

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50081; File No. SR-Amex-2004-51)

July 26, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Apply the Current Member Firm Guarantee for Equity Options to Index Options

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 June 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 Exchange. 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

The Exchange proposes to amend Commentary .02 (d) to Amex Rule 950(d) to apply the current member firm guarantee for equity options to index options traded on the Exchange. The text of the proposed rule change 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

specified in Item IV below. The Exchange 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 extend the Exchange's current participation or member firm guarantee to index options. As further discussed below, the member firm guarantee provides that a floor broker representing a member firm seeking to facilitate its own customer's order is entitled to a participation guarantee of 20% if the order is traded at the best bid or best offer (the "BBO") provided by the trading crowd, or 40% if the order is traded at a price that improves the trading crowd's market, *i.e.*, at a price between the BBO. Amex is proposing to amend Commentary .02(d) to Amex Rule 950(d), which sets forth the current member firm guarantee for equity options, to extend its application to index options traded on the Exchange.

In April 2003,<sup>3</sup> the Exchange received permanent approval of its pilot program relating to the member firm guarantee initially approved by the Commission on June 2, 2000.<sup>4</sup> Commentary .02(d) to Amex Rule 950(d) governs the applicability of member firm guarantees in

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<sup>3</sup> See Securities Exchange Act Release No. 47643 (April 7, 2003), 68 FR 17970 (April 14, 2003).

<sup>4</sup> See Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000).

facilitation cross transactions in equity options and sets forth the member firm guarantee percentages.<sup>5</sup>

The rule provides a floor broker, under certain conditions, the ability to cross a specified percentage of the customer order on behalf of a member firm before the specialist and/or registered options traders in the crowd can participate in the transaction, i.e., the member firm guarantee. The provision generally applies to orders of 400 contracts or more. The Exchange, however, is permitted to establish smaller eligible order sizes, on a class-by-class basis, provided that the size is not for fewer than 50 contracts.

The amount of the guaranteed participation percentage depends upon a comparison of the original market quoted by the trading crowd in response to a request from the floor broker and the price at which the order is traded. If the order is traded at the BBO provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 20% of the order. If the order is traded at a price that improves the market provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 40% of the order. In addition, the facilitating member firm may participate in the executed contracts only after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled.

Currently, the member firm guarantee applies only to orders in equity options. The instant proposal would extend the member firm guarantee to index options. Thus, for index option orders, floor brokers similarly would be guaranteed a participation of 20% if the order is

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<sup>5</sup> Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

traded at the BBO, or 40% if the order improves the market. All other rules concerning the member firm guarantee that currently apply to equity options would also apply to index options. The Exchange believes that the proposed expansion of the member firm guarantee to index options will provide greater incentive for order flow providers to bring order flow to the Exchange.

## 2. Statutory Basis

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

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance 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

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

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

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; or
- (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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-51 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-2004-51. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. 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 publicly available. All submissions should refer to File Number SR-Amex-2004-51 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>8</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).