

and other quantitative information such as daily trading volume.⁴¹

Based on the representations made in the Amex proposal, the Commission believes that pricing and other important information about each Fund is adequate.

D. Listing and Trading

The Commission finds that adequate rules and procedures exist to govern the listing and trading of VIPER Shares. VIPER Shares will be deemed equity securities subject to Amex rules governing the trading of equity securities, including, among others, rules governing trading halts, responsibilities of the specialist, account opening and customer suitability requirements, and the election of stop and stop limit orders.

In addition, the Funds will be subject to Amex listing and delisting/suspension rules and procedures governing the trading of Index Fund Shares on the Amex.⁴² As the Commission has noted previously,⁴³ the listing and delisting criteria for VIPER Shares should help to ensure that a minimum level of liquidity will exist in each of the Funds to allow for the maintenance of fair and orderly markets. Accordingly, the Commission believes that the rules governing the trading of VIPER Shares provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

As noted above, a minimum of 100,000 VIPER Shares will be required to be outstanding for each Fund at the start of trading. The Commission believes that this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading.⁴⁴

E. Surveillance

The Commission finds that Amex has adequate surveillance procedures to monitor the trading of the proposed VIPER Shares, including concerns with specialists purchasing and redeeming Creation Units. The Amex represents that it will rely on existing surveillance procedures governing Index Fund Shares, and in addition, that the exchange and MSCI prohibit the distribution of material, non-public information by their employees that

could undermine a fair and orderly market. In addition, the Exchange and MSCI also have a general policy prohibiting the distribution of material, non-public information by their employees. Because MSCI is a broker-dealer that maintains the Target Indices, it is imperative that a functional separation exist, such as a firewall between the trading desk of the broker-dealer and the research persons responsible for maintaining the Target Indices. MSCI has represented that such a firewall exists.

F. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁴⁵ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposed rule change is consistent with the listing and trading standards in Amex Rule 1000A *et seq.* (Index Fund Shares), and the Commission has previously approved similar products.⁴⁶ The Commission does not believe that the proposed rule change raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,⁴⁷ to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁸ that the proposed rule change (SR-Amex-2004-16), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁹

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49722; File No. SR-Amex-2004-29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to a Reduction in ETF Transaction Fees for Specialists and Registered Options Traders

May 18, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4² thereunder, notice is hereby given that on April 30, 2004, 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. On May 13, 2004, the Amex filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, has been filed by the Amex as establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2)⁵ thereunder, 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.

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

The Exchange proposes to reduce transaction fees for specialists and registered options traders (“ROTs”) in connection with transactions in exchange-traded fund shares (“ETFs”). The text of the proposed rule change, as amended, is available at the Office of the Secretary, Amex, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jeffrey Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated May 12, 2004 (“Amendment No. 1”). Amendment No. 1 corrects a typographical error in the proposed rule language.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

⁴¹ See *supra* “Availability of Information about VIPER Shares.”

⁴² See Amex Rule 1002A.

⁴³ See, e.g., Release No. 34-44990, *supra* note 35.

⁴⁴ This minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of Portfolio Depository Receipts and Index Fund Shares.

⁴⁵ 15 U.S.C. 78s(b)(2).

⁴⁶ See, e.g., Release No. 34-44990, *supra* note 35.

⁴⁷ 15 U.S.C. 78s(b)(5).

⁴⁸ *Id.*

⁴⁹ 17 CFR 200.30-3(a)(12).

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

The Amex proposes to reduce transactions charges imposed on specialists and ROTs in connection with

Exchange transactions in ETFs. For purposes of the Exchange's fee schedule, ETFs include portfolio depositary receipts, index fund shares and trust issued receipts. The Exchange's current ETF transaction charges for specialists and ROTs are set forth in the following table:

I.—TRANSACTION CHARGES FOR ETFs WITHOUT UNREIMBURSED FEES TO A THIRD PARTY

	Specialists	Registered traders
Per Share Side	\$0.0055 (\$.55 per 100 shares)	\$0.0060 (\$.60 per 100 shares).
Subject to the following per trade maximums: ..	\$300 (54,545 shares)	\$300 (50,000 shares).

II.—TRANSACTION CHARGES FOR ETFs FOR WHICH THE EXCHANGE PAYS UNREIMBURSED FEES TO A THIRD PARTY

	Specialists	Registered traders
Per Share Side	\$0.0059 (\$.59 per 100 shares)	\$0.0062 (\$.62 per 100 shares).
Subject to the following per trade maximums: ..	\$300 (50,847 shares)	\$300 (48,387 shares).

Transaction charges for specialists are capped at \$700,000 per month per specialist unit.

The proposed fee reductions are set forth below in the revised ETF transaction fee schedule:

* * * * *

I.—PROPOSED TRANSACTION CHARGES FOR ETFs WITHOUT UNREIMBURSED FEES TO A THIRD PARTY

	Specialists	Registered traders
Per Share Side	\$0.0044 (\$.44 per 100 shares)	\$0.0048 (\$.48 per 100 shares).
Subject to the following per trade maximums: ..	\$300 (68,181 shares)	\$300 (62,500 shares).

II.—PROPOSED TRANSACTION CHARGES FOR ETFs FOR WHICH THE EXCHANGE PAYS UNREIMBURSED FEES TO A THIRD PARTY

	Specialists	Registered traders
Per Share Side	\$0.0048 (\$.48 per 100 shares)	\$0.0050 (\$.50 per 100 shares).
Subject to the following per trade maximums: ..	\$300 (62,500 shares)	\$300 (60,000 shares).

Proposed transaction charges for specialists are capped at \$500,000 per month per specialist unit.

maintain existing floor operations of member firms at the Amex.

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, as amended.

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

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁷ and subparagraph (f)(2) of Rule 19b-4⁸ thereunder. At any time within 60 days of the filing of the proposed rule

The Exchange submits that the proposal would be effective on May 1, 2004 and constitutes a 20% reduction (both specialists and ROTs) for ETF transaction charges without reimbursed fees to third parties and an 18.64% reduction for specialists and a 19.35% reduction for ROTs for ETF transaction charges for which the Exchange pays unreimbursed fees to a third party.

2. Statutory Basis

The Exchange believes that the proposed fee change, as amended, is consistent with Section 6(b)(4) of the Act⁶ 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 does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

The Exchange believes that a reduction in ETF transaction fees is warranted in order to provide greater incentives for specialists and ROTs to competitively quote their markets and attract additional order flow. In addition, the Exchange also believes that the reduction would help to

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

change, as amended, 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, 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2004-29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-29. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 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 Number SR-Amex-2004-29 and should be submitted on or before June 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49723; File No. SR-CBOE-2004-26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Remove From the Exchange Rules References to Certain Indexes and Trading Permits

May 18, 2004.

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 May 10, 2004, 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 CBOE. Pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ CBOE has designated this proposal as non-controversial, which renders the proposed rule change 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 Exchange proposes to remove from its rules references to "Options Trading Permits" and "IPC Permits" as these permits are no longer valid on the Exchange. The Exchange also proposes to remove from its rules references to the "IPC Index." In addition, the Exchange is making a housekeeping change to Appendix A of Chapters XLVII to XLIX. The text of the proposed rule change is available at CBOE and at the Commission.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

In its filing with the Commission, CBOE 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. CBOE 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 Exchange is removing from its membership rules references to certain permits that granted the holders of the permits certain trading rights on the Exchange. Specifically, the Exchange is proposing to remove from its rules references to "IPC Permits" and related references and "Options Trading Permits" as these permits either are no longer valid on the Exchange or have since expired pursuant to their terms.

The Exchange represents that it previously entered into a license agreement with Bolsa Mexicana de Valores ("Bolsa") pursuant to which Bolsa licensed the Exchange to trade options on the *Indice de Precios y Cotizaciones* ("IPC"). CBOE states that in consideration for the grant of this license, it agreed to issue IPC permits to Bolsa members to trade options on the IPC and amended its membership rules to provide for the issuance of IPC permits that granted to the holder of an IPC permit limited trading rights. CBOE represents that since it never issued any IPC permits and because IPC Index options are no longer listed on the Exchange, the Exchange is removing all references in its rules relating to the IPC Index and IPC permits.

In addition, the Exchange states that in 1997, it entered into an agreement (the "NYSE Agreement") with the New York Stock Exchange, Inc. ("NYSE") whereby the NYSE transferred its options business to the Exchange. The Exchange states that in connection with the transfer of NYSE's options business, it made available to the individuals who had traded options on the NYSE a certain number of Options Trading Permits ("OTPs"), whose rights and obligations are set forth in Rule 3.27, "Options Trading Permits". On April 27, 2004, in accordance with the terms of the NYSE Agreement, the OTPs