

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52312; File No. SR-Amex-2005-063)

August 22, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Elimination of Position and Exercise Limits on NDX 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 9, 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, II, and III below, which Items have been prepared by the Amex. 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 eliminate position and exercise limits for options on the Nasdaq-100 Index (“NDX”). The text of the proposed rule change is available on the Amex’s Web site ([www.amex.com](http://www.amex.com)), at the Amex’s Office of the Secretary, 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 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.

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

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

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

1. Purpose

The Exchange proposes to eliminate position and exercise limits for options on the NDX, a broad-based securities index.<sup>3</sup> In August 2002, the Commission granted permanent approval to an Amex pilot program that eliminated position and exercise limits for options on the Major Market Index (the “XMI”) and the Institutional Index (the “XII”).<sup>4</sup> For similar reasons, the Exchange believes that position and exercise limits for NDX options should equally be eliminated.

In the XMI/XII Permanent Approval Order, the Commission cited several reasons for allowing the Exchange to eliminate position and exercise limits for XMI and XII options. First, the Commission expressed its belief that the enormous capitalization of these indexes and the deep liquid markets for the securities underlying each of these indexes significantly reduced concerns of market manipulation or disruption in the underlying markets. The Amex believes that the NDX is similarly capitalized. As of June 1, 2005, the market capitalization of XMI and XII was \$2.20 trillion and \$6.65 trillion, respectively, while NDX had a market capitalization of

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<sup>3</sup> As described by Amex, the Nasdaq-100 Index is a modified capitalization-weighted index of the 100 largest and most active non-financial domestic and international issues listed on the Nasdaq Stock Market, Inc. A single component security is prohibited from representing more than 24% of the weight of the Index. The Index was developed with a base value of 125 as of February 1, 1985. See Securities Act Exchange Release No. 51884 (June 20, 2005), 70 FR 36973 (June 27, 2005) (File No. SR-Amex-2005-038) (options on the Nasdaq-100 Indexes). See also Securities Exchange Act Release Nos. 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005) (File No. SR-ISE-2005-01); 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994) (SR-CBOE-93-42); and 37659 (September 6, 1996), 61 FR 48722 (September 16, 1996) (SR-CBOE-96-40).

<sup>4</sup> See Securities Exchange Act Release No. 46393 (August 21, 2002), 67 FR 55289 (August 28, 2002) (“XMI/XII Permanent Approval Order”).

\$1.86 trillion. In addition, the average daily trading volume (“ADTV”), in aggregate, for the component securities of the XMI, XII, and NDX from January 1, 2005 through May 31, 2005 was 113.9, 524.8, and 425.8 million shares, respectively. During the same time period, the ADTV for an average single component security of the XMI, XII, and NDX was 5.87, 7.014, and 4.25 million shares, respectively. The ADTV for options on the XMI<sup>5</sup> and NDX was 948 and 45,820 contracts, respectively.

Second, the Commission noted in the XMI/XII Permanent Approval Order that the financial requirements imposed by both the Exchange and the Commission help to address concerns that an Exchange member or its customer(s) may try to maintain an inordinately large unhedged position in options on these indexes. These financial requirements equally apply to NDX options. Under Amex rules, the Exchange also has the authority to impose additional margin upon accounts maintaining underhedged positions, and is further able to monitor accounts to determine when such action is warranted. As noted in the Exchange’s rules, the clearing firm carrying such an account would be subject to capital charges under Rule 15c3-1 under the Act<sup>6</sup> to the extent of any resulting margin deficiency.<sup>7</sup>

The Amex believes that the Commission in the XMI/XII Permanent Approval Order relied substantially on the Exchange’s ability to provide surveillance and reporting safeguards to detect and deter trading abuses arising from the elimination of position and exercise limits on

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<sup>5</sup> Options on the XII are no longer listed and traded on the Exchange.

<sup>6</sup> 17 CFR 240.15c3-1.

<sup>7</sup> See Commentary .03 to Amex Rule 904C. Clarified as per telephone conversation between Ira Brandriss, Special Counsel, and Theodore Venuti, Attorney, Division of Market Regulation, Commission, and Jeffery P. Burns, Associate General Counsel, Amex, on August 16, 2005 (“Telephone Conversation of August 16, 2005”).

XMI and XII options. The Exchange represents that it monitors the trading in NDX options in the same manner as trading in XMI options and that the current Amex surveillance procedures are adequate to continue monitoring NDX options. In addition, the Exchange proposes to impose a reporting requirement on Amex members (other than Amex specialists and registered options traders) and member organizations that trade NDX options. This reporting requirement, which is currently imposed on members and member organizations that trade XMI options, would require each member or member organization that maintains in excess of 100,000 NDX option contracts on the same side of the market, for its own accounts or for the account of customer, to report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in a manner and form required by the Exchange.<sup>8</sup> The Exchange may also specify other reporting requirements, as well as the limit at which the reporting requirement may be triggered.<sup>9</sup>

For consistency, the Exchange also proposes to amend its rules relating to the trading of FLEX broad-based index options to reflect that there shall be no position or exercise limits on NDX options and to adopt the 100,000 contract reporting requirement for NDX FLEX options.<sup>10</sup>

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<sup>8</sup> See Amex Rule 906C.

<sup>9</sup> Pursuant to Amex Rule 906, as referenced in Amex Rule 906C(a). Telephone conversation between Ira Brandriss, Special Counsel, and Theodore Venuti, Attorney, Division of Market Regulation, Commission, and Jeffery P. Burns, Associate General Counsel, Amex, on August 18, 2005.

<sup>10</sup> See Amex Rules 906G and 907G. The text of Rule 907G is not amended by this proposed rule change.

Thus, the provisions in Amex Rule 906G(b) applicable to XMI FLEX options shall also apply to NDX FLEX options.<sup>11</sup>

The Exchange believes that eliminating position and exercise limits for NDX options and FLEX options is consistent with Amex rules relating to similar broad-based indexes and also allows Amex members and their customers greater hedging and investment opportunities.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>13</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 Amex believes that the proposed rule change would impose no 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.

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<sup>11</sup> This would include the authority of the Exchange to impose additional margin on accounts maintaining underhedged positions in these options. Telephone Conversation of August 16, 2005, supra note 7.

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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 such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Amex 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-2005-063 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Amex-2005-063. 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, 100 F Street, NE, 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-2005-063 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>14</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).