

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49986; File No. SR-Amex-2004-37)

July 8, 2004

Self-Regulatory Organizations; Order Granting Accelerated Approval to a 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 Trades and Spread Trades

On May 19, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change 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”). On May 28, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change and Amendment No. 1 were published for comment in the Federal Register on June 10, 2004.<sup>4</sup> No comments were received regarding the proposal, as amended. This order approves the proposed rule change, as amended, on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the requirements

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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 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.

<sup>4</sup> See Securities Exchange Act Release No. 49800 (June 3, 2004), 69 FR 32639.

of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>6</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to lower the amount of the reduction of options transaction fees applicable to non-member broker-dealers in connection with Cabinet Trades and Spread Trades is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using Exchange facilities. According to Amex, the proposed fee changes should better reflect the actual cost of transactions on the Exchange. Further, the proposal provides non-member broker-dealers with the same options fee reductions for Cabinet Trades and Spread Trades that are applicable to specialists, registered options traders (“ROTs”) and member broker-dealers.<sup>8</sup>

Amex requested accelerated approval of the proposal in order to provide for uniform options transaction fee reductions for non-member broker-dealers and specialists, ROTs and member broker-dealers. Therefore, Amex has requested that the Commission find good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.

The Commission notes that the proposal and Amendment No. 1 were noticed for the full 21-day comment period, and the Commission received no comments regarding the proposal, as amended. As discussed more fully above, the Commission believes that the proposed rule

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<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> See Securities Exchange Act Release No. 49763 (May 24, 2004), 69 FR 30967 (June 1, 2004) (notice of filing and immediate effectiveness of File No. SR-Amex-2004-28).

change is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using Exchange facilities. The Commission also believes that adjusting the options transaction fee reductions applicable to non-member broker-dealers to equal the fee reductions applicable to specialists, ROTs and member broker-dealers for the same types of transactions will promote uniformity in options fees charged by the Exchange. Accordingly, the Commission finds good cause pursuant to Section 19(b)(2) of the Act<sup>9</sup> to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-Amex-2004-37), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> Id.

<sup>11</sup> 17 CFR 200.30-3(a)(12).