

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52754; File No. SR-Amex-2005-113)

November 9, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Elimination of the Equity Option Transaction Fee Discount for Member Firms Facilitating Customer Orders

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 November 1, 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. The Amex filed the proposed rule change 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

The Amex proposes to eliminate the equity option transaction fee discount for member firms facilitating customer orders.<sup>5</sup> 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

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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).

<sup>5</sup> The Exchange clarified that the option transaction fee discount applies only to equity options. Telephone conversation between Claire P. McGrath, Senior Vice President and General Counsel, Amex, and Jennifer Dodd, Special Counsel, and Ted Venuti, Attorney, Division of Market Regulation, Commission, November 7, 2005 (“November 7, 2005 Telephone Conversation”).

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 Amex 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

In April 2000, the Exchange eliminated its transaction, clearance, and floor brokerage fees for customer equity options transactions.<sup>6</sup> To offset this fee elimination, the Exchange increased certain fees charged for equity options transactions of members. Specifically, the transaction fee for member firm proprietary orders was increased from \$0.07 to \$0.19 per contract side. However, the Exchange determined at that time to keep the transaction fee at \$0.07 for those member firm proprietary orders that facilitated a customer equity options order.<sup>7</sup> A facilitation occurs when a member firm crosses an order for its own account by buying from or selling to an order from its customer. The Exchange chose to keep the fee for these types of transactions lower in order to encourage member firms to continue to send these types of orders to the Exchange.

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<sup>6</sup> See Securities Exchange Act Release No. 42675 (April 13, 2000), 65 FR 21223 (April 20, 2000) (Notice of Filing and Immediate Effectiveness of File No. SR-Amex-00-15).

<sup>7</sup> The Exchange clarified that this \$.07 transaction fee applies only to equity options. See November 7, 2005 Telephone Conversation, supra note 5.

Subsequently, in 2004, the Exchange adopted a monthly cap on fees charged for all equity and index options transactions by member firms including transactions resulting from customer facilitations.<sup>8</sup> Pursuant to the monthly cap, the transaction, comparison, and floor brokerage fees charged to member firms are capped at \$75,000 per month per member firm.<sup>9</sup> The purpose of this monthly cap was to provide an incentive for member firms to transact more volume on the floor of the Exchange, which provides more trading opportunities for floor members thus increasing revenue potential for specialists and registered options traders.

Based on the implementation of the monthly fee cap described above, management now proposes to eliminate the equity option transaction fee discount for member firms facilitating customer orders.<sup>10</sup> Given that member firm fees are currently capped at \$75,000 per month, an additional incentive in the form of a discount for these facilitation transactions is no longer necessary. The elimination of the fee discount also will allow the Exchange to charge the same fee for all types of transactions thereby simplifying the fee schedule and eliminating the need to identify transactions resulting from the member firm facilitation of customer orders.

## 2. Statutory Basis

The Amex believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in

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<sup>8</sup> See Securities Exchange Act Release No. 49217 (February 10, 2004), 69 FR 7828 (February 19, 2004) (Notice of Filing and Immediate Effectiveness of File No. SR-Amex-2004-10). The Exchange clarified that the monthly cap on fees applies to all equity and index options transactions. See November 7, 2005 Telephone Conversation, supra note 5.

<sup>9</sup> The Exchange clarified that the monthly cap applies to transaction, comparison, and floor brokerage fees. See November 7, 2005 Telephone Conversation, supra note 5.

<sup>10</sup> The Exchange clarified that the option transaction fee discount applies only to equity options. See November 7, 2005 Telephone Conversation, supra note 5.

<sup>11</sup> 15 U.S.C. 78f(b).

general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>12</sup> 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 addition, the Amex believes that eliminating the discount for transactions resulting from the member firm facilitation of customer orders in equity options allows for a more consistent application of options transaction fees to all types of orders.

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

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

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 establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange,<sup>13</sup> and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>15</sup> 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

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<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> The Exchange clarified that the proposed rule change would change a fee applicable only to a member. See November 7, 2005 Telephone Conversation, supra note 5.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

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 No. SR-Amex-2005-113 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 No. SR-Amex-2005-113. 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 will also 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 No. SR-Amex-2005-113 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>16</sup>

Jonathan G. Katz  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).