

relating to the effect of the operation of the pilot, is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. Therefore, the Commission is extending the effectiveness of section 8(c)(ii)(B)(2)(c) of the Plan for an additional five months, until June 30, 2004.

#### IV. Conclusion

It is therefore ordered, pursuant to section 11A of the Act<sup>12</sup> and Rule 11Aa3-2 thereunder,<sup>13</sup> that the proposed Plan Amendment No. 8 is approved on a pilot basis until June 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49145; File No. SR-Amex-2004-03]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Extension of a Linkage Fee Pilot Program

January 29, 2004.

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 January 14, 2004, the American Stock Exchange LLC ("Exchange" or "Amex") 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 to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

The Exchange proposes to extend for six (6) months, until July 31, 2004, the current pilot program regarding

transaction fees for trades executed through the intermarket options linkage (the "Linkage") on the Exchange.

The proposed fee schedule is available at the Exchange and at the Commission.

#### 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 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Amex is proposing to extend for six (6) months, until July 31, 2004, the current pilot program establishing Exchange fees for Principal Orders ("P Orders") and Principal Acting As Agent Orders ("P/A Orders") executed through the Linkage. The fees in connection with the pilot program are scheduled to expire on January 31, 2004.<sup>3</sup> The fees charged by the Amex under the pilot program consist of a \$0.26 per contract transaction fee, a \$0.05 comparison fee, and a \$0.05 floor brokerage fee. In addition to the previously approved fees, Amex is proposing to subject incoming P and P/A orders for certain licensed index products to a licensing fee<sup>4</sup> as part of the pilot.<sup>5</sup> These are the same fees charged to specialists and Registered Options Traders ("ROTs") for transactions executed on the Exchange. Consistent with the Linkage Plan, the Amex does not charge for the execution of Satisfaction Orders sent through the Linkage.<sup>6</sup>

<sup>3</sup> See Securities Exchange Act Release No. 47822 (May 9, 2003), 68 FR 27115 (May 19, 2003) (SR-Amex-2003-14).

<sup>4</sup> For example, specialists and registered options traders on the Exchange are subject to a \$.10 per contract fee for transactions in QQQ options.

<sup>5</sup> Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission on January 23, 2004 clarifying that the previous approval of fees for Linkage Orders (see note 3, *supra*) did not include the Options Licensing Fee.

<sup>6</sup> See Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (File No. 4-429).

As was the case in its filing for the original pilot program, the Exchange believes that the existing fee amount for equity options that currently is charged to Exchange specialists and ROTs should apply to executions resulting from Linkage Orders. Market makers from other option exchanges accessing the liquidity of the Exchange by sending P or P/A Orders accordingly pay the same fees applicable to Amex specialists and ROTs for such executions.

Based on the limited experience operating the Linkage, the Exchange believes that an extension of the pilot program for six (6) months until July 31, 2004 is appropriate. During this time, the Exchange intends to study the effect of Linkage fees and prepare to file a permanent Linkage fee proposal.

###### 2. Statutory Basis

The Amex believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>7</sup> regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

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

The Exchange believes that the proposed rule change will impose no 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. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-Amex-2004-03. 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, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78k-1.

<sup>13</sup> 17 CFR 240.11Aa3-2.

<sup>14</sup> 17 CFR 200.30-3(a)(29).

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

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

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 Exchange. All submissions should be submitted by February 26, 2004.

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

After careful consideration, 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,<sup>8</sup> and, in particular, with the requirements of section 6(b) of the Act<sup>9</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>10</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Exchange's Linkage fee pilot program until July 31, 2004 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,<sup>11</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Amex and the Commission further consider the appropriateness of Linkage fees.

#### V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-Amex-2004-

03) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49153; File No. SR-CBOE-2003-50]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc., Relating to a Pilot Program for Quotation Spreads in Hybrid Classes

January 29, 2004.

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 October 31, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" 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 CBOE submitted Amendment No. 1 to the proposed rule change on January 7, 2004.<sup>3</sup> The CBOE has submitted the proposed rule change under section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</sup> The Commission is

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See letter from Stephen Youhn, CBOE, to Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, dated January 6, 2004 ("Amendment No. 1"). In Amendment No. 1, the CBOE proposed to limit its proposed rule change to 200 options classes trading on the CBOE's Hybrid Trading System for a pilot period of six months. In addition, the CBOE agreed to provide the Commission with a pilot program report comparing the Average Quote Width Analysis ("AQWA") scores for each pilot program option prior to the commencement of the pilot with the AQWA scores for each pilot program option during the pilot period. Finally, the CBOE amended Items 7 and 8 of its Form 19b-4 to designate the filing as "non-controversial" pursuant to Rule 19b-4(f)(6) and to indicate that its proposed rule change is substantially similar to an approved pilot program of the International Securities Exchange, Inc.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> For purposes of determining the effective date and abrogation date of this filing, the Commission considers January 7, 2004, the date on which the

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE proposes to amend CBOE Rule 8.7, "Obligations of Market Makers," to adopt a six-month pilot program through June 29, 2004 that would permit quote spread parameters of up to \$5 on up to 200 option classes traded on the CBOE's Hybrid Trading System ("Hybrid"). The text of the proposed rule change appears below. Proposed new language is *italicized*.

#### Rule 8.7 Obligations of Market Makers

(a) No change.

(b)

(i)-(iii) No change.

(iv) To price options contracts fairly by, among other things, bidding and/or offering so as to create differences of no more than 0.25 between the bid and offer for each option contract for which the bid is less than \$2, no more than \$0.40 where the bid is at least \$2 but does not exceed \$5, no more than \$0.50 where the bid is more than \$5 but does not exceed \$10, no more than \$0.80 where the bid is more than \$10 but does not exceed \$20, and no more than \$1 where the bid is more than \$20, provided that the appropriate Market Performance Committee may establish differences other than the above for one or more options series. The bid/ask differentials stated above shall not apply to in-the-money series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the quotation on the primary market of the underlying security.

*(A) For a six month period expiring on August 5, 2004, the Exchange may designate options on up to two hundred (200) underlying securities that may be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid. The \$5 quote widths shall only apply to classes trading on the Hybrid system and only following the opening rotation in each security i.e., the widths specified in paragraph (b)(iv) above shall apply during opening rotation.*

CBOE filed Amendment No. 1, to be the filing date of this proposed rule change.

<sup>8</sup> In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> *Id.*