

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49722; File No. SR-Amex-2004-29)

May 18, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to a Reduction in ETF Transaction Fees for Specialists and Registered Options Traders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 30, 2004, 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. On May 13, 2004, the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, has been filed by the Amex as 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)<sup>5</sup> thereunder, 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.

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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> See letter from Jeffrey Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated May 12, 2004 (“Amendment No. 1”). Amendment No. 1 corrects a typographical error in the proposed rule language.

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

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

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

The Exchange proposes to reduce transaction fees for specialists and registered options traders (“ROTs”) in connection with transactions in exchange-traded fund shares (“ETFs”). The text of the proposed rule change, as amended, 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to reduce transactions charges imposed on specialists and ROTs in connection with Exchange transactions in ETFs. For purposes of the Exchange’s fee schedule, ETFs include portfolio depositary receipts, index fund shares and trust issued receipts. The Exchange’s current ETF transaction charges for specialists and ROTs are set forth in the following table:

**I. Transaction Charges For ETFs Without Unreimbursed Fees to a Third Party**

	<b>Specialists</b>	<b>Registered Traders</b>
Per Share Side	\$0.0055 (\$.55 per 100 shares)	\$0.0060 (\$.60 per 100 shares)
Subject to the following per trade maximums:	\$300 (54,545 shares)	\$300 (50,000 shares)

**II. Transaction Charges for ETFs for which the Exchange Pays Unreimbursed Fees to a Third Party**

	<b>Specialists</b>	<b>Registered Traders</b>
Per Share Side	\$0.0059 (\$.59 per 100 shares)	\$0.0062 (\$.62 per 100 shares)
Subject to the following per trade maximums:	\$300 (50,847 shares)	\$300 (48,387 shares)

Transaction charges for specialists are capped at \$700,000 per month per specialist unit.

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The proposed fee reductions are set forth below in the revised ETF transaction fee schedule:

**I. Proposed Transaction Charges For ETFs Without Unreimbursed Fees to a Third Party**

	<b>Specialists</b>	<b>Registered Traders</b>
Per Share Side	\$0.0044 (\$.44 per 100 shares)	\$0.0048 (\$.48 per 100 shares)
Subject to the following per trade maximums:	\$300 (68,181 shares)	\$300 (62,500 shares)

**II. Proposed Transaction Charges for ETFs for which the Exchange Pays Unreimbursed Fees to a Third Party**

	<b>Specialists</b>	<b>Registered Traders</b>
Per Share Side	\$0.0048 (\$.48 per 100 shares)	\$0.0050 (\$.50 per 100 shares)
Subject to the following per trade maximums:	\$300 (62,500 shares)	\$300 (60,000 shares)

Proposed transaction charges for specialists are capped at \$500,000 per month per specialist unit.

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The Exchange submits that the proposal would be effective on May 1, 2004 and constitutes a 20% reduction (both specialists and ROTs) for ETF transaction charges without reimbursed fees to third parties and an 18.64% reduction for specialists and a 19.35% reduction for ROTs for ETF transaction charges for which the Exchange pays unreimbursed fees to a third party.

The Exchange believes that a reduction in ETF transaction fees is warranted in order to provide greater incentives for specialists and ROTs to competitively quote their markets and attract additional order flow. In addition, the Exchange also believes that the reduction would help to maintain existing floor operations of member firms at the Amex.

2. Statutory Basis

The Exchange believes that the proposed fee change, as amended, is consistent with Section 6(b)(4) of the Act<sup>6</sup> regarding the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using Exchange facilities.

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<sup>6</sup> 15 U.S.C. 78f(b)(4).

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of 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

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, as amended, 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, 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

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-29 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-29. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 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-2004-29 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>9</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).