

public interest. The Commission also finds that that the proposed rule change is also consistent with the National Market System goals set forth in section 11A(a)(1)(C) of the Act<sup>13</sup> in that it will enhance economically efficient execution of securities transactions.

The Commission believes that requiring Amex brokers and ROTs to employ BARS/HHT in the manner described above should improve efficiency, minimize risk, and help create more liquid markets on the Exchange. BARS allows member firms to manage their order flow more efficiently by giving them a choice of sending orders electronically to their booths for further action or sending orders directly to the specialist post. BARS/HHT furthers the automation of the order delivery process by allowing floor brokers to communicate with their booths via HHTs. The Commission believes that BARS/HHT will improve the ability of brokers to represent equity and option orders and of ROTs to make markets.

The Commission also believes that the proposed amendments to Amex Rules 153 and 180 are consistent with the Act because they will clarify members' responsibilities under the Exchange's audit trail rules. Furthermore, these amendments will require the systematization of any order that has not already been systematized, which should make order processing more efficient and increase the ability of the Exchange and its members to construct an audit trail.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Amex-00-60) and Amendment Nos. 1 and 2 thereto are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45783; File No. SR-Amex-2002-11]

### 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 Options Trading Fees

April 18, 2002.

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 February 28, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 16, 2002, the Exchange 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.

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

The Exchange proposes to revise a recently adopted options trading fee, as described herein.<sup>4</sup> The text of the proposed rule change 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 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

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

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

<sup>3</sup> See letter from Clair P. McGrath, Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 12, 2002 ("Amendment No. 1"). In Amendment No. 1, the Amex amended the proposal to incorporate the Exchange's reasons for not charging specialists and registered options traders the recent increase in transaction, comparison and floor brokerage fees for accommodation trades or trades executed pursuant to reversals and conversions, dividend spreads, and box spreads. Amex also provided an explanation of the December 1, 2001 implementation date for the elimination of the fee cap.

<sup>4</sup> Under File No. SR-Amex-2002-12, the Exchange seeks to impose the revised options trading fees, as described in this current proposal, as of December 1, 2001. See Securities Exchange Act Release No. 45784 (April 18, 2002).

statements may be examined at the places specified in Item IV 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 Exchange recently (1) increased transaction, comparison and brokerage fees for all specialist and registered options trader transactions in both equity and index options;<sup>5</sup> and (2) eliminated the cap on the number options contracts subject to the transaction, comparison and floor brokerage fees on a given day.<sup>6</sup> This fee increase went into effect on December 1, 2001.<sup>7</sup>

The Exchange also determined, at the time, that accommodation trades (also known as "Cabinet Trades")<sup>8</sup> and trades occurring as part of certain types of strategies would continue to be eligible for the cap on that portion of the transaction, option clearance and floor brokerage fees that represented the increase in fees. Thus, for contracts executed in excess of 3,000 on a given day, the transaction fee increase of \$0.09, the options comparison fee increase of \$0.01 and the floor brokerage fee increase of \$0.02 were to be reimbursed. Transaction, options comparison and floor brokerage fees were to continue to be charged for only the first 3,000 contracts executed as an accommodation trade or pursuant to one of the following strategies: (1) Reversals

<sup>5</sup> The options fees were increased as follows: (1) The Options Transaction Fee per contract side was increased from \$0.17 to \$0.26 for equity options and from \$0.12 to \$0.21 for index options; (2) the options comparison fee was increased from \$0.04 to \$0.05 per contract side; and (3) the floor brokerage fee per contract side was increased from \$0.03 to \$0.05.

<sup>6</sup> See Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001) (notice of filing and immediate effectiveness of File No. SR-Amex-2001-101).

<sup>7</sup> See Securities Exchange Act Release No. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002) (order approving File No. SR-Amex-2001-102). The Exchange represents that it intended to eliminate the fee cap as of October 1, 2001. However, due to a delay in the reprogramming of the changes for the Exchange's Finance Division, the fee cap elimination did not go into effect until December 1, 2001.

<sup>8</sup> See Exchange Rule 959 for a description of an accommodation trade.

<sup>13</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

and conversions;<sup>9</sup> (2) dividend spreads;<sup>10</sup> and (3) box spreads.<sup>11</sup>

The Exchange proposes not to charge the recent increase in transaction, comparison and floor brokerage fees (a total increase of \$0.12) to the entire number of contracts executed as an accommodation trade or pursuant to one of the above strategies. Thus, specialist and registered traders will pay a (1) transaction fee of only \$0.17 for equity options and \$0.12 for index options; (2) comparison fee of \$0.04; and (3) floor brokerage fee of \$0.03 for contracts executed as an accommodation trade or pursuant to a reversal or conversion, a dividend spread or a box spread.

The Exchange proposes not to apply the fee increases to accommodation transactions in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity as an accommodation to investors seeking to close out worthless option positions. In addition, the Exchange proposes not to apply the fee increases to reversals, conversions, dividend spreads and box spreads in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity for these types of financing strategies. The Exchange represents that these financing strategies are usually entered into by professionals whose profit margins are generally narrow. In addition, the Exchange states that it has determined to keep fees for accommodation transactions and spread strategies comparable with the fees charged by other options exchanges for these types of transactions.

The Exchange represents that its billing system is unable to distinguish among these types of transactions; therefore, it has developed a manual procedure. Specifically, within thirty calendar days of the particular transaction date, a Fee Reimbursement Form must be completed and submitted to the Exchange. Upon acceptance, the Exchange will deliver to that member's clearing firm a reimbursement check in

<sup>9</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 riskless 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 riskless profit.

<sup>10</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>11</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.

the amount of the transaction, clearance and brokerage fee increases (a total of \$0.12) charged on contracts executed pursuant to an accommodation trade or one of the strategies described above.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>12</sup> in general and furthers the objectives of section 6(b)(4) of the Act<sup>13</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.

### 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, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and Rule 19b-4(f)(2)<sup>15</sup> thereunder because it establishes or changes a due, fee, or charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, 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 Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

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

<sup>13</sup> 15 U.S.C. 78f(b)(4).

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

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

<sup>16</sup> For purposes of calculating the 60 day abrogation period, the Commission considers the period to commence on April 16, 2002, the date that the Amex filed Amendment No. 1.

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. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2002-11 and should be submitted by May 17, 2002.

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

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45791; File No. SR-BSE-2001-08]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to Competing Specialists and the Execution of Directed Agency Orders

April 19, 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 December 21, 2001, the Boston Stock Exchange, Inc. ("BSE" 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. On April 19, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit

<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.

<sup>3</sup> See letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated April 18, 2002 ("Amendment No. 1"). In Amendment No. 1, the BSE removed from the proposed rule change all references to a new defined term, "Professional Agency Order."