

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-50525; File No. SR-Amex-2004-77)

October 13, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Trading of Ratio Orders

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 September 23, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Amex filed the proposal pursuant to Section 19(b)(3)(A) under the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal 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 Exchange proposes to amend Amex Rule 950, "Rules of General Applicability," and Amex Rule 950-ANTE, "Rules of General Applicability" to allow ratio orders with certain permissible ratio limits, as defined below, to be executed through the Amex. In addition, the Amex proposes to amend Commentary .01 to Amex Rule 950(d) and Commentary .01 to Amex Rule 950-ANTE(d) to include these types of permissible ratio orders in the same exception to the priority rules that Amex Rule 950(d), Commentary .01, and Amex Rule 950-ANTE(d),

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

Commentary .01, currently provide for spread, straddle, and combination orders.

The text of the proposed rule change appears below. Additions are italicized.

Rule 950 “Rules of General Applicability”

(a) – (d) No Change

Commentary to (d)

.01 When a member holding a spread order, a straddle order, ratio order, or a combination order and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with or within the bids and offers established in the marketplace, then the order may be executed as a spread, straddle, or combination at the total credit or debit with one other member without giving priority to either bids or offers established in the marketplace that are not better than the bids or offers comprising such total credit or debit, provided that, (i) in executing a spread order, the member does not buy at the established bid for the option contract to be bought and sell at the established offer for the option contract to be sold or, (ii) in executing a straddle or combination order, the member does not either buy both sides of the order at the established bids or sell both sides of the order at the established offers.

Commentary .02 - .07 No Change

(e) – (e)(iv) No Change

(e)(v) **Ratio Order** – A Ratio Order is a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differ by a permissible ratio.

For purposes of this section, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.00) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

(f) – (n) No Change

Rule 950-ANTE “Rules of General Applicability”

(a) – (d) No Change

Commentary to (d)

.01 When a member holding a spread order, a straddle order, ratio order, or a combination order and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with or within the bids and offers established in the marketplace, then the order may be executed as a spread, straddle, or combination at the total credit or debit with one other member without giving priority to either bids or offers established in the marketplace that are not better than the bids or offers comprising such total credit or debit, provided that, (i) in executing a spread order, the member does not buy at the established bid for the option contract to be bought and sell at the established offer for the option contract to be sold or, (ii) in executing a straddle or combination order, the member does not either buy both sides of the order at the established bids or sell both sides of the order at the established offers.

Commentary .02 - .07 No Change

(e) – (e)(iv) No Change

(e)(v) **Ratio Order** – A Ratio Order is a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differ by a permissible ratio. For purposes of this section, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.00) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

(f) – (n) 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 self-regulatory organization 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

Amex Rules 950(e) and 950-ANTE(e) list and define several types of orders that are executed through the Amex including, among others, three types of complex orders: spread orders, combination orders, and straddle orders. The Amex proposes to add certain ratio orders within permissible established limits to the list of orders included in Amex Rules 950(e) and 950-ANTE(e). Proposed Amex Rules 950(e)(v) and 950-ANTE(e)(v) would define a ratio order

as either a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differs by a permissible ratio. Under Amex Rules 950(e)(v) and 950-ANTE(e)(v), a permissible ratio would be any ratio that is equal to or greater than one-to-three (.333) or less than or equal to three-to-one (3.0).

Additionally, the Amex proposes to revise paragraph .01 of the Commentary to both Amex Rules 950(d) and 950-ANTE(d) to include these types of permissible ratio orders so that they may be afforded the same exception to the priority rules that Amex Rules 950(d), Commentary .01, and 950-ANTE(d), Commentary .01, currently provide for spread, straddle, and combination orders.⁵ The Amex believes that because ratio orders are slight variations on the types of complex orders currently permitted on the Amex, it is appropriate to treat ratio orders like spread, straddle, and combination orders for purposes of Amex Rules 950(d), Commentary .01, and 950-ANTE(d), Commentary .01.

Furthermore, the Amex believes that ratio orders within certain permissible ratios may provide market participants with greater flexibility and precision in effectuating trading and hedging strategies. According to the Amex, including ratio orders in the exception to the priority rules provided in Amex Rules 950(d), Commentary .01, and 950-ANTE(d), Commentary .01, serves to reduce the risk of incomplete or inadequate executions while increasing efficiency and competitive pricing by requiring price improvement before an order can receive priority over other orders.

⁵ This proposed rule is based on Chicago Board Options Exchange, Inc. ("CBOE") Rule 6.45(e). See Securities Exchange Act Release No. 48858 (December 1, 2003), 68 FR 68128 (December 5, 2003) (order approving File No. SR-CBOE-2003-07) ("CBOE Order").

The Amex believes it is important to include the definition of ratio orders within the ANTE rules because, while spreads cannot currently be executed through the ANTE system, the Amex anticipates that such transactions will be executed through the ANTE system in the future. The ANTE rules currently include definitions of spread, straddle, and combination orders and provide for the priority of these orders in certain circumstances. As discussed above, ratio orders are a form of a spread, straddle or combination order, and the Amex believes that in the interest of consistency it is important to update all of the effected rules, which encompass the ANTE rules. The Amex notes that the Commission recently has approved similar rule amendments and revisions for other options exchanges, including permitting ratio orders to have ratios equal to or greater than one-to three (.333) or less than or equal to three-to-one (3.0).⁶

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

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

The Amex does not believe that the proposed rule change will 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

⁶ See CBOE Order, *supra*, note 5. See also Securities Exchange Act Release No. 50184 (August 12, 2004), 69 FR 51498 (August 19, 2004) (notice of filing and immediate effectiveness of File No. SR-ISE-2004-20).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

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

The Amex has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰ Because the foregoing proposed rule change: (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 of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), the Amex provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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.

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:

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

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. Please include File Number SR-Amex-2004-77 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-77. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of this filing also will be available for inspection and copying at the principal office of the Amex. 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-2004-77 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).