

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52686; File No. SR-Amex-2005-099)

October 27, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Adoption of a Cap on Certain Fees for Options on Indexes, Exchange Traded Fund Shares, and Trust Issued Receipts

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 September 30, 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. On October 17, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ On October 21, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and Rule 19b-4(f)(2) thereunder,⁶ 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made clarifying changes to the purpose and statutory basis sections of the proposal and made non-substantive changes to the text of the proposed rule change.

⁴ In Amendment No. 2, the Exchange made clarifying changes to the purpose and statutory basis sections of the proposal and non-substantive changes to the statutory basis section and the text of the proposed rule change.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

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

Amex proposes to adopt a cap on fees for transactions in options on indexes, Exchange Traded Fund Shares ("ETFs"), and Trust Issued Receipts ("TIRs"). The text of the proposed rule change is available on Amex's Web site (<http://www.amex.com>), at Amex's principal office, 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, Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to put in place a cap on certain fees charged to members for customer transactions in options on indexes, ETFs, and TIRs that exceed certain volume levels.⁷ Specifically, the Exchange will provide a volume trade discount to members for customer transactions in the form of a cap on transaction, comparison, and floor brokerage fees in index, ETF, and TIR options. The fee cap will be applied on a trade-by-trade basis. Thus, for customer transactions in index, ETF, and TIR options of more than 2,000 contracts, the options

⁷ Effective September 1, 2005, the Exchange began charging members a fee on customer transactions in ETF and TIR options. The three types of fees -- transaction (\$0.08), comparison (\$0.04), and floor brokerage (\$0.03) -- result in a total fee on ETF and TIR options of \$0.15 per contract side. See Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005).

transaction, comparison, and floor brokerage fees will be charged to the member on the first 2,000 contracts only. As the Exchange does not currently charge members the transaction, comparison, or floor brokerage fees for customer transactions in options on the Nasdaq 100 Shares (symbol: QQQQ), the fee cap being proposed herein will not be extended to options on that ETF.

The purpose of this proposal is to help the Exchange remain competitive in these products by providing a large customer fee cap similar to those applied by other option exchanges to the trading of options on indexes, ETFs, and TIRs. The Exchange proposes that the fee cap proposed in this rule filing be effective on October 3, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, the Exchange believes that, since other options exchanges have applied similar large customer fee caps to the trading of options on indexes, ETFs, and TIRs, the proposed customer fee cap will help the Exchange to remain competitive.

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

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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not solicit or receive any written comments with respect to the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder. Accordingly, the proposal is effective upon filing with the Commission. At any time within 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.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² The effective date of the original proposed rule change is September 30, 2005, the effective date of Amendment No. 1 is October 17, 2005, and the effective date of Amendment No. 2 is October 21, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 21, 2005, the date on which the Exchange submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2005-099 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-2005-099. 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 Number SR-Amex-2005-099 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.¹³

Jonathan G. Katz
Secretary

¹³ 17 CFR 200.30-3(a)(12).