

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50492; File No. SR-Amex-2004-73)

October 5, 2004

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Relating to the Maturity of FLEX 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 August 31, 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 and II below, which Items have been prepared by the Amex.<sup>3</sup> The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. 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 amend Amex Rule 903G(a)(4)(i) to extend the maximum permissible term of FLEX index options to ten years under certain circumstances. The text of the proposed rule change appears below. Proposed new language is italicized.

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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> On September 17, 2004, the Amex filed Amendment No. 1 to the proposal. See letter from Laura M. Clare, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 16, 2004 (“Amendment No. 1”). Amendment No. 1 withdraws the Amex’s request that the Commission waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 204.19b-4(f)(6)(iii).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

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## Rule 903G Terms of FLEX Options

### (a) General Terms

(1) – (3) No Change.

(4) Every FLEX Request for Quotes and every responsive FLEX Quote, as applicable, must satisfy the following contract and transaction specifications:

(i) The maximum term of any FLEX Equity Option shall be three years, provided, however, that a submitting Member may request a longer term to a maximum of five (5) years, and upon assessment by the Flex Post Supervisor that sufficient liquidity exists among Specialists and Registered Options Traders such request may be granted. The maximum term of any FLEX Index Option shall be five (5) years, however, a Submitting Member may request a longer term to a maximum of ten (10) years, and upon assessment by the Flex Post Supervisor that sufficient liquidity exists among Specialists and Registered Options Traders such request may be granted;

(ii) – (iv) No Change.

(b) – (c) No Change.

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## 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 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

Currently, under Amex Rule 903G, “Terms of FLEX Options,” FLEX index options are limited to a maturity of five years. The purpose of the proposal is to allow FLEX index options traded on the Amex to have a maturity beyond five years and up to ten years in certain circumstances.

FLEX index options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. Currently, FLEX index options are limited to a maximum term of five years. The Exchange recently has received requests from broker-dealers to extend the maturity of FLEX index options to ten years. Among the reasons for this request from the broker-dealers is that some of their institutional customers trade or issue securities with five- to ten-year terms and are seeking a method to hedge that long-term risk. Furthermore, the Chicago Board Options Exchange, Inc. (“CBOE”) amended CBOE Rule 24A.4(a)(4)(i) to increase the maximum term of FLEX index options from five to ten years.<sup>6</sup>

The proposed amendment to Amex Rule 903G would permit FLEX index options with terms up to a maximum of ten years when requested by a Submitting Member if the FLEX Post Supervisor determines that sufficient liquidity exists among FLEX index participating members. In other words, the FLEX Post Supervisor will ask FLEX index market-makers and other FLEX index traders (including the Submitting Member) whether any of them are interested in making a two-sided market in the proposed series for the size requested. If the answer is yes, the FLEX

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<sup>6</sup> See Securities Exchange Act Release No. 46815 (November 12, 2002), 67 FR 69775 (November 19, 2002) (order approving File No. SR-CBOE-2002-23).

Post Supervisor will open a Request for Quotes for the proposed series and it will trade pursuant to the provisions of Amex Rule 904G, “FLEX Trading Procedures and Principles.” The liquidity requirement will help to ensure that there is not a proliferation of longer-term FLEX index options series where no interest in trading such options exists.

The Exchange margin requirements for the proposed longer term FLEX index options will be the same margin requirements that currently apply to existing FLEX index options (and other listed options). The margin that will be required for a purchase of the proposed FLEX index options in a margin account will be the same margin that is required for a purchase of other listed long-term options (options with more than nine months until expiration) and will be required to comply with the provisions of Amex Rule 462(d)(2)(D).

According to the Amex, the proposal will allow institutions to use longer-term FLEX index options to protect portfolios from long-term market moves with a known and limited cost. The Amex believes that the proposal will better serve the long-term hedging needs of institutional investors and provide those investors with an alternative to hedging their portfolios with off-exchange customized options and warrants.

By allowing for the extension of the maturity of FLEX index options to ten years in situations where there is demand for a longer-term expiration and where there is sufficient liquidity among FLEX index participating members to support the request, the Amex believes that the proposal will better serve the needs of the Amex’s customers and members who make a market for such customers.

## 2. Statutory Basis

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

Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

Because the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> As required under Rule 19b-4(f)(6)(iii), the Amex provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>11</sup>

#### 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-2004-73 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-2004-73. 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

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<sup>11</sup> The Commission considers the 60-day period within which the Commission may summarily abrogate the proposal under Section 19(b)(3)(C) of the Act to have commenced on September 17, 2004, the date the Amex filed Amendment No. 1 to the proposal.

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-2004-73 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>12</sup>

Margaret H. McFarland  
Deputy Secretary

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