

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 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 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 Section. Copies of such filing also will be available for inspection and copying at the principal offices of 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-2005-021 and should be submitted on or before March 25, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-879 Filed 3-3-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51275; File No. SR-Amex-2005-002]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Member Firm Guarantee

February 28, 2005.

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 January 4, 2005, 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 and II

below, which Items have been prepared by the Exchange. On February 15, 2005, 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, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change, as amended.

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

The Exchange proposes to amend Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE to change the current member firm guarantee for equity and index options traded on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com>), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

#### 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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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 purpose of the proposed rule change is to revise the current participation or member firm guarantee for equity and index options traded on the Exchange. The member firm guarantee provides that a floor broker is entitled to a participation guarantee of 20% if the order is traded at the best bid or offer ("BBO") or 40% if the order is traded at a price that improves the market, *i.e.*, at a price between the BBO ("20/40 Rule"). Amex is proposing to amend Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE to revise the current 20/40 Rule so that floor brokers

receive 40% of an order (after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled) if such order trades at a price that matches or improves the market.

In April 2003,<sup>4</sup> the Exchange received permanent approval of the pilot program relating to the member firm guarantee initially approved by the Commission on June 2, 2000.<sup>5</sup> Commentary .02(d) to Amex Rules 950(d) and 950(d)—ANTE permits facilitation cross transactions in equity options and sets forth the member firm guarantee percentages.<sup>6</sup> The member firm guarantee was subsequently extended to index options in September 2004.<sup>7</sup> In this proposed rule change, the Exchange also proposes that the member firm guarantee in ANTE extend to index options.

Amex Rules 950(d) and 950(d)—ANTE provide, under certain conditions, the ability to cross a specified percentage of the customer order on behalf of a member firm before specialists and/or registered options traders in the crowd can participate in the transaction, *i.e.*, the member firm guarantee. The provision generally applies to orders of 400 contracts or more; however, the Exchange is permitted to establish smaller eligible order sizes, on a class-by-class basis, provided that size is not for fewer than 50 contracts.

The amount of the guaranteed participation percentage depends upon a comparison of the original market quoted by the trading crowd in response to a request from the floor broker and the price at which the order is traded. If the order is traded at the best bid or offer provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 20% of the order. If the order is traded at a price that improves the market provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 40% of the order. In addition, the facilitating member firm may only participate in the executed contracts

<sup>4</sup> See Securities Exchange Act Release No. 47643 (April 7, 2003), 68 FR 17970 (April 14, 2003) (approving File No. SR-Amex-2000-49).

<sup>5</sup> See Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000) (approving File No. SR-Amex-99-36).

<sup>6</sup> Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

<sup>7</sup> See Securities Exchange Act Release No. 50326 (September 7, 2004), 69 FR 55479 (September 14, 2004) (approving File No. SR-Amex-2004-51).

<sup>14</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 Form 19b-4 dated February 15, 2005 ("Amendment No. 1"). In Amendment No. 1, the Exchange made clarifications and technical corrections to the proposal and proposed rule text, which have been incorporated into this notice and order.

after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled.

Under the proposal, floor brokers would be entitled to cross 40% of an order provided the order trades at a price that matches or improves upon the price given by the trading crowd in response to the floor broker's initial request for a market. All other requirements set forth in Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE would remain the same. The Exchange proposes to amend Commentary .02(d) to Amex Rules 950(d) and 950(d)—ANTE by deleting the 20/40 Rule and specifying that a floor broker would be entitled to cross 40% of the contracts remaining after public customer orders on the specialist's book or represented in the trading crowd have been satisfied, provided the order trades at or between the best bid or offer given by the trading crowd in response to the broker's initial request for a market. The procedures for facilitating orders would remain the same with the only change being to the size of the member firm guarantee from 20% to 40%.

Current Commentary .02(d) to Amex Rule 950(d) entitles the specialist to a participation entitlement of 20% of the original order size when the floor broker crosses its 20% at the trading crowd's price. If the floor broker improves upon the crowd's price and takes its 40%, the specialist is not entitled to any participation guarantee. The Exchange retains this limitation (*i.e.*, that the percentage of the specialist's entitlement when combined with the amount of the order the floor broker crosses may not exceed 40%), recognizing that in most instances the effect of the proposed rule change would be that specialists are not entitled to participation guarantees (because the member firm typically would take its 40% guaranteed amount). The rule text has been revised to clearly indicate this limitation.

In order to remain competitive with other options exchanges, Amex believes that a change from the 20/40 Rule to a 40% member firm guarantee is necessary. In recent months both the Chicago Board Options Exchange, Inc. and the Pacific Exchange, Inc. have implemented a 40% member firm guarantee. In addition, the International Securities Exchange, Inc. ("ISE") permits a 40% facilitation guarantee to its Electronic Access Members for those orders submitted through the ISE's Facilitation Mechanism. Accordingly, the Exchange asserts that this proposal is required to remain competitive.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</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, 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*

The proposed rule change does not 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. 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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-002 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-2005-002. 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

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 also will be available for inspection and copying at the principal office of the Exchange. 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 publicly available. All submissions should refer to File Number SR-Amex-2005-002 and should be submitted on or before March 25, 2005.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.<sup>10</sup> Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that an exchange's rules be designed to promote just and equitable principles of trade, to 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. The Commission notes that the increase in the percentage that the floor broker is entitled to facilitate at the quoted market would not exceed 40% of an order. The Commission has found with respect to participation guarantees in other contexts that a maximum guarantee of 40% is not inconsistent with statutory standards of competition and free and open markets.<sup>12</sup>

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See, e.g., Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398; and 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) at notes 96-99 and accompanying text.

The Commission finds good cause for approving this proposed rule change, as amended, prior to the thirtieth day after publication of notice thereof in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.<sup>13</sup> The Commission believes that the proposed rule change is generally consistent with rules in place at other exchanges, and that acceleration of the proposed rule change, as amended, will permit the Exchange to implement the proposal in an expeditious manner and to compete with other exchanges that have similar rules without delay. The Commission, therefore, believes it is consistent with Sections 6(b)(5)<sup>14</sup> and 19(b)(2)<sup>15</sup> of the Act to approve the Amex's proposed rule change on an accelerated basis.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Amex-2005-002), as amended, is hereby approved on an accelerated basis.

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

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

[FR Doc. E5-898 Filed 3-3-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51260; File No. SR-CBOE-2005-02]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Fees for Reduced-Value Options on the Russell 2000 Index

February 25, 2005.

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 January 3, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the

proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</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 CBOE proposes to amend its Fee Schedule to establish fees for reduced-value options on the Russell 2000 Index. The text of the proposed rule change is available on CBOE's Web site (<http://www.cboe.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

### 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 statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange has submitted to the Commission a proposal to list for trading options that are based on one-fifth and one-tenth the value of the Russell 2000 Index ("Reduced-Value Options").<sup>5</sup> The Exchange proposes to amend its Fee Schedule to establish fees for the Reduced-Value Options by setting the fees equal to the fees that are currently assessed by the Exchange for options on exchange-traded funds ("ETFs").

Specifically, the Exchange proposes to assess public customers a transaction fee of \$0.15 for transactions in the Reduced-Value Options, which is equivalent to what public customers are assessed for transactions in ETFs and Holding Company Depositary Receipts ("HOLDRS") options.<sup>6</sup> Thus, public

customer transaction fees for the Reduced-Value Options will be lower than the public customer transaction fees for the full-value Russell 2000 Index options ("RUT").<sup>7</sup>

All other fees for the Reduced-Value Options will also be the same as the fees currently assessed for ETF options. Market-maker and DPM transaction fees will be \$0.24 and member firm proprietary transaction fees will be \$0.20 for facilitation of customer orders and \$0.24 for non-facilitation orders. Linkage and broker-dealer transaction fees will be \$0.45 if the premium is greater than or equal to \$1 and \$0.25 if the premium is less than \$1.<sup>8</sup> Non-member market-maker transaction fees will be \$0.47 if the premium is greater than or equal to \$1 and \$0.27 if the premium is less than \$1. The floor brokerage fee will be \$0.04 and \$0.02 for crossed orders.

The RAES Access Fee will not apply as the Reduced-Value Options will trade on the Exchange's Hybrid Trading System. Also, the \$0.40 RUT DPM and Market-Maker License Fee will not apply as that fee is only applicable to DPM and Market-Maker transactions in the full-value Russell 2000 Index (RUT) options. The \$0.22 marketing fee will not apply as that fee is not applied to index option transactions.

The effect of this proposed rule change is to establish public customer transaction fees for the Reduced-Value Options that are lower than the public customer transaction fees for RUT options.<sup>9</sup> The Exchange believes the proposed rule change will further the Exchange's goal of making trading in Russell 2000 index options accessible to a greater range of investors.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>11</sup> in particular, in that it is

Release No. 50469 (September 29, 2004), 69 FR 59628 (October 5, 2004) ("ETF and HOLDRS fee filing").

<sup>7</sup> Public customer transaction fees for RUT options are \$0.45 if the premium is greater than or equal to \$1 and \$0.25 if the premium is less than \$1.

<sup>8</sup> The Exchange is also making a clarifying change to the Fee Schedule to make clear that broker-dealer transaction fees for options on ETFs and HOLDRS are not equal to the customer transaction fees. Only public customers pay a transaction fee of \$.15 for ETF and HOLDRS options. See ETF and HOLDRS fee filing, *supra* note 6.

<sup>9</sup> Except for public customer transaction fees and the RUT DPM and Market-Maker License Fee, all fees for RUT options are the same as the fees that are applicable to options on ETFs.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

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

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

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

<sup>5</sup> See File No. SR-CBOE-2004-89.

<sup>6</sup> Public customer transaction fees for options on ETFs and HOLDRS were reduced to \$0.15 effective October 1, 2004. See Securities Exchange Act