

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53415; File No. SR-Amex-2006-10)

March 3, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Its Fee Cap Program for Certain Options Spread Trades

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 2, 2006, 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 Amex. On February 28, 2006, Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> Amex has designated the proposed rule change, as amended, as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. 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

The Exchange proposes to amend the Options Fee Schedule relating to its fee cap program for certain options spread trades.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, Amex proposes to make the revised fee cap program for dividend spreads, merger spreads, and short stock interest spreads a six-month pilot program expiring August 1, 2006.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

The text of the proposed rule change, as amended, is available on Amex's Web site at <http://www.amex.com>, at the Office of the Secretary at Amex, and at the Commission's Public Reference Room.

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, as amended, and discussed any comments it received on the proposal. 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

Currently, the Exchange provides a fee cap program in which it limits to \$2,000 per trade the transaction, comparison and floor brokerage fees (hereinafter referred to collectively as "transaction-based fees") charged to specialists, registered options traders, non-member market makers, member firms, broker dealers and non-member broker dealers (referred to hereinafter as "non-customer market participants") for accommodation and spread trades.<sup>6</sup> The fee cap program does not apply to the license fees that are charged for transactions in some option classes. The program requires the submission to the Exchange of a Fee Reimbursement Form together with appropriate documentation for fees collected in excess of the cap to be reimbursed

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<sup>6</sup> Accommodation trades (also known as cabinet trades) are transactions to close out positions in worthless or nearly worthless out-of-the-money option contracts. Spread trades include: (i) reversals and conversions, (ii) dividend spreads, (iii) box spreads, (iv) butterfly spreads, (v) merger spreads, and (vi) short stock interest spreads.

to the non-customer market participants. Currently, there is no time limit within which the Fee Reimbursement Form must be submitted.

Over the years, the execution of certain types of spread trades have grown in popularity—in particular, option transactions that are part of dividend spreads<sup>7</sup>, merger spreads,<sup>8</sup> and short stock interest spreads<sup>9</sup> have grown significantly with two to three million contracts a day being executed. In order to become more competitive with fee cap programs in place at other options exchanges, the Exchange is now proposing to revise its cap program. The following revisions are being proposed:

First, for dividend spreads, merger spreads, and short stock interest spreads, the Exchange proposes to convert the cap on transaction-based fees from a per trade cap to a cap on all transactions executed as part of these spreads on the same trading day in the same option class and reduce the amount of fees charged before the cap is applied to \$1,000 per day. The Exchange is making these revisions to its fee cap program to match similar fee cap programs at other exchanges.<sup>10</sup>

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<sup>7</sup> A dividend spread transaction is defined as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options.

<sup>8</sup> A merger spread transaction is defined as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same option class and expiration date, but different strike prices followed by the exercise of the resulting long option position. Merger spreads are executed prior to the date that shareholders of record in a stock subject to a merger are required to elect their respective form of consideration (i.e., cash or stock).

<sup>9</sup> A short stock interest spread is defined as a spread that uses two deep in-the-money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position. This strategy is used to capture short stock interest.

<sup>10</sup> See PCX Options Fee Schedule and Securities Exchange Act Release No. 53171 (January 24, 2006) (SR-CBOE-2005-117).

Second, the Exchange proposes to add a monthly fee cap of \$50,000 on transaction-based fees per initiating firm for transactions in dividend spreads, merger spreads, and short stock interest spreads. The purpose of this revision is to also match similar fee cap programs at other exchanges.<sup>11</sup>

Third, the Exchange proposes to provide a \$2,000 per trade cap on transaction-based fees charged to members for customer box spread transactions<sup>12</sup> in index options. The recent options fee increases have significantly altered the economics for customers engaging in box spread transactions in index options. In order to retain this type of order flow, the Exchange is proposing expand the fee cap program to customer box transactions in index options as a way of remaining competitive with the other options exchanges.

Fourth, the Exchange proposes to establish that the Fee Reimbursement Form must be submitted within three business days of the transaction. The Exchange believes that a limited time for submission of the Form will assist it in more efficiently processing the reimbursement requests and that while the timeframe is limited, market participants, including firms seeking reimbursements for transaction-based fees charged for customer box spreads, should be able to meet the proposed deadline, which is already in effect at other options exchanges with similar fee cap programs.

Lastly, the Exchange proposes to establish the revised fee cap program for dividend spreads, merger spreads, and short stock interest spreads as a six-month pilot program expiring

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<sup>11</sup> Id.

<sup>12</sup> This is a combination of a long synthetic stock or index position (long call plus short put) and a short synthetic stock position (long put plus short call), which expire simultaneously and have different strike prices. Box spreads are used primarily to “borrow” or “lend” money. A lender is said to “buy” the box and a borrower is said to “sell” the box. Boxes are evaluated essentially on the basis of returns on the cash they tie up or free up.

August 1, 2006. The Exchange intends to implement the proposed revisions to the fee cap program effective February 6, 2006.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>14</sup> in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange is proposing to implement revisions to a fee cap program that is competitive with similar programs at other options exchanges.

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

Amex believes that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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, as amended.

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

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>15</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>16</sup> because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

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.<sup>17</sup>

#### IV. 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.

Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2006-10 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

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<sup>17</sup> The effective date of the original proposed rule change is February 2, 2006, the date of the original filing, and the effective date of Amendment No.1 is February 28, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 28, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2006-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Nancy M. Morris  
Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).