

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49763; File No. SR-Amex-2004-28)

May 24, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 thereto by the American Stock Exchange LLC Relating to a Reduction in Options Transaction Fees

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 April 29, 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 Exchange. The proposed rule change has been filed by the Amex as establishing or changing a due, fee or other charge under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing. On May 13, 2004, the Amex filed Amendment No. 1 to the proposed rule change⁵ and on May 20, 2004, the Amex filed Amendment No. 2 to the proposed rule change.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See letter from Jeffrey Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated May 12, 2004 (“Amendment No. 1”). In Amendment No. 1, the Exchange removed from the proposed rule change those portions of the fee change that applied to non-member broker-dealers.

⁶ See letter from Jeffrey Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 19, 2004 (“Amendment No 2”). In Amendment No. 2, the Exchange corrected a typographical error in the text of the proposed rule change.

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

The Exchange proposes to reduce aggregate options transaction fees for specialists and registered options traders ("ROTs") from \$0.36 per contract side to \$.30 per contract side. The text of the proposed rule change, as amended, is available at the 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 Exchange 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

Amex currently imposes transactions charges for transactions in equity options executed on the Exchange by specialists and ROTs. The current charges for specialist and ROTs in equity options are \$0.36 per contract side, consisting of an options transaction fee of \$0.26, an options comparison fee of \$0.05 and an options floor brokerage fee of \$0.05. The Exchange proposes to reduce the aggregate option transaction fee for specialists and ROTs from the current level of \$0.36 per contract side to \$0.30 per contract side effective May 1, 2004. The new aggregate equity option transaction fee for specialists and ROTs will consist of an options transaction fee

of \$0.20 per contract side, an options comparison fee of \$0.05 per contract side and options floor brokerage fee of \$0.05 per contract side.⁷

In conjunction with the proposed reduction in the aggregate equity option transaction fee for specialists and ROTs, the current fee reductions in the Options Fee Schedule for cabinet trades (the “Cabinet Trades”) and reversals and conversions, dividend spreads, box spreads and butterfly spreads (the “Spread Trades”) will also be reduced for specialists, ROTs and member broker-dealers.⁸ Effective May 1, 2004, the current fee reductions applicable to specialists, ROTs and member broker-dealers for equity options and QQQ options in connection with Cabinet Trades and Spread Trades will be reduced from \$0.12 to \$0.06 per contract side and from \$0.18 to \$0.12 per contract side, respectively.⁹ The \$2,000 per trade fee cap for specialists, ROTs, member broker-dealers and non-member broker-dealers in connection with Cabinet Trades and Spread Trades will continue to apply. This fee cap was recently adopted by the

⁷ Options on S&P 100 iShares are charged the same options transaction fee as equity options, and thus are also subject to the fee changes set forth herein. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Nathan Saunders, Attorney, Division, Commission (May 24, 2004).

⁸ See Securities Exchange Act Release Nos. 46026 (June 4, 2002), 67 FR 40034 (June 11, 2002) (File No. SR-Amex-2002-12) and 48219 (July 23, 2003), 68 FR 44823 (July 30, 2003) (File No. SR-Amex-2003-51). The Exchange in a separate rule filing will similarly reduce the fee reductions in connection with Cabinet Trades and Spread Trades for non-member broker-dealers.

⁹ The lowering of the fee reductions for equity option transactions in connection with Cabinet Trades and Spread Trades will now result in fee reductions of the options transaction fee, options comparison fee and options floor brokerage fee of \$0.03, \$0.01 and \$0.02 per contract side, respectively. With respect to QQQ option transactions only, the lowering of the fee reductions in connection with Cabinet Trades and Spread Trades will result in fee reductions of the options transaction fee, options comparison fee and options floor brokerage fee of \$0.09, \$0.01 and \$0.02 per contract side, respectively.

Exchange and implemented in February 2004.¹⁰ In addition, the transaction fee cap of \$72,000 per month in any single options class, exclusive of the options licensing fee, for specialists and ROTs will also continue to apply.¹¹

The Market Share Incentive Program adopted by the Exchange and implemented in December 2003 will also be eliminated effective May 1, 2004. The Market Share Incentive Program provided a slight reduction in the rate of options transaction fees based on the relative market share obtained by the specialist/ROT for the top 300 equity option classes.¹²

The Exchange believes that the proposed reduction in options transaction fees will benefit the Exchange by providing greater incentive to specialists and ROTs to competitively quote their markets in comparison to the markets made by other options exchanges. In addition, we also believe that the reduction in fees will help to maintain the existing floor operations of member firms at the Amex.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

¹⁰ See Securities Exchange Act Release No. 49358 (March 3, 2004), 69 FR 11469 (March 10, 2004) (File No. SR-Amex-2004-09).

¹¹ See Securities Exchange Act Release Nos. 49025 (January 6, 2004), 69 FR 2018 (January 13, 2004) (File No. SR-Amex-2003-106) and 49019 (January 5, 2004), 69 FR 2023 (January 13, 2004) (File No. SR-Amex-2003-104).

¹² See Securities Exchange Act Release No. 49019 (January 5, 2004), 69 FR 2023 (January 13, 2004) (File No. SR-Amex-2003-104). Under the Market Incentive Program, as long as a 20% market share or greater was maintained in a particular options class, the options transaction fee was reduced. With the across the board reduction in the options transaction fees proposed for equity options, the Exchange believes that the Market Share Incentive Program is now unnecessary.

the Act¹³ in general and furthers the objectives of 6(b)(4) of the Act¹⁴ in particular regarding the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using Exchange facilities.

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 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

The foregoing proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁵ and Rule 19b-4(f)(2) thereunder¹⁶ because it changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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 the furtherance of the purposes of the Act.¹⁷

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ See 15 U.S.C. 78(b)(3)(C). For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on May 20, 2004, the date the Exchange filed Amendment No. 2.

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. Please include File Number SR-Amex-2004-28 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-2004-28. 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-2004-28 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.¹⁸

Margaret H. McFarland
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).