

proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Exchange filed Amendment No. 1 to the proposed rule change on May 30, 1995.<sup>2</sup> 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 amend its Rule 950(d), Commentary .03, to modify the manner in which members solicit other members to participate in options transactions.

### **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 self-regulatory organization 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**

In 1989, the Exchange adopted its solicitation rule<sup>3</sup> to govern the manner in which members may solicit other members and non-member broker dealers to participate in options transactions. Generally, members solicit participation in large size orders and orders that might contain complex terms and conditions, including orders involving both stock and options. Currently, if the solicited party is a broker dealer other than a registered trader, the rule permits the solicitation of such a broker dealer to participate in trades without first attempting to determine whether the trading crowd

wishes to participate. The rule had sought to reconcile the growing practice of soliciting participation in orders outside of trading crowds with the rules and practices of the auction market. Since its adoption, the rule has operated successfully and has helped in giving fair and equal access to information regarding solicited transactions to participants in trading crowds and has resulted in more competitive markets and executions for customers at the best available prices.

Specifically, the rule permits the solicitation of on-floor and off-floor members outside of a trading crowd to participate as the contra-side of an order only if the trading crowd is given (1) the same information about the options order as is given to the solicited party; and (2) a reasonable opportunity to accept the bid or offer before the solicited party participates in the transaction. However, with respect to the solicitation of a registered options trader, the soliciting member must also disclose to the trading crowd, prior to the solicitation, the same terms and conditions as will be disclosed to the solicited registered options trader.

The Exchange now seeks to modify the rule to eliminate the difference in how the rule is applied to the solicitation of registered options traders. Members who are engaged in the practice of soliciting orders indicate that it is difficult, at times, to determine prior to the solicitation whether the solicited party is a registered options trader. Such a determination is important for a soliciting member seeking to adhere to the rule requirement that the trading crowd be notified of the terms of an order prior to solicitation of a registered options trader. Rather than chance violating the Exchange's rule, these members advise that in the case of multiple traded options, they frequently seek to trade at another options exchange whose solicitation rule does not differentiate between broker dealers other than registered traders, and registered traders.

Therefore, the Exchange seeks to eliminate the requirement that a soliciting member first disclose to a trading crowd the terms and conditions of the order prior to the solicitation of a registered trader. The Exchange believes that if trading crowds are given a reasonable opportunity to accept the bid or offer,<sup>4</sup> after the terms and

conditions of the order are announced, then it is not necessary for the soliciting member to disclose those terms and conditions to the trading crowd prior to soliciting a registered options trader. Once other market participants are given a reasonable opportunity to accept the bid or offer, the solicited party may accept all or any remaining part of such order, or the member may cross all or any remaining part of the originating order with the solicited party at such bid or offer by announcing that the member is crossing the orders and stating the quantity and price.

The Exchange also proposed to add language to its solicitations rule to make it clear that non-solicited market participants and floor brokers holding non-solicited discretionary orders in the trading crowd will have priority over the solicited party or the solicited order to trade with the original order at the best bid or offer price subject to the precedence rules set forth in Rule 155.<sup>5</sup>

Finally, the Exchange proposes to codify its policy that its solicitation rule also applies to the solicitation of non-member broker dealers.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) 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 Amex believes that the proposed rule change will not impose any burden on competition.

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

Written comments on the proposed rule change were neither solicited nor received.

opportunity has been given: (1) size and complexity of the order; (2) ease of executing hedging transactions in the underlying stock; and (3) effect of the options order on the positions held by participants in the trading crowd.

<sup>5</sup> See Amendment No. 1, *supra* note 2. Amex Rule 155 generally provides that a specialist shall give precedence to orders entrusted to him as an agent in any stock in which he is registered before executing at the same price any purchase or sale in the same stock for an account in which he has an interest.

<sup>2</sup> Amendment No. 1 concerns the priority of non-solicited market participants and floor brokers in the trading crowd over solicited parties or solicited orders. In addition, Amendment No. 1 makes certain minor technical and clarifying modifications to the proposed changes to Amex Rule 950(d), Commentary .03. See letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated May 26, 1995 ("Amendment No. 1").

<sup>3</sup> Securities Exchange Act Release No. 26947 (June 19, 1989), 54 FR 26869 (approving Amex Rule 950(d), Commentary .03).

<sup>4</sup> Since the size and complexity of orders for options can vary widely, the phrase "reasonable opportunity to accept the bid and offer" has not been specifically defined. However, the Exchange has determined that the following factors should be considered when deciding whether a reasonable