

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49800; File No. SR-Amex-2004-37)

June 3, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to a Change in the Options Transaction Fee Reductions for Non-Member Broker-Dealers in Connection with Cabinet and Spread Trades

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 19, 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. On May 28, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.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 lower the amount of the reductions of options transaction fees that are available to non-member broker-dealers in connection with equity options and QQQ options contracts executed as part of an accommodation or cabinet trade (“Cabinet Trades”) and reversals and conversions, dividend spreads, box spreads and butterfly spreads (“Spread Trades”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 27, 2004 (“Amendment No 1”). In Amendment No. 1, the Exchange corrected a typographical error in the text of the proposed rule change.

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. 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 states that it currently imposes charges for transactions in equity and QQQ options executed on the Exchange by non-member broker-dealers. Amex states that the current charges for non-member broker-dealers in equity options are \$0.26 per contract side, consisting of an options transaction fee of \$0.19, an options comparison fee of \$0.04 and an options floor brokerage fee of \$0.03.

Amex represents that, in connection with the recent proposal to reduce options transaction fees for specialists and registered options traders ("ROTs"), it also proposed to lower the amount of the reductions of options transaction fees for specialists, ROTs and member broker-dealers (i.e., firms) in connection with Cabinet Trades and Spread Trades.⁴ Amex states

⁴ See Securities Exchange Act Release No. 49763 (May 24, 2004), 69 FR 30967 (June 1, 2004) (File No. SR-Amex-2004-28).

that, for the purpose of uniformity, this proposed rule change seeks to similarly lower the amount of the reductions of options transaction fees for equity and QQQ options contracts executed as part of Cabinet Trades or Spread Trades that are transacted by non-member broker-dealers.

Amex states that this change will effectively increase transaction fees for non-member broker-dealers' executions of equity option and QQQ option contracts that are either Cabinet Trades or Spread Trades.

Amex represents that the current fee reductions⁵ applicable to non-member broker-dealers for equity options and QQQ options transactions executed as either Cabinet Trades or 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.⁶ The \$2,000 per trade fee cap currently in place in connection with Cabinet Trades and Spread Trades will continue to apply. This fee cap was recently adopted by the Exchange and implemented in February 2004.⁷

Amex believes that this proposal to lower the amount of the reductions of options transaction fees for non-member broker-dealers in connection with Cabinet and Spread Trades will better reflect the actual cost of transactions on the Amex. In addition, Amex represents that

⁵ See Securities Exchange Act Release Nos. 46026 (June 4, 2002), 67 FR 40034 (June 11, 2002) and 48219 (July 23, 2003), 68 FR 44823 (July 30, 2003).

⁶ The lowering of the fee reductions for equity options transactions in connection with Cabinet Trades and Spread Trades will now result in 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 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.

⁷ See Securities Exchange Act Release No. 49358 (March 3, 2004), 69 FR 11469 (March 10, 2004).

the proposed fee change for non-member broker-dealers will provide the same options fee reductions for Cabinet Trades and Spread Trades that exist for specialists, ROTs and member broker-dealers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general and furthers the objectives of 6(b)(4) of the Act⁹ 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

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 Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, as amended, or

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

- (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 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-2004-37 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-2004-37. 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-2004-37 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.¹⁰

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).