

maintained by Standard and Poor's. As of November 20, 2003, the market capitalization of the securities included in the S&P 500 ranged from a high of \$289.478 billion to a low of \$629 million. The average daily trading volume for these same securities for the last six months ranged from a high of 44.909 million shares to a low of 10.673 million shares and from a high of 1.966 million shares to a low of 0.127 million shares, respectively.

Given the large trading volume and capitalization of the compositions of the stocks underlying the S&P 500 Index, the Commission believes that the listing and trading of Notes based on the performance of the S&P 500 Index should not unduly impact the market for the underlying securities comprising the S&P 500 Index or raise manipulative concerns. Additionally, the Commission believes that the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes depend upon the individual credit of the issuer, Wachovia. To some extent this credit risk is minimized by the listing standards in section 107A of the Amex Company Guide, which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Amex's "Other Securities" listing standards further require that the Notes have a market value of at least \$4 million.<sup>19</sup> In any event, financial information regarding Wachovia, in addition to the information on the 500 common stocks comprising the S&P 500 Index, will be publicly available.<sup>20</sup>

The Commission does have a concern, however, that a broker-dealer such as Wachovia, or a subsidiary providing a hedge for the issuer, will incur position exposure. As the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,<sup>21</sup> however, the

Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Wachovia.

Finally, the Commission notes that the value of the S&P 500 Index will be disseminated at least once every fifteen seconds throughout the trading day over the Consolidated Tape Association's Network B. The Commission believes that providing access to the value of the S&P 500 Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,<sup>22</sup> to approve the proposal on an accelerated basis.

## V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-Amex-2003-93) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49019; File No. SR-Amex-2003-104]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Cap Monthly Options Transactions Fees Incurred by Specialists and Registered Options Traders ("ROTs") in any Single Options Class at \$72,000, and Implement Market Share Fee Program for Specialists and ROTs in the Top 300 Equity Options

January 5, 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 December 1, 2003, 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 Exchange. The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Amex under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal 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 adopt the following changes to its Options Fee Schedule: (i) A transaction fee cap of \$72,000 per month in any single options class, exclusive of the options licensing fee, for specialists and registered options traders ("ROTs"), and (ii) a market share fee program for the top 300 equity options that would reduce transaction fees paid by specialists and ROTs in such classes if a 20% or greater monthly market share is maintained. The text of the proposed rule change is available at the 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

<sup>19</sup> See Amex Company Guide Section 107A.

<sup>20</sup> The Commission notes that the 500 stocks that make up the S&P 500 Index are reporting companies under the Act, and that the Notes will be registered under Section 12 of the Act.

<sup>21</sup> See, e.g., Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR-NASD-2001-73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR-Amex-2001-40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

<sup>22</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Options Fee Cap for Specialists and ROTs

The Exchange is proposing to adopt a transaction fee cap of \$72,000 per month in any single options class, exclusive of the options licensing fee, for specialists and ROTs. Specialists and ROTs that have incurred transaction fees, which include the options transaction fee, the options comparison fee, and the options floor brokerage fee, greater than \$72,000 per month in any single options class going forward, will now be billed at the capped fee of \$72,000.

The Exchange believes that specialists and ROTs who bring in substantial order flow to the Exchange should be rewarded through the proposed fee reduction. As proposed, specialists and ROTs in any single option class will be required to trade 200,000 contracts for equity options and 232,258 contracts in index options to reach the cap (based on the current rate of \$0.36 per contract side). However, the number of contracts required to reach the fee cap in the top 300 equity options may increase as a result of the market share fee program described below. Although the Exchange submits that only a small number of firms will reach these limits, the proposal is intended to provide additional incentives to firms to continue to attract order flow.

Market Share Fee Program

The Exchange is proposing to adopt a market share fee program for the top 300 equity options ("Program"). The Program will commence on December 1, 2003. The Program is designed to provide incentives to specialists and ROTs to maintain and increase the Exchange's market share of total national volume in the top 300 equity option classes.

The Amex believes the Program will provide incentives to maintain highly competitive quotes by reducing the applicable options transaction fees as long as the specialist or ROT maintains a 20% market share on a monthly basis.

Specialists and ROTs in the top 300 equity option classes who maintain an Amex market share of at least 20% in those classes in a particular month will receive a lower options transaction fee for their transactions in those classes during that month. The revised options transaction fee will be as follows:

Options transaction fee	Market share break point
\$0.26 .....	0% to 19.99%
0.24 .....	20% to 24.99%
0.21 .....	25% and greater

Because clearing firms for specialists and ROTs are unable to immediately calculate the effective transaction fee based upon the relevant market share, the Exchange will implement a manual procedure. Specifically, at the end of each month, the Exchange will calculate the market share of each option class and then send the appropriate credit amount through to each clearing firm for the account of the specialist or ROT. The credit amount is the amount such specialist or ROT overpaid for those option transactions that are subject to the lower fee.<sup>4</sup> For example, specialists/ROTs that maintain a market share of 20–24.99% in a top 300 equity options class will receive a \$.02 per contract credit amount while those specialists/ROTs that maintain a market share of 25% or greater in a top 300 equity options class will receive a \$.05 per contract credit amount. All specialists and ROTs will be provided with reports showing the total credit they received along with all details supporting the Exchange's calculations on or about the fifteenth (15) business day of the subsequent month.

The program is intended to provide positive incentives for specialists/ROTs to increase or maintain their market shares by continuing to provide highly competitive quotes. The Exchange further believes that those specialists and ROTs that provide substantial order flow to the Exchange should be rewarded through the proposed fee reduction.

2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among

<sup>4</sup> The current transaction fee applicable to specialists/ROTs is \$0.36 per contract side for equity options.

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

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

exchange members and other persons using exchange facilities.

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

The Exchange does not believe 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes or changes a due, fee, or other 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 the 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 proposal 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-2003-104. 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 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

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

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

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-2003-104 and should be submitted by February 3, 2004.

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

**Jill M. Peterson,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49024; File No. SR-AMEX-2003-78]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change by American Stock Exchange Relating to Resolving Uncompared Options Transactions

January 6, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on August 27, 2003, the American Stock Exchange LLC ("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 primarily by Amex. 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

Amex proposes to amend Amex Rule 970 (Comparison of Option Transactions Excluded From Clearance) to make the processes for resolving uncompared transactions in its intra-day options and equities comparison systems more consistent.

#### 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 IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

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

Amex Rule 970 sets forth the process by which Amex members reconcile uncompared option transactions on the business day following the trade date, or T+1.<sup>3</sup> Specifically, Rule 970 requires that, at a time designated by Amex on T+1, each member or member organization must review their contract sheets listing all uncompared option trades and option advisory trades. For each uncompared option trade, members must deliver to the contra-party a Rejected Option Transaction Notice ("ROTN"), which details the terms of the uncompared trade. The contra-party or an authorized representative must then accept ("OK") or reject ("DK") and sign the ROTN no later than one-half hour (fifteen minutes if the transaction was executed by a specialist or floor broker) prior to the opening of trading on T+1.

In July 1992, Amex introduced the Intra-day Comparison System for Options (the "IDCO") to facilitate the intra-day comparison of option trades and the reconciliation of uncompared option trades. The IDCO provides an electronic input and correction facility for option transactions executed on Amex. Specifically, the system displays uncompared options trades and option advisory trades and delivers an electronic ROTN to the appropriate contra-party. In addition, the system allows members or member organizations to accept or reject a ROTN, to correct or delete uncompared trades, and to add new trades for comparison where necessary.

Amex proposes to amend Rule 970 by adopting a format consistent with that of Amex Rule 731, which sets forth a similar process for resolving uncompared equity transactions and the use of the Intra-Day Comparison System for Equities ("IDCE"). With login and password safeguards to protect members against unauthorized rejections and acceptances of electronic ROTNs, Amex believes that the use of the IDCO

renders unnecessary the requirement that members manually sign paper ROTNs for each uncompared option transaction. With the exception of eliminating the manual signature requirement for paper ROTNs, Amex does not propose any other change to the comparison process for option transactions. For clarity and consistency, Amex proposes to supplement and preserve the current language of Rule 970 in new Commentary.

Amex believes that the proposed rule change is consistent with section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of section 6(b)(5) of the Act<sup>5</sup> in particular because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

#### 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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or such longer period (i) as the Commission may delegate up to ninety days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization 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 proposed rule change is consistent with the Act.

<sup>2</sup> The Commission has modified the text of the summaries prepared by Amex.

<sup>3</sup> An uncompared transaction is one in which trade data is received from one member but no corresponding data is received from a contra-member.

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

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

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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