

this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

The Commission also believes that the listing and trading of the Notes should not unduly impact the market for the component securities of the Underlying Indices of the Oil and Natural Gas Index or raise manipulative concerns. As discussed more fully above, the Oil and Natural Gas Index is based upon the return of the Underlying Indices. Each of the Underlying Indices will have a weighting of 50% of the weight of the Oil and Natural Gas Index, initially, and immediately following each annual rebalancing of the Oil and Natural Gas Index. In addition, the Oil Index's price-weighting and the Natural Gas Index's equal dollar-weighting methodologies are commonly applied index calculation methods. Moreover, Amex's listing and trading of other products on both of the Underlying Indices have been previously approved by the Commission.²⁵ In approving the listing and trading of these other products on the Underlying Indices, the Commission noted in its approval orders that the Amex has developed several composition and maintenance criteria for the Underlying Indices that the Commission believes will minimize the potential for manipulation of the Underlying Indices.²⁶ In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Oil and Natural Gas Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Oil and Natural Gas Index at least once every fifteen seconds throughout the trading day is extremely important and

will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change 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 instruments currently listed and traded on the Amex.²⁷ The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes 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 Act²⁸ to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-Amex-2002-18), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45628; File No. SR-Amex-2001-94]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change by the American Stock Exchange LLC To Increase to Two Hundred and Fifty the Maximum Permissible Number of Equity and Index Option Contracts Executable Through AUTO-EX

March 22, 2002.

I. Introduction

On October 29, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with 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 to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, AUTO-EX. On November 15, 2001, the proposed rule change was published for public comment in the **Federal Register**.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

In 1985, the Exchange implemented its AUTO-EX system for options, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File ("AOF"). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to AUTO-EX, was recently increased to allow for the entry of orders of up to 2,500 option contracts.⁴ AUTO-EX, however, is only permitted to execute equity option orders and index option orders of up to 100 contracts.⁵ Thus, market and marketable limit orders of more than 100 contracts are routed by AOF to the specialist's book.

The Exchange now proposes to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order that can be executed through the AUTO-EX system. It is proposed that this increase to 250 contracts as the permissible order size for AUTO-EX be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. Currently, the Amex posts applicable quote size and AUTO-EX parameters on its web page. The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increase.

The Exchange represents that AUTO-EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations

1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

²⁵ See Oil and Gas Index Approval Order, *supra* note 9; and Natural Gas Approval Order, *supra* note 10.

²⁶ Among other things, the Amex would be required to submit a rule filing with the Commission pursuant to Section 19(b) of the Act prior to expanding either of the Underlying Indices to greater than twenty stocks or reducing either of the Underlying Indices to less than ten stock. The Commission finds that this requirement will protect against the design of the Underlying Indices from being materially changed without Commission review and approval, and that it is unlikely that attempted manipulations of prices of the issues in the Underlying Indices would affect significantly the Underlying Indices' value. See Securities Exchange Act Release No. 31245 (September 28, 1992, 57 FR 45844 (October 5, 1992)) (approving the listing and trading of long-term options ("LEAPS") based on the Biotech Index and a reduced value Biotech Index).

²⁷ See *supra* note 20.

²⁸ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45045 (November 7, 2001), 66 FR 57495.

⁴ See Securities Exchange Act Release No. 44065 (March 12, 2001), 66 FR 15513 (March 19, 2001).

⁵ See Securities Exchange Act Release No. 43887 (January 25, 2001), 66 FR 8831 (February 2, 2001) (approving amendment to Amex Rule 933).

and during other, non-emergency situations for certain option classes. The Exchange believes that automatic executions of orders for up to 250 contracts will allow for the quick, efficient execution of public customer orders.

III. Discussion

After careful review, 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, the requirements of Section 6 of the Act.⁶ Among other provisions, Section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.⁷

While increasing the maximum order size limit from 100 contracts to 250 contracts for automatic execution eligibility by itself does not raise concerns under the Act, the Commission believes that this increase raises collateral issues that the Amex will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for AUTO-EX. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed on to the Amex's AUTO-EX system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through AUTO-EX, the greater the risk market makers must be willing to accept. The Commission does not believe that, because Amex floor governors or senior floor officials determine to approve orders as large as 250 contracts as eligible for AUTO-EX, Amex floor

governors or senior floor officials or Amex staff should disengage AUTO-EX more frequently by, for example, declaring an "unusual market condition."⁸ Disengaging AUTO-EX can negatively affect investors by making it slower and less efficient to execute their orders. It is the Commission's view that the Amex, when increasing the maximum size of orders that can be sent through AUTO-EX, should not disadvantage all customers—the vast majority of whom enter orders for less than 250 contracts—by making their automatic execution systems less reliable.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-Amex-2001-94) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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⁸ The Amex has filed a proposed rule change (File No. SR-Amex-2001-74) with the Commission that would codify the Exchange's current practices and policies by specifying (i) the circumstances under which AUTO-EX can be disengaged or operated in a manner other than the normal manner set forth in Exchange rules and policies and (ii) the required documentation of the reasons for any action to disengage AUTO-EX to operate in a manner other than normal. The proposed rule change was filed pursuant to the Order Instituting Public Administrative Proceedings Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3-10282) and is pending with the Commission.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45630; File No. SR-CBOE-2002-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Customer Portfolio and Cross-Margining Requirements

March 22, 2002.

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 January 15, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 CBOE proposes to amend its rules, for certain customer accounts, to allow member organizations to margin listed, broad-based, market index options, index warrants and related exchange-traded funds according to a portfolio margin methodology as an alternative to the current strategy-based margin methodology. The proposed rule change will also provide for cross-margining by allowing broad-based index futures and options on such futures to be included with listed, broad-based index options, index warrants and related exchange-traded funds for portfolio margin treatment.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, at the Commission, and on the Commission's website.

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 CBOE 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 CBOE has prepared summaries, set forth in

⁶ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.