differentials of $0.40 and $0.80 under the abovementioned conditions.[5]

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5) of the Act[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change 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

The foregoing rule change has become immediately effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder because (i) it does not significantly affect the protection of investors or the public interest; (ii) it does not impose any significant burden on competition; and (iii) by its terms, it does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission 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.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative delay will permit the Amex to amend Rule 958 without undue delay. For this reason, the Commission designates the proposal to be effective upon filing with the Commission.[10] At any time within sixty (60) days of the filing of the 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. 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 such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2003–53 and should be submitted by July 9, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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[5] Under Amex Rule 958(c)(i), the Exchange may establish, where appropriate, maximum bid/offer differentials other than those set forth in the rule.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 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).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48024; File No. SR–Amex–2003–36]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 by the American Stock Exchange LLC To Initiate a Pilot Program That Allows the Listing of Strike Prices at One-Point Intervals for Certain Stocks Trading Under $20

June 12, 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 April 29, 2003, 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 Exchange. The Exchange filed Amendments No. 1 and 2 to the proposal on June 3, 2003,[3] and June 11, 2003,[4] respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change, as amended, through June 5, 2004.

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

The Exchange proposes to initiate a pilot program (''Pilot Program'') that will allow the Exchange to list options on selected stocks trading below $20 at one-point intervals. The text of the proposed rule change appears below. Additions are in *italics.*

Rule 903. Series of Options Open for Trading

(a)–(d) No Change.

Commentary

.01–.03 No Change.

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Division of Market Regulation, Commission, dated June 10, 2003 (''Amendment No. 2''). Amendment No. 2 revises the proposal to indicate that: (1) The pilot program will expire on June 5, 2004; (2) the strike price interval for options on individual stocks will be $5 or greater where the strike price is greater than $25 but less than $200 and $10 or greater where the strike price is greater than or equal to $200; and (3) the strike price interval for options on Exchange-Traded Fund Shares (''ETFs'') will be $5 or greater where the strike price is over $200.

.04 The interval between strike prices of series of options on individual stocks may be (a) $2.50 or greater where the strike price is $25 or less, provided however, that the Exchange may not list $2.50 intervals below $20 (e.g. $12.50, $17.50) for any class included within the $1 Strike Price Pilot Program, as detailed below in Commentary .05, if the addition of $2.50 intervals would cause the class to have strike price intervals that are $0.50 apart; (b) $5 or greater where the strike price is greater than $25 but less than $200; or (c) $10 or greater where the strike price is greater than or equal to $200. For series of options on Exchange-Traded Fund Shares that satisfy the criteria set forth in Commentary .06 to Rule 915, the interval of strike prices may be $1 or greater where the strike price is $200 or less or $5 or greater where the strike price is over $200. Exceptions to the strike price intervals above are set forth in Commentaries .05 and .06 below.

.05 The interval between strike prices of series of options on individual stocks may be:

a. $1.00 or greater (''$1 Strike Prices'') provided the strike price is $20 or less, but not less than $3. The listing of $1 strike prices shall be limited to option classes overlying no more than five (5) individual stocks (the ''$1 Strike Price Pilot Program'') as specifically designated by the Exchange. The Exchange may list $1 Strike Prices on any other option classes if those classes are specifically designated by other national securities exchanges that employ a similar $1 Strike Price Pilot Program under their respective rules.

b. To be eligible for inclusion into the $1 Strike Price Pilot Program, an underlying security must close below $20 in the primary market on the previous trading day. After a security is added to the $1 Strike Price Pilot Program, the Exchange may list $1 Strike Prices from $3 to $20 that are no more than $5 from the closing price of the underlying on the preceding day. For example, if the underlying security closes at $13, the Exchange may list strike prices from $8 to $18. The Exchange may not list series with $1 intervals within $0.50 of an existing $2.50 strike price (e.g. $12.50, $17.50) in the same series. Additionally, for an option class selected for the $1 Strike Price Pilot Program, the Exchange may not list $1 Strike Prices on any series having greater than nine (9) months until expiration.

c. A security shall remain in the $1 Strike Price Pilot Program until otherwise designated by the Exchange. The $1 Strike Price Pilot Program shall expire on June 5, 2004.

.06 The options exchanges may select up to 200 options classes on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater than $25 but less than $50. The 200 options classes are selected by the various options exchanges pursuant to any agreement mutually agreed to by the individual exchanges and approved by the Commission. In addition to those options selected by the Exchange, the strike price interval may be $2.50 in any multiply-traded option once another exchange trading that option selects such option, as part of this program. The Exchange and any of the other options exchanges may also list strike prices of $2.50 on any option class that was selected by the NYSE pursuant to this program.

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 III 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 Amex proposes to amend Amex Rule 903, ''Series of Options Open for Trading,'' to implement the Pilot Program, which will operate until June 5, 2004. The Pilot Program will allow the Amex to list options on up to five underlying equities trading below $20 at one-point intervals and to list $1 strike prices on any equity option included in the $1 strike price pilot program of any other options exchange.

In addition to implementing the Pilot Program, the Amex proposes to amend Amex Rule 903 to codify certain existing strike price interval guidelines that the Commission approved but that have not been codified in Amex Rule 903.[5] In this regard, the Amex proposes to amend Amex Rule 903 to indicate that: (1) the strike price interval for series of options on individual stocks may be $2.50 or greater where the strike price is $25 or less,[6] $5 or greater where the strike price is greater than $25 but less than $200 (except for options included in the options exchanges' $2 ½-point strike price program, as described below), or $10 or greater where the strike price is greater than or equal to $200; and (2) the strike price interval for series of options on ETFs may be $1 or greater where the strike price is $200 or less or $5 or greater where the strike price is over $200. In addition, the Amex proposes to revise Amex Rule 903 to describe more specifically the options exchanges' 2½-point strike price program.[7]

Pilot Program

The Amex notes that stock prices in general have dropped over the past few years, with many listings suffering severe declines. As a result, there has been a proliferation of stocks trading below $20. The Amex lists options on more than 900 of these stocks. Some of these stocks are among the most widely held and actively traded equity securities listed on the New York Stock Exchange, Inc., the Amex, and Nasdaq, including, for example, Cisco, Oracle, Lucent, JDS Uniphase, AT&T, and Motorola. Accordingly, the options overlying these stocks are among the most actively traded options.

When a stock underlying an option trades at a lower price, it requires a larger percentage gain in the price of the stock for an option to become in-the-money. For example, when a stock trades at $10 an investor that wants to purchase a slightly out-of-the-money call option would have to buy the $12.50 call. At these levels, the stock

[5] *See* Securities Exchange Act Release Nos. 21929 (April 10, 1985), 50 FR 15258 (April 17, 1985) (File No. SR–Amex–85–6) (order approving $2.50 strike price intervals for options on individual stocks where the strike price is $25 or less) (''April 1985 Order''); 21644 (January 9, 1985), 50 FR 2360 (January 16, 1985) (File No. SR–Amex–84–31) (order approving $5 strike price intervals for options on stocks trading below $200); and 40157 (July 1, 1998), 63 FR 37426 ((July 10, 1998) (File No. SR–Amex–96–44) (order approving strike price intervals of $1 or greater for options on ETFs up to a strike price of $200 and strike price intervals of $5 or greater for ETF options where the strike price is over $200).

[6] As discussed more fully below, the Pilot Program will impose certain limitations on the Amex's ability to list $2½-point strike prices on options included in the Pilot Program.

[7] *See* Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (File Nos. SR–Amex–98–21; SR–CBOE–98–29; SR–PCX–98–31; and SR–PHLX–98–26) (order permanently approving the 2½-point strike price pilot program). The 2½-point strike price program allows the Amex, the Chicago Board Options Exchange, Inc. (''CBOE''), the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. to list up to 200 equity options trading at a strike price greater than $25 but less than $50 at 2½-point intervals.

price would need to increase by 25% to reach in-the-money status. According to the Amex, a 25% or higher gain in the price of the underlying stock is especially large given the lessened degree of volatility that has accompanied many stocks and options over the past several months. Accordingly, Amex member firms have expressed an interest in listing additional strike prices on these classes so that they can provide their customers with greater flexibility in achieving their investment strategies. For this reason, the Exchange proposes to implement the proposed Pilot Program.

1. *Pilot Program Eligibility:* The Exchange proposes to amend Amex Rule 903 to allow the Exchange to list options on selected stocks trading below $20 at one-point intervals, provided that the strike prices are $20 or less, but not less than $3. An option would become eligible for inclusion in the Pilot Program provided that the underlying stock closed below $20 in its primary market on the preceding trading day. Once the underlying stock is part of the Pilot Program, the Exchange may continue to list $1 strike prices provided the underlying stock remains below $20. As described more fully below, although an option class will not be removed automatically from the Pilot Program if the underlying stock trades at or above $20, the Amex will not add $1 strike prices when the underlying stock closes above $20. Once the stock closes below $20, it will again be eligible for the addition of $1 strike prices. An underlying stock will remain in the Pilot Program until the Amex removes it from the Pilot Program. Options on stocks trading under $20 that are not included in the Pilot Program may continue to trade in $2.50 and $5.00 strike price intervals. Although the Amex may only select up to five individual stock options for its Pilot Program, the Exchange will not be precluded from also listing at $1 strike price intervals equity options included in the $1 strike price programs of other option exchanges.

2. *Procedure for Adding $1 Strike Price Intervals:* The Exchange proposes to amend Amex Rule 903 to set forth the standards regarding the addition of $1 strike price intervals. Under the Pilot Program, the closing price of the underlying stock serves as the reference point for determining which $1 strike prices the Exchange may open for trading. To minimize the proliferation of options series, the Exchange intends to restrict the number of $1 strike prices that may be added to those strikes that fall within a $5 range of the price of the underlying stock. The Amex will not add strike prices outside of the $5 range. For example, if the underlying stock trades at $6, the Exchange could list $1 strike prices from $3 to $11, while if the underlying stock trades at $10, the Exchange could list $1 strikes from $5 to $15. By restricting the number of strike prices that may be listed to a predetermined $5 range, the Exchange believes it will be able to provide investors with more flexibility without burdening The Options Price Reporting Authority (''OPRA'') capacity by bringing up strike prices that are not reasonably related to the price of the underlying stock.

Currently, when an underlying stock trades below $25, the Exchange may list strike prices with $2.50 intervals.[8] For this reason, several classes have $7.50, $12.50, and $17.50 strike prices. To further avoid the proliferation of series, the Exchange does not intend to list $1 strike prices at levels that ''bracket'' existing $2.50 intervals (*e.g.*, $7 and $8 strikes around a $7.50 strike). Accordingly, the Exchange does not intend to list $7, $8, $12, $13, $17, and $18 levels in an expiration month where there is a corresponding $2.50 level. As the $2.50 intervals are ''phased-out,'' as described below, the Exchange will introduce the $1 levels that bracket the phased-out price. For example, when a $7.50 series expires, the Exchange will replace it by issuing a new expiration month with $7 and $8 strike price intervals.

3. *Procedures for Phasing-Out $2.50 Strike Price Intervals:* When an individual stock becomes a part of the Pilot Program, the Exchange will begin to phase-out the existing $2.50 strike price intervals for options on that stock in favor of the $1 strike price intervals. To phase-out the $2.50 strike price intervals, the Exchange first will delist any $2.50 series for which there is no open interest. Second, the Exchange will no longer add new expiration months at $2.50 strike price intervals below $20 when existing months expire. This will cause the $2.50 strike price intervals below $20 to be phased-out when the farthest-out month with a $2.50 interval expires.

4. *$1 Strikes for Longer Dated Options:* The Exchange will not list $1 strikes on any series of individual equity option classes that have greater than nine months until expiration.

5. *Procedures for Adding Expiration Months:* Amex Rule 903(a)(i) will govern the addition of expiration months for $1 strikes series. Pursuant to this rule, the Exchange generally opens up to four expiration months for each class upon the initial listing of an options class for trading. Thus, for options included in the Pilot Program, the Amex will list an additional expiration month upon expiration of the near-term month, provided that the underlying stock prices closes below $20 on Expiration Friday. If the underlying closes at or above $20 on its primary market on Expiration Friday, the Exchange will not list an additional month of $1 strike price series until the stock again closes below $20.

6. *Procedures for Delisting $1 Strike Price Intervals:* At any time, the Exchange may cease listing $1 strike prices on existing series by submitting a cessation notice to The Options Clearing Corporation (''OCC'').[9] As discussed above, if the underlying closes at or above $20 on its primary market on Expiration Friday, the Amex will not list any additional months with $1 strike prices until the stock subsequently closes below $20. If the underlying stock does not subsequently close below $20, thereby precluding the listing of additional strike prices and months, the existing $1 series eventually will expire. When the near-term month is the only series available for trading, the Exchange may submit a cessation notice to OCC. Upon submission of that notice, the underlying stock would no longer count towards the five option classes available on the Exchange pursuant to the Pilot Program, thereby allowing the Exchange to list options on an additional stock at $1 strike price intervals. Once the Exchange submits the cessation notice it will not list any additional months pursuant to the Pilot Program for trading with strikes below $20, unless the underlying stock again closes below $20.[10]

7. *OPRA Capacity:* The Exchange believes that OPRA has the capacity to accommodate the increase in the number of series that could be added pursuant to the Pilot Program. In this regard, the Amex notes that, on a daily basis, the options exchanges use an average of less than 7,000 messages per second (''mps'') during peak periods,

[8] *See* April 1985 Order, *supra* note 5.

[9] The reasons for submitting a cessation notice are as follows: (1) Expiration of available $1 strikes (*i.e.* the underlying stock price remains at or above $20); (2) series proliferation concerns; and (3) delisting because of, among other things, low price, merger, or takeover. In any event, with prior notice to the membership and customers, the Amex will continue to have the ability to cease trading any series that has became inactive and has no open interest.

[10] If the underlying stock trades below $20 after the Amex submits a cessation notice, the Amex could again list options on that stock at $1 strike prices provided the Amex included the class as one of its five allowable classes.

which is less than 25% of the total system capacity of 32,000 mps. According to the Amex, the Amex listed approximately 108,094 series in December 2000, approximately 100,632 series in September 2001, and approximately 88,494 series in April 2003. The Amex believes that the increase in the number of series resulting from the Pilot Program should be substantially less than the decreases in listed series experienced by the Exchange.

Furthermore, the Amex states that, to date, the options exchanges have not exceeded 11,000 mps for any extended period of time.[11] Therefore, the Amex believes that implementing the Pilot Program would not have a negative impact on OPRA system capacity.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act [12] in general and furthers the objectives of section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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. 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 Exchange. All submissions should refer to File No. SR–Amex–2003–36 and should be submitted by July 9, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.[14] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposed listing of one point strike price intervals in selected equity options on a pilot basis should provide investors with more flexibility in the trading of equity options overlying stocks trading at more than $3 but less than $20, thereby furthering the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the Exchange's limited Pilot Program strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wide array of investment opportunities and the need to avoid unnecessary proliferation of options series. The Commission expects the Exchange to monitor the applicable equity options activity closely to detect any proliferation of illiquid options series resulting from the narrower strike price intervals and to act promptly to remedy this situation should it occur. In addition, the Commission requests that the Amex monitor the trading volume associated with the additional options series listed as a result of the Pilot Program and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

As noted above, the Commission is approving the Amex's proposal on a pilot basis. In the event that Amex proposes to extend the Pilot Program beyond June 5, 2004, expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the Commission along with the filing of such proposal.[16] The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the Amex selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the Amex's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Amex addressed them; (6) any complaints that the Amex received during the operation of the Pilot Program and how the Amex addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program.

The Commission believes that the proposal to codify previously approved options strike price interval guidelines in Amex Rule 903 and to revise Amex Rule 903 to describe the options' exchanges existing 2½-point strike price program with greater specificity should help to clarify the Amex's rules and facilitate compliance with them, thereby protecting investors and the public interest.

The Commission finds good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Amex's Pilot Program is identical to a CBOE pilot program (''CBOE Pilot'') that the

[11] According to the Amex, on November 6, 2002, the OPRA five-minute message peak was 8,203 mps and on November 13, 2002, the one-minute peak was 10,091 mps.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

[16] The Commission expects the Amex to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the Amex wishes to extend, expand, or seek permanent approval of the Pilot Program.

Commission approved.[17] Notice of the CBOE Pilot was published for comment [18] and the Commission received one comment letter, which supported the CBOE's proposal. Accordingly, the Commission believes that the Amex's Pilot Program raises no issues of regulatory concern. Amendment No. 2 clarifies the proposal by specifying the expiration date for the Pilot Program and the strike price intervals for options on individual stocks and ETFs. For these reasons, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b) of the Act,[19] to approve the Amex's proposal, as amended, on an accelerated basis, through June 5, 2004.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Amex–2003–36) and Amendments No. 1 and 2 thereto are hereby approved, on an accelerated basis and as a pilot program, through June 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15353 Filed 6–17–03; 8:45 am]

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[17] *See* Securities Exchange Act Release No. 47991 (June 5, 2003) (order approving File No. SR–CBOE–2001–60).

[18] *See* Securities Exchange Act Release No. 47753 (April 29, 2003), 68 FR 23784 (May 5, 2003).

[19] 15 U.S.C. 78f(b)(5) and 78s(b).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48019; File No. SR–PCX–2003–16]

Self-Regulatory Organizations; Notice of Filing and Order Accelerating Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to an Amendment to the Auto-Ex Incentive Program

June 11, 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 21, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 6, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

PCX proposes to amend its rules to extend the Automatic Execution System (''Auto-Ex'') Incentive Pilot Program until June 30, 2004. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

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 III below. PCX 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 25, 2001, the Commission approved, as a nine-month pilot program, the Exchange's proposal to amend Rule 6.87, which governs the operation of Auto-Ex,[4] to provide an Auto-Ex Incentive Program for apportioning Auto-Ex trades among Market Makers.[5] On June 7, 2002, the Commission extended the Auto-Ex Incentive Program pilot for six months [6] and on December 24, 2002, the Commission extended the pilot for an additional six months.[7] The pilot program is currently set to expire on June 24, 2003.

The Auto-Ex Incentive Program allows the Exchange to assign Auto-Ex orders to logged-on Market Makers according to the percentage of their in-person agency [8] contracts traded in an issue (excluding Auto-Ex contracts) compared to all of the Market Maker in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period is determined by the Options Floor Trading Committee (''OFTC'') and may be for any period of time not in excess of two weeks.[9] The percentage distribution determined for a review period will be effective for the succeeding review period.

The Exchange is requesting an additional extension of the pilot program from June 24, 2003 through June 30, 2004. The added time permits the Exchange to phase-in the Exchange's new trading platform for options, ''PCX Plus'', on an issue-by-issue basis.[10] As each issue is phased into PCX Plus, the Exchange will simultaneously phase-out such issue from the Auto-Ex Incentive Program. PCX Plus will eventually replace the Auto-Ex Incentive Program in its entirety. Therefore, the Exchange believes that an extension of the program is warranted until June 30, 2004, the date on which PCX Plus will be completely operative.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)[11] of the Act, in general, and furthers the objectives of

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

[2] 17 CFR 240.19b-4.

[3] *See* Letter from Tania J. Cho, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 5, 2003 (''Amendment No. 1''). In Amendment No. 1, PCX amended its proposal to request an extension of its Auto-Ex Incentive Program pilot until June 30, 2004, rather than June 24, 2004, as stated in the original proposal, so that the pilot's expiration coincides with the date on which the Exchange's ''PCX Plus'' system will be completely operative. *See supra* n. 10 and accompanying text.

[4] Auto-Ex is the Exchange's Automated Execution system feature of POETS for market or marketable limit orders. The Pacific Options Exchange Trading System (''POETS'') is the Exchange's automated trading system comprised of an options order routing system, an automatic execution system (''Auto-Ex''), an on-line limit order book system and an automatic market quote update system. Option orders can be sent to POETS via the Exchange's Member Firm Interface (''MFI''). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet the order type and size requirements of the Exchange.

[5] *See* Exchange Act Release No. 44847 (September 25, 2001), 66 FR 50237 (October 2, 2001) (SR–PCX–01–05).

[6] *See* Exchange Act Release No. 46115 (June 25, 2002), 67 FR 44494 (July 2, 2002) (SR–PCX–2002–34).

[7] *See* Exchange Act Release No. 47088 (December 24, 2002), 68 FR 140 (January 2, 2003) (SR–PCX–2002–78).

[8] Agency contracts are those contracts that are represented by an agent and do not include contracts traded between Markets Makers in person in the trading crowd.

[9] The OFTC has set a two-week review period for all options classes and the OFTC will not vary the term of the review period except for exigent circumstances.

[10] *See* Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) ('' PCX Plus Order'').

[11] 15 U.S.C. 78f(b).