

staff believed that 18 months was an inappropriately long period of time to regain compliance in view of the nature and severity of the particular continued listing deficiency. For example, companies which are delinquent with respect to SEC filing obligations, facing severe short-term liquidity and financial impairment, or present potential public interest concerns,<sup>6</sup> or deficiencies with respect to the requisite distribution requirements that make the security unsuitable for auction market trading, have typically been required to return to compliance with the impacted continued listing standards within 30 to 90 days. In some cases, a particular company has been given staggered extension deadlines (*i.e.*, the company must resolve its SEC filing deficiency and short-term financial impairment issues within 30 days, but is given 18 months to increase its shareholders equity to the required level).

Although none of the listed companies that have been subject to the shortened extension periods have challenged the staff's authority to impose a shorter period, some have raised questions about it. Accordingly, the Exchange is proposing to revise section 1009 of the Company Guide to clarify that the staff may establish a time period of less than 18 months for a listed company to regain compliance with some or all of the continued listing standards, if the nature and circumstances of the company's particular continued listing status warrant such shorter time period. In addition, the Exchange proposes that corresponding revisions be made to the applicable submission and review deadlines.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to

<sup>6</sup> Public interest concerns could include, for example, situations where the company, a corporate officer or affiliate is the subject of a criminal or regulatory investigation or action; or the company's auditors have resigned and withdrawn their most recent audit opinion raising concerns regarding the internal controls and financial reporting process. However, other situations not specifically enumerated could also raise public interest concerns regarding the appropriateness of a particular company's continued listing.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### 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 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, 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-2003-110. The 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 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 submissions should be submitted by March 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-5377 Filed 3-9-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49358; File No. SR-Amex-2004-09]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to a Per Trade Options Fee Cap

March 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on January 30, 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, II, and III below, which Items have been prepared by Amex. On March 1, 2004, Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>9</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 Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 27, 2004 ("Amendment No. 1"). In Amendment No. 1, Amex clarified that proposal is intended to apply the reduced transaction fees set forth in footnote 1 to the Options Fee Schedule to member broker-dealers and revised the proposed rule text to conform it to recent changes made to the Options Fee Schedule. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on March 1, 2004, the date Amex filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

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

Amex proposes to amend its Options Fee Schedule to adopt an options fee cap of \$2,000 per trade, exclusive of the options licensing fee, for specialists, registered options traders ("ROTs"), member broker-dealers, and non-member broker-dealers in connection with cabinet trades and certain options strategies. Amex also proposes to apply reduced transaction fees set forth in footnote 1 to the Options Fee Schedule to member broker-dealers.

The text of the proposed rule change is available at 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, 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 IV below. 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

#### I. Purpose

Amex is proposing to impose an options fee cap of \$2,000 per trade, exclusive of the options licensing fee, for specialists, ROTs, member broker-dealers, and non-member broker-dealers in connection with cabinet trades<sup>4</sup> and the following options strategies: (a) reversals and conversions;<sup>5</sup> (b) dividend spreads;<sup>6</sup> (c) box spreads;<sup>7</sup> and (d) butterfly spreads<sup>8</sup> (collectively "Spread

<sup>4</sup> See Amex Rule 959.

<sup>5</sup> A "conversion" is a strategy in which a long put and a short call with the same strike price and expiration date are combined with long underlying stock to lock in a nearly risk-less profit. A "reversal" is a strategy in which a short put and long call with the same strike price and expiration date are combined with short stock to lock in a nearly risk-less profit.

<sup>6</sup> A "dividend spread" is any trade done within a defined time frame in which a dividend arbitrage can be achieved between any two (2) deep-in-the-money options.

<sup>7</sup> A "box spread" is a spread strategy that involves a long call and short put at one strike price as well as a short call and long put at another strike price. This is a synthetic long stock position at one strike price and a synthetic short stock position at another strike price.

<sup>8</sup> A "butterfly spread" is an option strategy that has both limited risk and limited profit potential,

Trades"). Cabinet trades and Spread Trades are currently subject to reduced fees, exclusive of license fees, as a result of a fee rebate program.<sup>9</sup>

Pursuant to the Options Fee Schedule, the Exchange imposes charges for transactions in options executed on the Exchange by specialists, ROTs, member broker-dealers, and non-member broker-dealers. Current charges for specialist and ROT transactions in equity options and index options are \$0.36 and \$0.31, respectively, per contract side. For member broker-dealers and non-member broker-dealers, the current charge for equity options and index options is \$0.26 and \$0.18, respectively, per contract side. The current fees for specialists, ROTs, and non-member broker-dealers in connection with cabinet trades and Spread Trades have previously been reduced, exclusive of the options licensing fee, as a result of a fee rebate program. These transactions are currently subject to reduced fees so that the options transaction fee, the options comparison fee, and the options floor brokerage fee are reduced by \$0.09, \$0.01, and \$0.02, respectively. The current proposal will apply this fee rebate program to member broker-dealers.

The Exchange is proposing to adopt a maximum fee amount that may be collected on a per trade basis from specialists, ROTs, member broker-dealers, and non-member broker-dealers in connection with cabinet trades and the Spread Trades. The proposed maximum fee amount is \$2,000 per trade.<sup>10</sup>

The Exchange believes that the proposed fee cap in connection with cabinet trades should encourage specialists and ROTs to provide liquidity as an accommodation to investors seeking to close out worthless option positions. Amex also believes that capping fees should also encourage specialists and ROTs to provide liquidity for reversals, conversions, dividend spreads, box spreads, and butterfly spreads. Amex notes that these financing strategies are entered into by professionals with narrow profit margins. Therefore, by capping fees, Amex believes that such professionals

constructed by combining a bull spread and a bear spread having the same expiration date for all options. Three (3) strike prices are involved, with the lower two strikes being utilized in the bull spread and the higher two (2) strikes in the bear spread. The strategy may be established with either puts or calls.

<sup>9</sup> See Securities Exchange Act Release Nos. 46026 (June 4, 2002), 67 FR 40034 (June 11, 2002), and 48219 (July 23, 2003), 68 FR 44823 (July 30, 2003).

<sup>10</sup> Amex represents that the current rebate program remains unchanged for transactions below the \$2,000 maximum.

may find the Exchange an attractive venue to execute their trades.

Amex believes that the ability to compete with the other options exchanges for order flow based on pricing is essential for the continued vitality of the Exchange's options market. In addition, Amex believes that pricing changes must be done on a timely basis in order to be beneficial.

#### 2. Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,<sup>11</sup> in general, and with 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 other persons using its facilities.

### 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.

### 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>13</sup> and subparagraph (f)(2) of Rule 19b-4<sup>14</sup> thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of the filing of the proposed rule change,<sup>15</sup> 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.<sup>16</sup>

## 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. Persons making written submissions should file six copies thereof with the

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

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

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> See note 3 *supra*.

<sup>16</sup> See 15 U.S.C. 78s(b)(3)(C).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-Amex-2004-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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 Amex. All submissions should be submitted by March 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-5378 Filed 3-9-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49354; File No. SR-ISE-2004-03]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Elimination of the Marketing Fee

March 2, 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 February 23, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the ISE has prepared. 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 amend its Schedule of Fees to eliminate the Marketing Fee.

#### 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 ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE 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 proposes to amend its Schedule of Fees to eliminate the Marketing Fee. The Marketing Fee is a \$.10 per contract execution fee that is charged to a market maker for each contract it executes against a public customer. The fee was used to support Exchange-wide marketing efforts.<sup>3</sup> The fee is currently waived until June 30, 2004.<sup>4</sup> The Exchange is proposing to eliminate this fee to reduce its fees for members; the Exchange will support marketing efforts out of general revenues.

###### 2. Statutory Basis

The Exchange believes that this proposal to amend its schedule of dues, fees and charges would be an equitable allocation of reasonable fees among ISE members, and that the proposal is consistent with Section 6(b) of the Act<sup>5</sup>

<sup>3</sup> The Commission notes that the ISE's marketing fee received approval by the Commission for implementation in 2001. See Securities Exchange Act Release No. 44101 (March 26, 2001), 66 FR 17590 (April 2, 2001) (SR-ISE-01-06).

<sup>4</sup> The Commission notes that the marketing fee was first waived in SR-ISE-2002-16. See Securities Exchange Act Release No. 46189 (July 11, 2002), 67 FR 47587 (July 19, 2002). The waiver has subsequently been extended three times. See Securities Exchange Act Release Nos. 46976 (December 9, 2002), 67 FR 77116 (December 16, 2002) (SR-ISE-2002-26); 48219 (July 3, 2002), 68 FR 41409 (July 11, 2002) (SR-ISE-2003-16); and 48955 (December 18, 2003), 68 FR 75007 (December 29, 2003) (SR-ISE-2003-31).

<sup>5</sup> 15 U.S.C. 78f(b).

and furthers the objectives of Section 6(b)(4) of the Act.<sup>6</sup>

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

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

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

The ISE neither solicited nor received written comments on this proposal.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and Rule 19b-4(f)(2)<sup>8</sup> thereunder. Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the 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. 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*. All comment letters should refer to File No. SR-ISE-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 hard copy or by e-mail, but not by both methods. 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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</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.