

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45211; File No. SR-Amex-2001-98]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC to Reinstate and Increase Options Transaction Charges

December 28, 2001.

On November 8, 2001, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change to reinstate and increase options transaction charges in select products. In April 2000, the Exchange eliminated transaction, floor brokerage, and clearance charges for customer equity option trades. At that time, fees charged to customers for transactions in index options remained unchanged at \$0.10 per contract. The Exchange proposes to increase the fees charged to (1) customers for transactions in index options from \$0.10 to \$0.15; and (2) member firms and non-member broker dealers for transactions in index options from \$0.11 to \$0.15. In addition, the Exchange is proposing to reinstate a customer transaction charge for equity options on the S&P 100 iShares. The transaction charge will be \$0.15 per contract side.

The proposed rule change was published for comment in the **Federal Register**.<sup>2</sup> The Commission received no comments on the proposal.

The Commission finds the proposed rule change is consistent with section 6(b) of the Act<sup>3</sup> in general and furthers the objectives of section 6(b)(4) of the Act<sup>4</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.<sup>5</sup> According to the Amex, these increases are necessary due to the increasing costs incurred in developing and implementing new technology for the fast and efficient trading of options.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the

proposed rule change (SR-Amex-2001-98) be, and hereby is, approved.<sup>7</sup>

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

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45177; File No. SR-Amex-2001-103]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to a Utilization Fee for the 'Smart' Wiring Program

December 20, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 10, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III 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.

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

The Exchange proposes to increase floor fees by assessing a \$15.00 monthly utilization fee on registered options traders operating on the Harry's floor of the Exchange (new trading facility on the first floor of the 86 Trinity Exchange building) to enable registered options traders to hard-wire their handheld computers from certain locations in the Harry's floor.

#### 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

The Exchange is proposing to assess a \$150.00 monthly utilization fee (regardless of amount of days service is utilized during a month) on registered options traders operating on the Harry's floor of the Exchange to recover the capital investment, as well as the implementation and operating costs, for the 'Smart' Wiring program.

'Smart' Wiring involves the installation of 'Smart' wired outlets throughout the Harry's floor to enable registered options traders to change their location within that trading floor from day to day by easily connecting into a 'Smart' outlet. The need for this program arose because of the desire of users to be able to move to any location in the trading crowd and get connectivity to their member firm's servers. Through the 'Smart' Wiring connection, registered options traders receive analytical data and other information from their member firms which assists them in making better markets. 'Smart' Wiring is not part of the Exchange's order routing or other trading system.

The 'Smart' Wiring program is being implemented in the Harry's floor first, since that space requires less work than the other Amex floors to effect implementation of the program. The Exchange will monitor the program and, based on its experience with the program as well as the demand for the service, the Exchange may decide to extend the service on the Harry's floor by adding additional 'Smart' outlets and/or extend new service to the other Amex floors.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>3</sup> in general and furthers the objective of Section 6(b)(4) of the Act<sup>4</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.

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

<sup>2</sup> Securities Exchange Act Release No. 45068 (Nov. 11, 2001), 66 FR 58765 (Nov. 23, 2001).

<sup>3</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-30(a)(12).

<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. 78f(b).

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

### *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*

Amex has neither solicited nor received written comments with respect to the proposed rule change.

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

Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from December 11, 2001, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(g)(6) thereunder.<sup>6</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such proposed 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. 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR-Amex-2001-103 and should be submitted by January 29, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-45221; File No. SR-CBOE-99-45]**

### **Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Clarify Certain Aspects of Interpretation and Policy .02 to Exchange Rule 6.8**

January 2, 2002.

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 19, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 2 to the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the CBOE.<sup>3</sup> On December 28, 1999, the proposed rule change was published for comment in the **Federal Register**.<sup>4</sup> On October 30, 2000, the CBOE filed Amendment No. 1 to the

<sup>7</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 Joanne Moffic-Silver, General Counsel and Corporate Secretary, Legal Department, CBOE to Stephen M. Cutler, Director, Division of Enforcement, Commission, Annette L. Nazareth, Director, Division of Market Regulation ("Division"), Commission, and Lori A. Richards, Director, Office of Compliance, Inspections and Examination, Commission, dated November 19, 2001 ("Amendment No. 2"). In Amendment No. 2, the CBOE proposes to set forth specific, objective criteria describing the circumstances in which Exchange Floor Officials may determine that quotes from one or more markets in one or more particular classes of options are not reliable and, thus, may be excluded from CBOE's Retail Automatic Execution System ("RAES") determination of the National Best Bid and Offer ("NBBO").

<sup>4</sup> See Securities Exchange Act Release No. 42256 (December 20, 1999), 64 FR 72707 (December 28, 1999).

proposed rule change.<sup>5</sup> Amendment No. 2 supersedes and replaces Amendment No. 1 in its entirety.<sup>6</sup> The Commission is publishing this notice to solicit comments on Amendment No. 2 to 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 change its Interpretation and Policy .01 to CBOE Rule 6.8 (RAES Operations) in order to add specific, objective criteria describing the circumstances in which Exchange Floor Officials may determine that quotes from one or more markets in one or more particular classes of options are not reliable, and, thus, may be excluded from CBOE's Retail Automatic Execution System ("RAES") determination of the National Best Bid and Offer ("NBBO"). The text of Amendment No. 2 to the proposed rule change is provided below. Changes to the current rule text are in *italics*; deletions from the current rule text are in *brackets*.

#### *RAES Operations in Equity Options*

Rule 6.8 [No change]

\* \* \* Interpretation and Policy

.01 [No change]

.02 (a) Orders to buy or sell options that are multiply traded in one or more markets in addition to the Exchange will not be automatically executed on RAES at prices inferior to the current best bid or offer in any other market, as such best bids or offers are identified in RAES.

*Under circumstances where two Floor Officials determine that quotes from one or more particular markets in one or more classes of options are not reliable, the Floor Officials may direct the senior person in charge of the Exchange's Control Room to exclude the unreliable quotes from the RAES determination of the NBBO in the particular option class(es).*

*I. Two Floor Officials may determine quotes in one or more particular options classes in a market are not reliable under any of the following circumstances:*

*(a) Quotes Not Firm: A market's quotes in a particular options class are not firm based upon direct communication to the Exchange from*

<sup>5</sup> See letter from Christopher R. Hill, Attorney II, Legal Department, CBOE to Terri Evans, Special Counsel, Division, Commission, dated October 24, 2000 ("Amendment No. 1").

<sup>6</sup> Telephone conversation between Patrick Sexton, Legal Division, CBOE, and Deborah Flynn, Assistant Director, Division, Commission, on December 14, 2001.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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