

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52297; File No. SR-Amex-2005-080)

August 18, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to Fees in Connection with Merger Spreads and Short Stock Interest Spreads

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 25, 2005, 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 Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The Exchange proposes to amend the Amex Options Fee Schedule to include "merger spreads" and "short stock interest spreads" as qualified spread transactions ("Spread Trades").

The text of the proposed rule change is available from the Exchange's Web site

(<http://www.amex.com>), at the principal office of the Exchange, and at the Commission's Public

Reference Room.

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.

proposed rule change. The text of these statements may be examined at the places specified in Item III 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Amex Options Fee Schedule to include “merger spreads” and “short stock interest spreads” in the definition of “Spread Trades,” which are subject to reduced transaction fees³ for non-member market makers and non-member broker-dealers, and a \$2,000 fee cap per trade, exclusive of any license fees, applicable to specialists, registered options traders (“ROTs”), member broker-dealers (*i.e.*, Firms), non-member market makers, and non-member broker-dealers (*i.e.*, Broker-Dealers).⁴ In addition, the proposal would revise footnote 1 of the Options Fee Schedule to reflect the change of the symbol for the Nasdaq-100 Index Tracking Stock from “QQQ” to “QQQQ.”⁵ Qualified Spread Trades currently include: (a) reversals and conversions, (b) dividend spreads, (c) box spreads, and (d) butterfly spreads.⁶

³ Transaction fees are comprised of options transaction fees, options comparison fees, and options floor brokerage fees. See Amex Options Fee Schedule. See also footnote 4, infra.

⁴ The Commission notes that clarifying changes were made to the purpose section of the proposed rule change. Telephone conversations between Jeffrey P. Burns, Associate General Counsel, Amex, Cyndi N. Rodriguez, Special Counsel, and Johnna B. Dumler, Attorney, Division of Market Regulation, Commission, on August 10 & 18, 2005.

⁵ On December 1, 2004, the Nasdaq-100 Index Tracking Stock transferred its listing from the Amex to the Nasdaq Stock Market, Inc. It now trades on Nasdaq under the symbol QQQQ. The Amex, pursuant to unlisted trading privileges, trades the QQQQ.

⁶ See Amex Options Fee Schedule, footnote 1. See also footnote 4, supra.

The Amex currently imposes charges for transactions in options executed on the Exchange by specialists, ROTs, member broker-dealers, non-member market makers, and non-member broker-dealers. Current per-contract transaction fees for specialists, ROTs, member broker-dealers, non-member market makers, and non-member broker-dealers in equity options are \$0.20, \$0.20, \$0.26, \$0.30, and \$0.26, respectively, per contract side. In connection with index options, current per-contract transaction fees for specialists, ROTs, member broker-dealers, non-member broker-dealers, and non-member market makers are \$0.31, \$0.31, \$0.22, \$0.22, and \$0.31, respectively, per contract side.⁷

A non-member broker-dealer or a non-member market maker that executes a Cabinet Trade or a qualified Spread Trade already would be subject to a fee rebate program. The options transaction fee, the options comparison fee, and the options floor brokerage fee are reduced by \$0.03, \$0.01, and \$0.02, respectively. With respect to a Cabinet Trade or a qualified Spread Trade in a QQQQ option, the options transaction fee, the options comparison fee, and the options floor brokerage fee are reduced by \$0.09, \$0.01, and \$0.02, respectively. In addition, a Cabinet Trade or a Spread Trade by a specialist, a ROT, a member broker-dealer, a non-member market maker, or a non-member broker-dealer also would be subject to a fee cap of \$2,000 per trade, exclusive of the options licensing fee.⁸

A merger spread is defined as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices, followed by the exercise of the resulting long option position. Merger spreads are executed prior to the date that shareholders of record are required to elect their respective form of consideration (i.e., cash or stock).

⁷ See footnote 4, supra.

⁸ Id.

A short stock interest spread is defined as a spread that uses two deep in-the-money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position. This strategy is used to capture short stock interest.

The Exchange submits that merger spreads and short stock interest spreads should qualify as Spread Trades under the Amex Options Fee Schedule for the purpose of attracting additional order flow. The Exchange notes that merger spreads and short stock interest spreads are entered into by professionals with narrow profit margins and, therefore, believes that, by qualifying for reduced and capped fees, these professionals may find the Exchange an attractive venue to execute their trades. The Exchange further believes that qualifying merger spreads and short stock interest spreads as Spread Trades will increase the ability of the Exchange to compete with the other options exchanges for order flow in connection with these options strategies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act⁹ in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members of the exchange 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 would result in 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.

⁹ 15 U.S.C. 78f(b)(4).

III. 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-2005-080 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File No. SR-Amex-2005-080. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. 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 No. SR-Amex-2005-080 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the exchange's facilities. Amending the Amex's Options Fee Schedule to include "merger spreads" and "short stock interest spreads" in the definition of "Spread Trades," thereby rendering these types of trades eligible for reduced and capped fees, is a reasonable measure to improve the Exchange's competitiveness. The Commission notes that similar proposals to reduce and cap fees for certain trades, including those occurring as part of merger spreads and short stock interest spreads, have been adopted by other options exchanges.¹²

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(4).

¹² Most of the proposals by other options exchanges were filed as pilot programs pursuant to Section 19(b)(3)(A) of the Act, rendering the proposals effective upon filing with the Commission. See Securities Exchange Act Release Nos. 51468 (April 1, 2005), 70 FR 17742 (April 7, 2005) (SR-CBOE-2005-18); 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR-Phlx-2005-19); 51657 (May 5, 2005), 70 FR 24851 (May 11, 2005) (SR-Phlx-2005-22); 51787 (June 6, 2005), 70 FR 34174 (June 13, 2005) (SR-PCX-2005-65); and 51828 (June 13, 2005), 70 FR 35475 (June 20, 2005) (SR-CBOE-2005-42). However, one proposal to make the fee cap applicable to short stock interest spread transactions retroactive to January 1, 2005 was filed with and approved by the Commission pursuant to Section 19(b)(2) of the Act. See Securities Exchange Act Release No. 52083 (July 20, 2005), 70 FR 43733 (July 28, 2005) (SR-PCX-2005-67).

The Amex has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register. Granting accelerated approval of the proposal will allow the Amex to immediately implement a fee change that is similar to arrangements already in place at other option exchanges. Furthermore, the Commission believes that granting accelerated approval of the proposed rule change will allow the Amex to implement reasonable fee reductions to various market participants without undue delay. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹³ for approving the proposed rule change prior to the thirtieth day after the publication of notice thereof in the Federal Register.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2005-080), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland
Deputy Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).