percentage, derived by dividing 100 by the number of market participants quoting at the ABBO.

- Component B (Size Pro Rata Component)—the percentage to be used for Component B is the percentage that the size of each market participant's quote or order at the ABBO represents relative to the total number of contracts in the disseminated quote.

Final Weighting—A weighted average of the percentages derived for Components A and B is calculated, and then multiplied by the size of the incoming order. Currently, the weighting of Components A and B is equal.

The proposed revision to Rule 935—ANTE permits the specialist to receive a 100% allocation after marketable non-broker-dealer customer orders are executed for orders of five (5) contracts or less. A specialist will not receive any portion of an allocation unless it is quoting at the ABBO at the time ANTE receives the executable order. In addition, the size associated with the specialist's quote must be sufficient to fill the portion of the order that would be allocated to it.

The proposal also specifies that, on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for five (5) contracts or less executed by specialists, and will reduce the size of the orders included in this provision if such percentage is over 40%.<sup>6</sup>

The Exchange believes that the proposal will provide greater incentive for specialists to competitively quote based on both price and size and therefore will benefit the marketplace.

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<sup>6</sup> Supplementary Material .01(c) to International Securities Exchange, LLC ("ISE") Rule 713 excludes, for purposes of calculating the percentage of volume executed on the ISE consisting of orders of 5 contracts or less, the volume resulting from the execution of orders in its Facilitation Mechanism. Unlike ISE, the Exchange's ANTE system does not have a similar facilitation mechanism or platform.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

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

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The Exchange has designated the proposed rule change as one that: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection

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<sup>7</sup> 15 U.S.C. 78f(b).

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

of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup>

The Exchange notes that the proposed rule change is based on similar proposals approved by the Commission.<sup>11</sup> The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest. The Commission notes that the proposed rule change is substantially similar to provisions in the rules of two other exchanges.<sup>12</sup> The Commission believes that, because the proposed rule change raises no new regulatory issues, it is consistent with the protection of investors and the public interest to permit Amex to implement the proposal without needless delay.<sup>13</sup> Therefore, the Commission designates the proposal as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>11</sup> See supra note 5.

<sup>12</sup> See supra note 5.

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2008-32 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2008-32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00

p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2008-32 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).