

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49759; File No. SR-Amex-2004-35)

May 24, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Adoption of Procedures for the Transfer of Options Positions

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 May 14, 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 Amex. Pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> Amex has designated this proposal as non-controversial, which renders the proposed rule change effective immediately upon filing. 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

Amex proposes to amend Exchange Rule 959 to adopt procedures for the on-floor transfer of options positions that are being transferred as part of a sale or disposition of all, or substantially all, of the assets or options of the transferring party. The text of the proposed rule change is available at Amex and at the Commission.

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(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, 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. 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 purpose of the proposed rule change is to establish which position transfers may occur off-floor and which position transfers must be offered to the floor. Specifically, the Exchange proposes to amend Rule 959 to allow for the on-floor transfer of options positions that are being transferred as part of a sale or disposition of all, or substantially all, of the assets or option positions of a specialist or registered options trader ("ROT"), who would no longer be involved in managing or owning the transferred positions. The procedures established by this proposal would be used by specialists and ROTs who, for reasons other than a forced liquidation, desire to liquidate their entire, or nearly entire position in a single set of transactions. In addition, specialists and ROTs would also be able to use these procedures in preparation for or during lengthy absences from the trading floor, such as an extended vacation. However, these procedures are not intended to replace the Exchange's auction market, and accordingly, frequent use of the procedures by the same specialist or ROT will not be permitted.

Pursuant to the proposal, the specialist or ROT (referred to hereinafter as the "Transferor") would determine which securities to package with the Amex-traded option positions in the

portfolio. The Transferor would be able to include other exchange-listed or NASDAQ NMS securities as well as option contracts in the package to be transferred (“Transfer Package”) provided the positions are being transferred pursuant to a discontinuation of the management or ownership of the options positions. Any number of Transfer Packages can be created, provided each Transfer Package contains positions in only one option class. This limitation ensures that smaller specialists and ROTs are able to compete against larger member organizations in the bidding for the Transfer Package, thus ensuring a broader participation by the membership of the Exchange. The proposed rule provides, however, that a member or member organization may make an aggregate bid or offer for any number of Transfer Packages offered by a single Transferor. In the event that the aggregate bid or offer is superior to the combination of the individual best bids or offers for the individual Transfer Packages, the Transferor would be allowed to accept that aggregate bid or offer for a combination of, or all of, the Transfer Packages. The Exchange believes that allowing Transferors to accept aggregate bids or offers would ensure that they get the best possible price for their positions.

Transfer Packages would be offered using the procedures for the trading of Flexible Exchange Options (“FLEX”)<sup>5</sup> and would be required to be submitted to the specialist for that option class prior to 2:00 p.m. Under the proposed procedures, any firm submitting a Transfer Package would be required to designate a member of the Exchange or a person associated with a member to represent the order on the floor of the Exchange. This designee must be available on the Exchange floor to answer questions regarding the Transfer Package during the entire Request Response Time. Following the offer of the Transfer Packages, interested members of the Exchange would be given two hours to submit a bid for one or any combination of the Transfer

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<sup>5</sup> See Exchange Rules 900G et. al.

Packages offered by the Transferor. Acceptance of a best bid or offer (“BBO”) would create a binding contract under Amex Rule 953, however, a Transferor is not obligated to accept a BBO. If the Transferor does not accept the BBO for the Transfer Packages, the Transferor may offer the positions in any Transfer Package the following business day. Because the Exchange intends for this proposed procedure to be a transfer procedure and not a price discovery mechanism, the Transferor would need the permission of a Floor Governor to offer the positions on the Exchange floor for any day subsequent to the second day.

Bids and offers would be made on a net debit or credit basis for entire Transfer Packages. In the event that a particular Transfer Package contains stock positions or other securities positions whose transfer must be transacted on another exchange pursuant to applicable law or regulation, then any accepted bid or offer would give rise to a contract for the Amex-listed product, the price of which is contingent on the prices at which the other portions of the Transfer Package are transacted. The price at which the Amex-listed product is transacted would be the price that is necessary to ensure that the entire Transfer Package is transferred at the agreed upon net debit or credit. All transactions that are required to be completed would typically be transacted by the end of the trading day on which the bid or offer is made and accepted. The proposed rule also would provide that the member submitting the accepted bid or offer may cancel the trade for the Amex-listed product in the event that the parties are unable to complete the transaction for the non-Amex-listed product due to a trading halt or some other operational problem outside the control of the submitting party.

The Exchange believes that the proposed procedures should provide Transferors a more favorable bid or offer for their options positions since the other securities in the package may

hedge or otherwise complement the options positions and result in more favorable pricing for the overall package.

The proposed rule would serve to expose the maximum number of positions to the auction market. The Exchange believes that exposing these positions to the auction market would benefit the public by increasing the liquidity and transparency of the market in the listed option positions. We further believe that the membership would benefit by being given the opportunity to bid on the positions.

### Exemptions

The Exchange represents that it generally prohibits the off-floor transfers of options positions between accounts, individuals or entities where a change of beneficial ownership results. However, the Exchange recognizes that there may be circumstance where an off-floor transfer may be justified, such as emergency transfers of a firm's positions in bulk during a market crisis. In an extremely volatile market, the Transferor may be subject to undue risk if he were forced to subject his positions to the auction process established by the proposed rule because there may be some delay in agreeing to a price. In these circumstances, the Exchange represents that its Chief Executive Officer or his designee may, on his own initiative or upon request from the Transferor, exempt the transfer from the proposed rule and permit an off-floor transfer to occur. The Exchange states that another basis for exempting the transfer from the proposed rule would be a showing by the Transferor to the Chief Executive Officer or his designee that compliance with the proposed rule would compromise the market value of the Transferor's business.

The Exchange represents that there are several other circumstances where it would not require the transfer to be completed on the Exchange floor, even in situations where the Transferor does not maintain ownership or management of the positions. These exemptions found in the

proposed Rule generally relate to changes to the member's legal status or trading account. In addition, positions donated to a not-for-profit organization or positions donated to a minor under the "Uniform Gifts to Minor" law would not have to be brought to the Exchange floor pursuant to the proposed rule change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of Section 6(b)(5)<sup>7</sup> 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

Amex does not believe that the proposed rule change will result in 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

Amex neither solicited nor received written comments with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective upon filing on May 14, 2004 pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(6)<sup>9</sup> thereunder because the

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

proposal: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization 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.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. Amex seeks to have the proposed rule change become effective immediately to allow it to implement the proposed procedures for transferring the options positions of specialists and ROTs that are being transferred as part of a sale or disposition.

The Commission has determined to waive the 30-day operative date requirement for this proposed rule change, and designate the proposed rule change as operative on May 14, 2004, the date it was submitted to the Commission.<sup>12</sup> The Commission notes that the proposed rule change is similar to rules of the Pacific Exchange, Inc. and Chicago Board Options Exchange, which were previously approved by the Commission.<sup>13</sup> Accordingly, because the proposed rule change does

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<sup>10</sup> As required under Rule 19b-4(f)(6)(iii), Amex provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For the 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).

<sup>13</sup> See Securities Exchange Act Release Nos. 36647 (December 28, 1995) (Order approving CBOE Rule 6.49A); and 45395 (February 5, 2002) (Order approving PCX Rule 6.78(d)).

not raise any new regulatory concerns, the Commission has determined that it is consistent with the protection of investors and the public interest to designate the proposed rule change as operative on May 14, 2004. 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 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 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-2004-35 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-2004-35. 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, 450 Fifth Street, NW, Washington, DC 20549. 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-2004-35 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>14</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).