

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50308; File No. SR-Amex-2004-59)

September 2, 2004

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change 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 July 30, 2004, the American Stock Exchange, Inc. (“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 Amex. The Amex submitted the proposed rule change under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 reduce aggregate options transaction fees for specialists and registered options traders from \$0.30 per contract side to \$0.25 per contract side. The text of the proposed rule change 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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

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 Amex imposes transaction charges for transactions in equity options executed on the Exchange by Exchange specialists and Exchange registered options traders (“ROTs”). The current charges for Exchange specialists and ROTs in equity options are \$0.30 per contract side, consisting of an options transaction fee of \$0.20, an options comparison fee of \$0.05 and an options floor brokerage fee of \$0.05. The Exchange proposes to reduce the aggregate equity option transaction fee for Exchange specialists and ROTs from the current level of \$0.30 per contract side to \$0.25 per contract side effective August 1, 2004. Non-member market makers, i.e., market makers registered in the same option class on another option exchange, will continue to be charged the current transaction fee of \$0.30 per contract side. Under the proposed revisions to the Options Fee Schedule, transaction fees charged to non-member market makers for executing options transactions on the Exchange will be separately identified.⁵ The new aggregate equity option transaction fee for Exchange specialists and ROTs will consist of an options transaction fee of \$0.15 per contract side, an options comparison fee of \$0.05 per contract side, and options floor brokerage fee of \$0.05 per contract side.

⁵ Currently, non-member market makers are subject to transaction fees applicable to Exchange specialists and ROTs as set forth in the Options Fee Schedule. Therefore, for clarity, the Exchange proposes to separately set forth transaction fees applicable to non-member market makers in the revised Options Fee Schedule.

In conjunction with the proposed reduction in the aggregate equity option transaction fee for Exchange specialists and ROTs, the fee reductions in the Options Fee Schedule for cabinet trades (“Cabinet Trades”) and reversals and conversions, dividend spreads, box spreads, and butterfly spreads (“Spread Trades”) are terminated for Exchange specialists, ROTs and member broker-dealers.⁶ Effective August 1, 2004, the fee reductions applicable to Exchange specialists, ROTs and member broker-dealers for QQQ options in connection with Cabinet Trades and Spread Trades do not apply.

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

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁸ 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.

⁶ See Securities Exchange Act Release No. 49763 (May 24, 2004), 69 FR 30967 (June 1, 2004).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁰ because it establishes or changes a due, fee, or other charge imposed by Amex. 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, as amended, 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-2004-59 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.

⁹ 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-Amex-2004-59. 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 the filing also will be available for inspection and copying at the principal offices 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 available publicly. All submissions should refer to File Number SR-Amex-2004-59 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.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).