

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54104; File No. SR-Amex-2006-47)

July 5, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 2 Thereto Relating to the Member Firm Guarantee for FLEX Equity Options

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 12, 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 the Amex. The Amex filed Amendment No. 1 to the proposed rule change on June 5, 2006 and subsequently withdrew Amendment No. 1. The Amex filed Amendment No. 2 to the proposed rule change on June 12, 2006.³ 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 Amex Rule 904G(e)(iii) to change the current member firm guarantee for FLEX equity options to 40%. The text of the proposed rule change is available on the Amex’s Web site (<http://www.amex.com>), at the Amex’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 2, the Amex made technical corrections to the rule text of the proposed rule change.

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.⁴

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the current participation or member firm guarantee⁵ for FLEX equity options traded on the Exchange. Currently, the member firm guarantee provides that a Submitting Member or Submitting Member firm – an Exchange member deemed eligible by the Exchange to trade FLEX options – who has indicated an intention to cross or act as principal on the trade and who has matched or improved the best bid or offer entered in response to the Submitting Member's initial request for quotes (the "BBO," as

⁴ Pursuant to discussions with Amex staff, the Commission made clarifying changes to the purpose section of the proposed rule change. Telephone conversation between Caroline McCaffery, Assistant General Counsel, Amex; and Ira Brandriss, Special Counsel, and Kate Robbins, Attorney, Division of Market Regulation, Commission, on June 29, 2006.

⁵ A "member firm guarantee" provides, under certain conditions, the ability to cross a specified percentage of a customer order on behalf of a member firm before specialists and/or registered options traders in the crowd can participate in the transaction. The member firm guarantee for FLEX equity options is set forth in Amex Rule 904G(e). The member firm guarantee for non-FLEX options is set forth in Rule 950(d) and 950—ANTE(d). The provision for non-FLEX options 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 size is not for fewer than 50 contracts.

defined for purposes of Amex rules regarding FLEX options) with respect to FLEX equity options, is entitled to a participation guarantee of 25%. The Amex is proposing to amend Rule 904G(e)(iii) so that Submitting Members and Submitting Member firms would receive a guaranteed participation of 40% of an order, which is the current standard applicable to non-FLEX options.⁶

In April 2003,⁷ the Exchange received permanent approval of a pilot program relating to the member firm guarantee for non-FLEX options initially approved by the Commission on June 2, 2000.⁸ Commentary .02(d) to Amex Rules 950(d) and 950—ANTE(d) permits facilitation cross transactions in equity options and sets forth the member firm guarantee percentages.⁹ The member firm guarantee for non-FLEX options was subsequently extended to index options in September 2004¹⁰ and to index options in the Amex New Trading Environment System (“ANTE”) in February 2005.¹¹ The amount of the guaranteed participation percentage for non-

⁶ The text of Amex Rule 904G(e)(iii) provides that the Submitting Member is permitted to participate “to the extent of at least 25% of the trade” (40% under the proposal). The Submitting Member may participate in more than its guaranteed percentage to the extent that the trading crowd chooses not to trade against the remaining portion of the order.

⁷ See Securities Exchange Act Release No. 47643 (April 7, 2003), 68 FR 17970 (April 14, 2003).

⁸ See Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000).

⁹ A facilitation cross transaction occurs 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.

¹⁰ See Securities Exchange Act Release No. 50326 (September 7, 2004), 69 FR 55479 (September 14, 2004).

¹¹ See Securities Exchange Act Release No. 51275 (February 28, 2005), 70 FR 10709 (March 4, 2005).

FLEX options is currently 40%, provided that the order trades at or between the best bid or offer given by the trading crowd in response to the floor broker's request for a market.¹²

Under the instant proposal, a Submitting Member or a Submitting Member firm trading FLEX equity options will be entitled to cross up to 40% of an order provided the order trades at a price that matches or improves upon the BBO. As with non-FLEX equity options, it is believed that providing Submitting Members or Submitting Member firms who are eligible to trade FLEX options and are seeking to cross or facilitate a trade with an across-the-board 40% member firm guarantee will provide additional incentive for such Submitting Member or Submitting Member firm to bring large FLEX option orders to the floor of the Amex rather than to the floor of another options exchange or to the over-the-counter ("OTC") market. Additionally, the liquidity provided by such Submitting Member or Submitting Member firm seeking to facilitate their orders gives the Exchange the ability to provide deep liquid markets for investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act¹³ in general and furthers the objectives of Section 6(b)(5)¹⁴ in particular in that it is designed

¹² Prior to February 2005, the member firm guarantee for non-FLEX options provided that a floor broker was entitled to a participation guarantee of 20% if the order was traded at the best bid or offer given by the trading crowd in response to a floor broker's request for a market or 40% if the order was traded at a price that improved the market, *i.e.*, at a price between the crowd's best bid or offer. This rule was revised in February 2005 so that floor brokers receive 40% of an order (after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled) if such order trades at a price that matches or improves the market. *See* Securities Exchange Act Release No. 51275 (February 28, 2005), 70 FR 10709 (March 4, 2005).

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

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 proposed rule change 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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-Amex-2006-47 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-2006-47. 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 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 the Exchange. 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-2006-47 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.¹⁵

Nancy M. Morris
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).