

**SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50852; File No. SR-Amex-2004-94)**

December 14, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Changes in the Exchange's Options Rules to Reflect the Exemption of Standardized Options from the Securities Act of 1933 and Provisions of the Securities Exchange Act of 1934

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 November 24, 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 proposed rule change has been filed by Amex as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend its rules to reflect the Commission's recent adoption of Rule 238 under the Securities Act of 1933 (the "Securities Act")⁵ and Rule 12a-9 under the Act,⁶ which together exempt standardized options issued by a registered clearing agency and traded on a registered national securities exchange or on an a registered national securities association from most of the provisions of the Securities Act and from the registration requirements of Section 12(a) of the Act.⁷ Specifically, Amex proposes to remove the word "prospectus" from Amex Rules 921 and 926. The text of the proposed rule change appears below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rule 921. Opening of Accounts

(a) – (g) No change.

Commentary .01 - .03 No change.

.04 For purposes of Rule 921 (Opening of Accounts), Rule 922 (Supervision of Accounts) and Rule 926 (Delivery of Options Disclosure Document [and Prospectus]), the term writing uncovered short option positions shall include orders involving combinations and any transactions which involve naked writing.

Rule 926. Delivery of Options Disclosure Document [and Prospectus]

(a) No change.

⁵ 17 CFR 230.238.

⁶ 17 CFR 240.12a-9.

⁷ 15 U.S.C. 78l(a).

[(b) Prospectus. Every member and member organization shall deliver a current Prospectus of The Options Clearing Corporation to each customer upon request. The term "current Prospectus of The Options Clearing Corporation" means the prospectus portion of Form S-20 which then meets the delivery requirements of Rule 153b of the Securities Act of 1933.]

[(c)] (b) The written description of risks required by Rule 921(g) shall be in a format prescribed by the Exchange or in format developed by the member organization, provided it contains substantially similar information as the prescribed Exchange format and has received prior written approval of the Exchange.

Commentary .01 - .02 No change.

.03 The Exchange will advise members and member organizations when [a Prospectus or] the Options Disclosure Document is amended.

* * * * *

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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 2, 2003, final Commission Rule 238 under the Securities Act⁸ and Rule 12a-9 under the Act⁹ became effective which exempt standardized options issued by a registered clearing agency and traded on a registered national securities exchange or a registered national securities association from all provisions of the Securities Act, other than the Section 17 antifraud provision, and from the registration requirements of Section 12(a) of the Act.¹⁰

The Amex is proposing to revise its rules that contain references to a prospectus in connection with options trading because, as a registered national securities exchange, Amex represents that all of its listed options fall within the scope of the exemptions provided by the Commission's rules.

2. Statutory Basis

The Exchange asserts that because the proposed rule change reflects final rules of the Commission, it is therefore consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed

⁸ 17 CFR 230.238.

⁹ 17 CFR 240.12a-9.

¹⁰ 15 U.S.C. 78I. See also Securities Act Release No. 8171 and Securities Exchange Act Release No. 47082 (December 23, 2002), 68 FR 188 (January 2, 2003).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition that is 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

The foregoing rule change has become immediately effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder¹⁴ because: (i) it does not significantly affect the protection of investors or the public interest; (ii) it does not impose any significant burden on competition; and (iii) by its terms, it does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

Although Rule 19b-4(f)(6) under the Act¹⁵ requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the Exchange's request. The Exchange has also requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative delay will allow the Exchange to expeditiously update its options rules to accurately reflect the disclosure requirements with respect to providing prospectuses. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.¹⁶

At any time within sixty (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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 No. SR-Amex-2004-94 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-2004-94. 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 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 available publicly. All submissions should refer to File Number SR-Amex-2004-94 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).