

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52493; File No. SR-Amex-2005-087)

September 22, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise its Options Transaction Fees

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, 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 Exchange. Amex has designated the proposed rule change as one establishing or changing a due, fee, or other charge imposed by Amex pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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 from interested persons.

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

Amex proposes to: (i) increase transaction fees for customer and firm orders on index options from the current rate of \$0.22 per contract side to \$0.45 per contract side; (ii) eliminate the fee exception for machine delivered index option orders of less than 30 contracts; (iii) adopt transaction fees of \$0.15 per contract side in connection with customer orders for options on trust

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

issued receipts (“TIRs”) and exchange-traded funds (“ETFs”); and (iv) adopt options licensing fees for firm, non-member market maker, and broker-dealer orders.

The text of the proposed rule change is available on Amex’s Web site (<http://www.amex.com>), at Amex’s principal office, and from 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 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 aspects of such statements.

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

1. Purpose

Amex proposes to amend its Options Fee Schedule to adopt and/or increase certain transaction fees applicable to index options, ETF options, and TIR options. The fee changes proposed in this rule filing will be effective September 1, 2005. The Exchange, for the purpose of clarity and ease of reference, has also added additional references to specific option types throughout its Options Fee Schedule. The types of options set forth in the Options Fee Schedule now will include Equity Options, Exchange-Traded Fund Share Options (excluding QQQQ

Options), QQQQ Options, Trust Issued Receipt (HOLDR) Options, Index Options (in some cases, excluding MNX and NDX Options), and MNX and NDX Options.<sup>5</sup>

Amex currently charges transaction fees for customer and firm orders in index options executed on the Exchange at the total rate of \$0.22 per contract side. The Exchange proposes to increase total transaction fees to \$0.45 per contract side<sup>6</sup> for customer and firm index option orders executed on the Exchange, with the exception of MNX and NDX options, which will remain at the current total rate of \$0.22 per contract side. In addition, the Exchange also proposes to eliminate the fee exception in which machine-delivered index option orders of less than 30 contracts are not subject to transaction fees. This change will provide that all index option orders executed on the Exchange will be subject to transaction fees.

The transaction fees in connection with ETF and TIR options transactions are currently provided under the category “Equity Options,” set forth in the Options Fee Schedule.<sup>7</sup> As a result, customer orders are not charged transaction fees. The one exception is that customer orders are charged a \$0.15 options transaction fee in the iShares S&P 100 Index Fund option. Amex is proposing to levy a transaction fee on customer orders of TIR and ETF options (excluding QQQQ options) at a total rate of \$0.15 per contract side.<sup>8</sup> In order to remain

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<sup>5</sup> Currently, the Options Fee Schedule lists equity options, index options, and options on the S&P 100 iShares.

<sup>6</sup> The \$0.45 per contract side charge would consist of an options transaction fee of \$0.38 per contract side, an options comparison fee of \$0.04 per contract side, and an options floor brokerage fee of \$0.03 per contract side.

<sup>7</sup> As set forth above, ETF and TIR options will now be separately listed in the Options Fee Schedule.

<sup>8</sup> The \$0.15 per contract side charge would consist of an options transaction fee of \$0.08 per contract side, an options comparison fee of \$0.04 per contract side, and an options floor brokerage fee of \$0.03 per contract side.

competitive with the other options exchanges, the Exchange will continue not to charge a transaction fee on customer QQQQ option orders.

Currently, the Exchange does not charge firm, non-member market maker, or broker-dealer orders a fee for transactions in certain licensed options products. The Exchange proposes to levy an options licensing fee on these orders consistent with the licensing fee currently assessed on orders of specialists and registered options traders. The proposed fee varies from \$0.05 per contract side to \$0.20 per contract side, depending upon the particular index-based product that is subject to a license agreement. These fees are set forth in the Options Licensing Fee section of the Options Fee Schedule.

## 2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with the requirements of Section 6(b) of the Act,<sup>9</sup> in general, and Section 6(b)(4) of the Act,<sup>10</sup> in particular, regarding the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using Exchange facilities.

The Exchange asserts that the proposed increase in transaction fees for index, ETF, and TIR options is equitable as required by Section 6(b)(4) of the Act.<sup>11</sup> In connection with the proposed increase in the index option transaction fee for customer and firm orders, the Exchange notes that the proposal will better align its index option fees with its competitors. Customer

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> Section 6(b)(4) states that the rules of a national securities exchange must provide for “the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.” 15 U.S.C. 78f(b)(4).

orders will now also be charged \$0.15 per contract side in connection with ETF and TIR options instead of not being subject to transaction fees. The Exchange believes that this is reasonable and equitable given the fact that the orders of other market participants are subject to transaction charges. The Exchange also maintains that charging an options licensing fee, where applicable, to all market participant orders except for customer orders is reasonable given the competitive pressures in the industry.

The Exchange further believes that eliminating the fee exception for machine-delivered index option orders of less than 30 contracts is equitable and fair since all index option orders will now be potentially subject to transaction charges regardless of the size of the order. In the past, the Exchange and certain market participants have largely subsidized the cost of providing index options. The Exchange now seeks to better align these fees with the cost of providing these products, maintaining the trading floor and systems, and generating revenue to fund Exchange operations.

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

The Exchange believes that the proposed rule change does not 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 proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and Rule 19b-4(f)(2) thereunder,<sup>13</sup> because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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 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-2005-087 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 Number SR-Amex-2005-087. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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 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 Number SR-Amex-2005-087 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>

Jonathan G. Katz  
Secretary

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