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, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

Amex has requested that the Commission waive the usual five-business-day notice period and the usual 30-day pre-operative waiting period. The Commission notes that this proposal simply extends the existing pilot program and does not alter the pilot in any way. As a result, the Commission believes that it is consistent with the protection of investors and the public interest to waive the five-business-day notice period and accelerate the operative date so that the pilot can continue without delay and because the proposal raises no new regulatory issues. Therefore, the Commission designates that the proposal become operative immediately.[13] This pilot extension will expire on June 19, 2004.

At any time within 60 days of the filing of this 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2003–107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 filing will also be available for inspection and copying at the principal office of Amex. All submissions should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–32172 Filed 12–30–03; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48975; File No. SR–Amex–2003–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Percentages Used To Allocate Executed Options Contracts Between the Specialist and Registered Options Traders

December 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 May 14, 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, II, and III below, which Items have been prepared by the Exchange. On November 18, 2003, Amex filed Amendment No. 1 to the proposed rule change.[3] 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

Amex proposes to amend Amex Rules 933 and 950 to revise the percentages used to allocate executed contracts between the specialist and registered options traders. In addition, the Exchange is correcting the paragraph reference to the allocation provisions in Amex Rule 933 from (d) to (h).

Below is the text of the proposed rule change, as amended. Deleted language is in brackets. Proposed new language is *italicized.*

* * * * *

Rule 933 Automatic Execution of Options Orders

(a) through (g) No change.

[(d)] *(h)(i)* Options orders executed through Auto-Ex shall be automatically allocated on a rotating basis to the specialist and to each trader that has signed on to Auto-Ex. Auto-Ex trades of ten contracts or less are allocated to each Auto-Ex participant as set forth below. If an Auto-Ex trade is greater than ten contracts, the Auto-Ex system divides the execution into lots of ten or fewer contracts and allocates a lot to each Auto-Ex participant. Each lot is considered a separate trade for purposes of allocating trades within Auto-Ex. The rotation is designed to provide that the allocation of Auto-Ex trades between the specialist and traders signed on to Auto-Ex in a given *equity* option class is as follows:

Number of traders signed on to Auto-Ex	*Approximate number of trades allocated to the specialist*	*trades allocated to the traders signed on to Auto-Ex (as a group)*
1	*60%*	*40%*
2	*40%*	*60%*
3 or more	*30%*	*70%*

In addition, for options on Exchange Traded Funds, Trust Issued Receipts and Indexes, the allocation of Auto-Ex trades between the specialist and traders signed on to Auto-Ex is as follows:

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 17, 2003 (''Amendment No. 1''). In Amendment No. 1, Amex made technical corrections to the proposed rule text and amended the purpose section of the proposal to reflect the re-institution of the Exchange-sponsored payment for order flow program.

Number of traders signed on to Auto-Ex	*Approximate number of trades allocated to the specialist*	*Approximate number of trades allocated to the traders signed on to Auto-Ex (as a group)*
1	*60%*	*40%*
2	*40%*	*60%*
3–7	*30%*	*70%*
8 or more	*25%*	*75%*

(ii) Notwithstanding the foregoing, in the event the Exchange establishes a payment for order flow program, in which it collects a fee from the registered options traders, the rotation designed to provide that the allocation of Auto-Ex trades between the specialist and traders signed on to Auto-Ex in a given option class is as follows:

Number of traders signed on to Auto-Ex	*Approximate number of trades allocated to the specialist*	*Approximate number of trades allocated to the traders signed on to Auto-Ex (as a group)*
1	*60%*	*40%*
2–4	*40%*	*60%*
5–7	*30%*	*70%*
8–15	*25%*	*75%*
16 or more	*20%*	*80%*

* * * Commentary

.01 through .03 No change.

* * * * *

Rules of General Applicability

Rule 950

(a) through (c) No change.

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) thereof, shall apply to Exchange option transactions and the following additional commentary shall also apply.

* * * Commentary

.01 through .05 No change.

.06(i)*(A)* When two or more bids (offers) are made simultaneously by the specialist dealing for his own account and by registered options traders, all such bids (offers) shall be on parity and any contracts sold (bought) in execution of such bids (offers) shall be divided among the specialist and registered options trader(s) so that the specialist shall receive the following percentage of contracts executed and the registered options traders shall divide the remainder in accordance with Rule 950(n), Commentary .03(a)(iii)[:]*. The following percentages shall be in effect for equity option classes:*

Number of traders on parity	Approximate [number] percentage of contracts allocated to the specialist	*Approximate [number] percentage of contracts 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

Number of traders on parity	*Approximate percentage of contracts allocated to the specialist*	*Approximate percentage of contracts allocated to the traders (as a group)*
1	*60*	*40*
2	*40*	*60*
3 or more	*30*	*70*

In addition, the following percentages shall be in effect for options on Exchange Traded Funds, Trust Issued Receipts and Indexes:

Number of traders on parity	*Approximate percentage of contracts allocated to the specialist*	*Approximate percentage of contracts allocated to the traders (as a group)*
1	*60*	*40*
2	*40*	*60*
3–7	*30*	*70*
8 or more	*25*	*75*

Notwithstanding the foregoing, neither the specialist nor a registered options trader will be allocated more executed contracts than the number of contracts representing the specialist's or registered options trader's portion of the aggregate quotation size, as that term is used in Rule 958A, except, when the number of executed contracts to be allocated exceeds the aggregate quotation size disseminated for that options series.

(B) In the event the Exchange establishes a payment for order flow program, in which it collects a fee from the registered options traders, when two or more bids (offers) are made simultaneously by the specialist dealing for his own account and by registered options traders, all such bids (offers) shall be on parity and any contracts sold (bought) in execution of such bids (offers) shall be divided among the specialist and registered options trader(s) so that the specialist shall receive a percentage of the contracts executed and the registered options traders shall divide the remainder in accordance with Rule 950(n), Commentary .03(a)(iii). The following percentages shall be in effect for equity option classes:

Number of traders on parity	*Approximate percentage of contracts allocated to the specialist*	*Approximate percentage of contracts 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*

Notwithstanding the foregoing, neither the specialist nor a registered options trader will be allocated more executed contracts than the number of contracts representing the specialist's or registered options trader's portion of the aggregate quotation size, as that term is used in Rule 958A, except, when the number of executed contracts to be allocated exceeds the aggregate quotation size disseminated for that options series.

(ii) No change.

.07 *(i)* The Exchange's automated allocation system, known as Quick Trade, when activated for a particular transaction in a given options series, will provide for the automatic allocation on a rotating basis of executed orders to the specialist and participating registered options traders. Executed orders of ten contracts or less are allocated to Quick Trade participants as set forth below. If an executed order is greater than ten contracts, Quick Trade divides the execution into ten or less lots and allocates a lot to each participant. Each lot is considered a separate trade for purposes of allocating trades within Quick Trade. The rotation is designed to provide that the allocation of trades between the specialist and traders signed on to Quick Trade in a given *equity* option [series] *class* is as follows:

Number of traders signed on to quick trade	Approximate number of trades allocated to the specialist	*Approximate number of trades allocated to the traders signed on to quick trade (as a group)*
1	60%	40%
2	40%	60%
3 or more	30%	70

In addition, for options on Exchange Traded Funds, Trust Issued Receipts and Indexes, the allocation of trades between the specialist and traders signed on to Quick Trade is as follows:

Number of trades signed on to quick trade	*Approximate number of trades allocated to the specialist*	*Approximate number of trades signed on to quick trade (as a group)*
1	*60%*	*40%*

Number of trades signed on to quick trade	*Approximate number of trades allocated to the specialist*	*Approximate number of trades signed on to quick trade (as a group)*
2	*40%*	*60%*
3–7	*30%*	*70%*
8 or more	*25%*	*75%*

(ii) Notwithstanding the foregoing, in the event the Exchange establishes a payment for order flow program, in which it collects a fee from the registered options traders, the rotation is designed to provide that the allocation of trades between the specialist and traders signed on to Quick Trade in a given option class is as follows:

Number of traders *signed* on to quick trade	Approximate [percentage] *number* of trades allocated to the specialist	Approximate [percentage] *number* of trades allocated to the traders signed on to quick trade (as a group)
1	60%	40%
2–4	40%	60%
5–7	30%	70%
8–15	25%	75%
16 or more	20%	80%

(e) through (p) 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, 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 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

On April 24, 2003, the Commission approved amendments to Amex Rules 933 and 950(d), codifying longstanding practices regarding the allocation of options contracts executed on the Exchange and, among other things, setting forth in Commentary .06 to Amex Rule 950(d) allocation ratios by which contracts are divided between registered options traders and specialists on parity.[4] In addition, on May 22, 2002, the Commission approved the implementation of Quick Trade, an automated allocation system activated for particular kinds of transactions that allocates trades between specialists and registered options traders using specific allocation ratios set forth in Amex Rule 950(d), Commentary .07.[5] The Exchange is now proposing to revise the allocation ratios set forth in Amex Rule 933 and in Commentaries .06 and .07 of Amex Rule 950(d), as discussed below, in connection with the re-institution of an exchange-sponsored payment for order flow program.[6]

Recently, the Exchange re-instituted an exchange-sponsored payment for order flow program. The Exchange has traditionally opposed payment for order flow, believing, among other things, that it can create serious conflicts of interest and can compromise a broker's fiduciary obligation to achieve best execution of the broker's customers' orders. However, given the institution of payment for order flow programs at other options exchanges and the continuation of payment for order flow programs by some specialist and market making organizations, the Exchange believes that the re-institution of payment for order flow is necessary to respond to these competitive pressures. Amex represents that most specialists and registered options traders are fundamentally against the practice of payment for order flow, but they recognize its necessity, especially when specialists and market makers at other exchanges engage in the practice using either their own funds or funds provided by their exchange.

The Exchange's re-instituted payment for order flow program collects a marketing fee of $0.40 per contract from both specialists and registered options traders. The Exchange represents that the marketing fee, however, will only be collected on those specialist and registered options trader transactions involving customer orders from firms that accept payment for directing their orders to the Exchange (''payment-accepting firms''). The Exchange also represents that the specialist is solely responsible for negotiating payment for order flow arrangements with payment-accepting firms. Amex asserts that specialists would not be required to negotiate with any payment-accepting firms. Accordingly, the marketing fee would be assessed only on those specialist and registered options trader transactions resulting from orders from customers of payment-accepting firms with whom a specialist has negotiated a payment for order flow arrangement. Amex represents that the current payment for order flow program in place at the Exchange also allows registered options traders to vote to eliminate the program in select classes.[7] The Exchange asserts that a vote to eliminate the marketing fee will result in registered options traders not contributing to the payment for order flow program in some option classes, which in turn will require the specialists in those classes to pay for order flow using their own funds. Amex represents that one issue of concern to the specialists is that, while they pay for order flow out of their own funds, the order flow that is received by the Exchange is shared with the registered options traders who will not be contributing to the payment for order flow program.

While specialists generally receive a larger share of order flow when on parity with registered options traders, the percentages and practices codified in Amex Rule 933 and Commentaries .06 and .07 of Rule 950(d) were established many years ago, and current payment for order flow practices had not been taken into consideration. Given the specialists' concerns, the Exchange has determined that a revision to the percentages set forth in these rules for those options classes in which the Exchange does not collect a payment for order flow marketing fee is appropriate. The Exchange has also determined that the percentages will vary depending on the type of option, whether equity option or option on an Exchange Traded Fund, Trust Issued Receipt, or index. The proposed revised percentages for equity options are set forth below:[8]

[4] *See* Securities Exchange Act Release No. 47729 (April 24, 2003) 68 FR 23344 (May 1, 2003) (approving File No. SR–Amex SR–00–30).

[5] *See* Securities Exchange Act Release No. 45974 (May 22, 2002) 67 FR 37886 (May 30, 2002) (approving File No. SR–Amex–2001–65). The allocation ratios in Commentary .07 to Amex Rule 950(d) are the same as those in Commentary .06.

[6] *See* Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (File No. SR–Amex–2003–50).

[7] *See* Securities Exchange Act Release No. 48577 (September 30, 2003), 68 FR 57943 (October 7, 2003)(File No. SR–Amex–2003–80). The Commission notes that Amex instituted the procedures by which specialists and registered options traders may determine whether to continue to participate in the payment for order flow program on a six-month pilot basis.

[8] Amex is also proposing comparable revisions to the percentages for traders signed on to Quick Trade.

Number of Traders on Parity (or Signed on to Auto-Ex or Quick Trade)	Approximate Percentage of Option Contracts (or Number of Trades on Auto-Ex or Quick Trade) Allocated to the Specialist	Approximate Percentage of Option Contracts (or Number of Trades on Auto-Ex or Quick Trade) Allocated to the Traders (as a group)
1	60%	40%
2	40%	60%
3 or more	30%	70%

The revised percentages for options on ETFs, Trust Issued Receipts, and Indexes are set forth below:

Number of Traders on Parity (or Signed on to Auto-Ex or Quick Trade)	Approximate Percentage of Option Contracts (or Number of Trades on Auto-Ex or Quick Trade) Allocated to the Specialist	Approximate Percentage of Option Contracts (or Number of Trades on Auto-Ex or Quick Trade) Allocated to the Traders (as a group)
1	60%	40%
2	40%	60%
3–7	30%	70%
8 or more	25%	75%

As discussed more fully in Amex's recently approved proposal to codify these percentages, the Exchange believes that it is appropriate to provide a greater participation to specialists since they have responsibilities and are subject to certain costs that registered options traders do not have. Specifically, some of these additional responsibilities and costs include paying for order flow, the fixed staffing costs committed to market making in a particular security whether it is actively traded or not, and the costs associated with participating in educational and marketing functions to attract order flow. However, for those options classes in which the Exchange has a payment for order flow program that collects a fee from registered options traders for the products set forth above, the allocation percentages will revert back to the percentages currently set forth in Amex Rule 933(h)(ii) and Commentaries .06(i)(B) and .07(ii) of Amex Rule 950(d). Finally, the Exchange is taking the opportunity to correct the paragraph reference in Amex Rule 933 from (d) to (h).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [9] in general and furthers the objectives of section 6(b)(5) of the Act [10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

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

The Exchange believes that the proposed rule change will impose no burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-Amex–2003–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 the filing will also be available for inspection and copying at the principal offices of Amex. All submissions should be submitted by January 21, 2004.

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

Margaret H. McFarland,

Deputy Secretary.

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[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48995; File No. SR–Amex–2003–102]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Extend on a Six-Month Pilot Basis the Exchange's Odd-Lot Execution Procedures Applicable to Trading in Nasdaq Securities

December 24, 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 November 21, 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, II and III below, which items have been prepared by the Exchange. On December 23, 2003, the Amex amended the proposed rule change.[3] The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Eric Van Allen, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 23, 2003, replacing Form 19b–4 in its entirety (''Amendment No. 1'').

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).