

any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: March 2, 2001.

Jonathan G. Katz,
Secretary.

[FR Doc. 01-5675 Filed 3-5-01; 12:26 pm]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

In the Matter of Ives Health Co. Inc.; Order of Suspension of Trading

March 5, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ives Health Company, Inc., an Oklahoma corporation, with its principal place of business in Claremore, Oklahoma. Questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, a product being marketed by Ives Health for treatment of human immunodeficiency virus (HIV).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Ives Health.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Ives Health Company, Inc. is suspended for the period from 9:30 a.m. EST, March 5, 2001, through 11:59 p.m. EST, March 16, 2001.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-5676 Filed 3-5-01; 1:12 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44013; File No. SR-AMEX-01-05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Price Matching and Improvement Enhancements to Auto-Ex

February 28, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and

Rule 19b-4 thereunder,² notice is hereby given that on February 12, 2001, the American Stock Exchange LLC (the "Amex" or the "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 Exchange. The Exchange has designed the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. On February 27, 2001, the Exchange Commission received Amendment No. 1 to the filing.⁴

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to implement price improvement enhancements to the Exchange's Automatic Execution system. Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

Automatic Execution of Options Orders Rule 933

(a)-(b) No change.

Commentary

.01(a) Orders to buy or sell options that are multiply traded on one or more options exchanges in addition to the Exchange will not be automatically executed at prices inferior to the current best bid or offer displayed by any other options exchange, as such best bids or offers are identified by the Exchange's order routing system.

(b) Customer orders in those series of options that have been specifically designated by the Auto-Ex Enhancements Committee ("automatic price matching series"), under circumstances where the Exchange's best bid or offer is inferior to the current best bid or offer displayed by another options exchange by no more than the

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b(f)(6).

⁴ See letter from Claire McGrath, Vice President and Special Counsel, Amex to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 26, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange deleted Commentary .01(g) from the proposed rule text, and clarified the circumstances under which customer orders would be routed to the specialist instead of being automatically executed.

"price matching amount," as defined below, will be automatically executed at the current best bid or offer displayed by the other options exchange. If the Exchange's best bid or offer is inferior to the current best bid or offer displayed by another options exchange by more than the price matching amount, the order will be routed to the specialist and not automatically executed. Only customer orders within the order size parameters established by the Auto-Ex Enhancements Committee will be eligible for automatic price matching. A customer order that exceeds the established order size parameter will be routed to the specialist and not automatically executed.

(c) Customer orders in those series of options that have been specifically designed by the Auto-Ex Enhancements Committee ("automatic price improvement series") will be automatically executed when the Exchange's best bid or offer is equal to the current best bid or offer by the price improvement amount, as defined below. Only customer orders within the order size parameters established by the Auto-Ex Enhancements Committee will be eligible for automatic price improvement. A customer order that exceeds the established order size parameter will be either automatically executed at the Exchange's best bid or offer if it is within the Auto-Ex order size parameters, or it will be routed to the specialist and not automatically executed.

(d) Notwithstanding paragraphs (b) and (c) above, orders for automatic price matching series or automatic price improvement series will be routed to the specialist and not automatically executed in situations where: (i) the current best bid or offer for one of the series is crossed (e.g., 4.20 bid, 4 asked) or locked (e.g., 4 bid, 4 asked); (ii) the specialist in conjunction with a Floor governor or two Floor Officials determined quotes in such options or options exchange(s) are not reliable; or (iii) the Exchange is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes by the Options Price Reporting Authority ("OPRA"). Members and member organizations will be notified when the Exchange has determined that quotes are not reliable and prior to one or both Auto-Ex Enhancements being shut off and customer orders being routed to the specialist for execution. The specialist will report the execution or non-execution of such orders to the firm that

¹ 15 U.S.C. 78s(b)(1)

originally forwarded the order to Auto-Ex.⁵

(e) As used in this Commentary, the term "price matching amount" shall mean the minimum increment for options of that series established pursuant to Rule 952, or any greater amount established by the Auto-Ex Enhancements Committee in respect of specified automatic price matching series of options. As used in this Commentary, the term "price improvement amount" shall mean the minimum increment for options of that series established pursuant to Rule 952, or any greater amount established by the Auto-Ex Enhancements Committee in respect of specified automatic price improvement series of options.⁶

* * * * *

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 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the implementation of enhancements to the Exchange's Automatic Execution ("Auto-Ex")

⁵ Proposed subparagraph (d) of Commentary .01 of Amex Rule 933 is reorganized in this order to clarify that orders for automatic price matching series or automatic price improvement series will be routed to the specialist and will not be automatically executed if the specialist in conjunction with a Floor Governor or two Floor officials determines that quotes in such options or options exchange(s) are not reliable and if the Exchange is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes by OPRA. Telephone conversation between Elizabeth King, Associate Director, Nancy Sanow, Assistant Director, and Jennifer Colihan, Special Counsel, Division, Commission, and Claire McGrath, Vice President and Special Counsel, Amex, on February 27, 2001.

⁶ Proposed subparagraph (e) of Commentary .01 of Amex Rule 933 provides that that Auto-Ex Enhancement Committee shall determine the price improvement amounts and order size parameters. Telephone conversation between Nancy Sanow, Assistant Director and Jennifer Colihan, Special Counsel, Division, Commission, and Claire McGrath, Vice President and Special Counsel, Amex, on February 27, 2001.

system. Auto-Ex executes, at the displayed bid or offer, customer market and marketable limit option orders up to a specified number of contracts routed through the Amex Order File ("AOF"). There are, however, some situations in which orders otherwise eligible for execution on Auto-Ex are routed to the specialist's book (known as the Amex Options Display Book ("AODB")) for an execution. These situations occur when (i) the best bid or offer is represented by a limit order on the AODB, (ii) the best bid or offer is locked or crossed, or (iii) there is a better bid or offer being displayed by a competing market.

The Exchange now proposes to enhance its automatic execution system to provide automatic price matching and improvement for certain orders executed through Auto-Ex, thus eliminating the need for these orders to be routed to the AODB. The first proposed enhancement will provide automatic price matching on Auto-Ex when the best bid or offer for that series being displayed by a competing market is within a specified number of trading increments or "ticks" of the bid or offer being displayed by the Amex (*i.e.*, the "price matching amount"). The second proposed enhancement will provide automatic price improvement on Auto-Ex for orders within the established order size parameters when Amex is displaying the best bid or offer and specialists and registered options traders wish to improve upon their own bid or offer by a specified number of trading increments (*i.e.*, the "price improvement amount").

A newly created committee, the Auto-Ex Enhancement Committee (the "Committee"), will review and designate which option classes or series are eligible for either one or both of the Auto-Ex enhancements upon the request of a specialist. The Committee will be comprised of the Exchange's four Floor Governors and the Chairmen (or their designees) of the Specialists Association, the Options Market Makers Association and the Floor Brokers Association. In determining which option classes or series are eligible for either one or both of the Auto-Ex enhancements, the Committee may consider such factors as the open interest in the requested option; the average daily volume of the option; customer requests; and any other factors as the Committee deems appropriate. The Committee will also have the ability to delete options from the list of those eligible for the enhancements upon the request of the specialist using the same or similar criteria, including the specialists' ability to continue offering either of the enhancements. The

Committee will also determine the price matching and price improvement amounts and the order size parameters. The Exchange will publish a list of all eligible options in an Information Circular distributed to members.

a. Automatic Price Matching

The first proposed enhancement will provide for the matching of the best bid or offer displayed by a competing market by allowing customer market and marketable limit orders to be automatically executed at that best bid or offer provided it is within the specified number of trading increments or ticks of the Amex's displayed bid or offer, and the order is within the established order size parameters. Currently, the trading increment for an option with a premium equal to or less than \$3.00 is 5 cents and for an option with a premium greater than \$3.00, the trading increment is 10 cents. Thus, for example, if the Amex displayed quote is 2-2.10, the best bid/offer displayed by a competing market is 2-2.05, the specified number of ticks is one and the order size parameter is five contracts, when an order is received on the Amex to buy 5 contracts at the market, the order will be automatically executed at the offer price of 2.05. The enhancement can be turned on at any level for an option, by symbol, class put/call or strike price. If an order is received and the competing market's best bid or offer was not within the specified number of ticks or the order size is larger than the order size parameters, then the order would be routed to the AODB for an execution.

b. Automatic Price Improvement

The second enhancement will provide for automatic price improvement anytime the Amex quote is equal to the best bid/offer and the option series has been designated by the Auto-Ex Enhancement Committee. Through this enhancement, automatic price improvement will be provided based upon a predefined number of ticks and for orders within the established order size parameter. For example, if the Amex displayed quote is the best bid and offer at 2-2.10, the predefined number of ticks is one and the order size parameter is five when an order is received on the Amex to buy 5 contracts at the market, the order will be automatically executed at an improved price of 2.05. If the order size is for a number of contracts that exceeds the order size parameters, such orders will be automatically executed at the best bid/offer. This enhancement may be turned on for any option, by symbol, class, put/call or strike price.

Neither enhancement will apply if the current best bid or offer is locked or crossed. Further, the enhancements will not apply when the specialist in conjunction with a Floor Governor or two Floor Officials determines that quotes in such options or market(s) are deemed not to be reliable. This authority would be expected to be exercised only in circumstances such as communications or systems problems; fast markets; delays in the dissemination of quotes because of queues on the Option Price Reporting Authority ("OPRA") (in which case the Exchange would know that there is a delay in the dissemination of quotes from the other exchanges, which would likely render such quotes stale) or if the Exchange is advised by another exchange that it is experiencing communications or system problems that would cause its disseminated quotes to be unreliable. Also, neither enhancement will apply if the Exchange is experiencing communications or systems problems; fast markets; or delays in the dissemination of quotes by OPRA.

The Exchange believes the implementation of the proposed price matching and improvement enhancements will benefit investors by providing investors with automatic executions at prices equal to or better than the current best bid/offer and greatly enhance speed of execution and order turn-around times.

2. Basis

The proposed rule change is consistent with section 6(b) of the Act⁷ in general and furthers the objectives of section 6(b)(5)⁸ 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

Written comments were neither solicited nor received with respect to the proposed rule change.

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

The proposed rule change has been filed by the Exchange as a "non-controversial" 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: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, 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 Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6).

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, more than five business days prior to the date of the filing of the proposed rule change. The Commission finds that it is appropriate to accelerate the operative date of the proposal and designate the proposal to become operative today.¹¹

The Commission finds good cause for accelerating the operative date of the proposed rule change.¹² The

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 15 CFR 240.19b-4(f)(6).

¹¹ 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).

¹² The Commission notes that its decision to accelerate the operative date of this rule change is not dispositive of whether all aspects of the new Commentary comply with the terms and conditions of section IV.h.(i)(bb) of the Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (the "Order"). The parties to the Order, including the Exchange, are required to "specify the circumstances, if any, under which automated execution systems can be disengaged or operated in

any manner other than the normal manner set forth in the exchange's rules and require the documentation of the reasons for each decision to disengage an automated execution system or operate it in any manner other than the normal manner." The Order further provides that parties to the Order must submit to the Commission staff draft proposed rule changes that comply with the requirements set forth above no later than six months from the date of the Order. See Securities Exchange Act Release No. 43268 (September 11, 2000).

Commission notes that it has approved similar proposals filed by the Chicago Board Options Exchange ("CBOE")¹³ and the Philadelphia Stock Exchange, Inc. ("Phlx").¹⁴ Approval of this proposal on an accelerated basis will enable the Amex to compete on an equal basis with these other exchanges and thus is consistent with section 6(b)(8) of the Act.¹⁵

At any time within 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 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-01-05 and should be submitted by March 28, 2001.

¹³ See Securities Exchange Act Release Nos. 43285 (September 12, 2000), 65 FR 56972 (September 20, 2000) (approving SR-CBOE-93-22); 40096 (June 16, 1998), 63 FR 34209 (June 23, 1998) (approving SR-CBOE-98-13); 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999) (approving SR-CBOE-99-17); 42167 (November 22, 1999), 64 FR 66954 (November 30, 1999) (approving SR-CBOE-99-57).

¹⁴ See Securities Exchange Act Release No. 43684 (December 6, 2000), 65 FR 78238 (December 14, 2000) (partially approving SR-Phlx-00-93).

¹⁵ 15 U.S.C. 78f(b)(8).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-5540 Filed 3-6-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44019; File No. SR-Amex-01-10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC to Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

February 28, 2001.

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 February 27, 2001, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in detail in Part II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, 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 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 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 Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions approved by the Commission on June 2, 2000.³ Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.⁴ The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the

³ See Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000). The pilot program has since been extended twice. See Securities Exchange Act Release Nos. 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); and 43643 (November 29, 2000), 65 FR 76686 (December 7, 2000).

⁴ Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.⁵ However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the almost nine months since the pilot program began, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with Commission⁶ concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

Because the pilot program is due to expire on February 27, 2001, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to section 19(b)(2) of the Act.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general and furthers the objectives of section 6(b)(5) of the act⁹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

⁵ Amex trading practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. See Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

⁶ See File No. SR-Amex-00-49, available for inspection at the Commission's Public Reference Room.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.