

redemption to the Index Series in Creation Units only.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42675; File No. SR-Amex-00-15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Transaction, Clearance, and Floor Brokerage Fees

April 13, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 10, 2000, 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. On April 1, 2000, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission, which amendment replaces and supersedes the original proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Amex proposes to eliminate transaction, clearance, and floor brokerage fees for customer equity options orders. The Exchange also

proposes to increase the specialist and market maker floor brokerage fee for both equity and index options transactions.⁴

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 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 Amex proposes to eliminate transaction, clearance, and floor brokerage fees for customer equity options orders. The Exchange also proposes to increase the specialist and market maker floor brokerage fee for both equity and index options transactions. The proposed fee schedule would be applicable to options transactions effected on and after April 1, 2000.⁵

The Amex currently imposes a transaction charge on options trades executed on the Exchange. The charges vary depending on whether the transaction involves an equity or index option and whether the transaction is executed for a member firm proprietary account, a specialist or market maker account, or a customer account. The Amex also imposes a charge for clearance of options trades and an options floor brokerage charge, which also depends upon the type of account for which the trade is executed. In addition, all three of charges—transaction, options clearance, and options floor brokerage—are subject to caps on the number of options contracts subject to the charges on a given day.⁶

Current, for customer equity and index options transactions, the Amex does not charge a transaction fee for market and marketable limit orders of

30 contracts or less.⁷ The Amex charges a transaction fee of \$0.10 for customer equity and index options transactions (per contract side) for limit orders up to 30 contracts and all orders exceeding 30 contracts.⁸ These customer options transactions fees also apply to both LEAPS⁹ and FLEX¹⁰ options. The current clearance fee for customer equity options transactions is \$0.04 per contract side. The floor brokerage fee for customer equity options orders is \$0.02 per contract side.

Under the revised fee schedule, the Exchange proposes to eliminate all transaction, clearance, and floor brokerage fees for customer equity options orders. Fees currently charged to customers for transactions in index options will remain unchanged. To offset the Exchange's elimination of transaction, clearance, and floor brokerage fees for customer equity options transactions, the Exchange proposes to raise certain fees charged to members. Specifically the Exchange proposes to increase the equity options transaction fee from \$0.07 to \$0.19 per contract side for member firm proprietary orders and from \$0.08 to \$0.17 per contract side for specialist and market maker orders. Transaction charges for broker-dealers facilitating customer equity options orders will remain unchanged at \$0.07 per contract side.

Under the Exchange's proposal, options clearance fees for member firms, specialists, and market makers will remain unchanged at \$0.04 per contract side. The Exchange proposes to increase the specialist and market maker options floor brokerage fee from \$0.02 to \$0.03 per contract side for both equity and index transactions.¹¹ Options floor brokerage fees for member firms will remain unchanged at \$0.03.

The Exchange represents that customers will receive actual cost savings of approximately \$17.5 million, based upon third quarter, 1999 annualized option contract volume.¹² The Exchange believes that the proposed fee changes are necessary to make the Exchange's options transaction charges more competitive with other options exchanges' fees and with the

⁷ See Securities Exchange Act Release No. 41370 (May 5, 1999), 64 FR 25931 (May 13, 1999).

⁸ *Id.*

⁹ LEAPs are Long Term Equity Anticipation Securities or options with durations of up to 36 months. See Amex Rule 903C.

¹⁰ FLEX options are customized options with individually specified terms such as strike price, expiration date, and exercise style. See Amex Rule 900G.

¹¹ See Amendment No. 1, *supra* note 3.

¹² *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Nasdaq-Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 31, 2000 ("Amendment No. 1"). In response to comments from Commission staff, the Exchange submitted Amendment No. 1 to withdraw the portion of the filing that would increase the equity options transaction fees charged to non-member broker-dealers. Amendment No. 1 also: (i) makes certain technical corrections to the Amex's options fee schedule; (ii) proposes to increase the specialist and market maker floor brokerage fee from \$0.02 to \$0.03 per contract side for both equity and index options; (iii) states that all fee changes are effective April 1, 2000; and (iv) clarifies that the cost savings estimate to customers is based on third quarter, 1999 trading volume.

⁴ *Id.*

⁵ *Id.*

⁶ The current caps are set at 2,000 contracts for customer trades and 3,000 contracts for member firm proprietary, non-member broker-dealer, specialist and market maker trades.

costs of trading other financial instruments, and to increase the number of options orders that are routed to the Exchange. While the Exchange anticipates that other options exchanges may also reduce fees charged to customers, it believes that the proposed fee changes will increase options usage among all investors and stimulate industry-wide growth in the options business.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4)¹⁴ in particular, in that it provides 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

The 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

The Exchange has neither solicited nor received comments on 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,¹⁵ and Rule 19b-4(f)(2) thereunder,¹⁶ in that 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 furtherance of the purposes of the Act.¹⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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, N.W., Washington, D.C. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-Amex-00-15 and should be submitted by May 11, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42687; File No. SR-Amex-99-25]

Self-Regulatory Organizations; Order Granting Approval to Proposed Amendments to the Amex Constitution by the American Stock Exchange LLC Eliminating the Requirement That the Chairman Also Be the CEO

April 13, 2000.

I. Introduction

On July 16, 1999, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, a proposed rule change. In its proposal, Amex seeks to eliminate the requirement that the Chairman also be the Chief Executive Officer ("CEO") of the Exchange. The proposed rule change was published for comments in the **Federal Register** on January 7, 2000.³ The Commission received no comments

on the filing and this order approves the proposal.

II. Description of the Proposal

Article II, Section 4(a) of the Amex Constitution currently requires that the Chairman of the Board also act as the CEO of the Exchange. The Chairman thus performs the standard functions of a Board Chairman, as well as being responsible to the Board for the management and administration of the affairs of the Exchange as CEO.

The Exchange proposes to amend Article II, Section 4(a) of the Constitution to eliminate the requirement that the Chairman also act as the CEO of the Exchange. Amex represents that the NASD's two other subsidiaries (the Nasdaq Stock Market and NASD Regulation), both have non-executive Chairmen. Amex believes that having a non-executive Chairman attend to the functions of a Chairman would allow the CEO to focus on the operations of the Exchange. Nevertheless, the proposal gives Amex the flexibility to choose to have two people fill the Chairman and CEO positions or to have the same person fill these two positions.

As a result of the amendment to Article II, Section 4(a) of the Constitution, Amex made a number of conforming changes to other provisions of the Constitution and rules. Before this proposal, Amex's rules generally did not make a distinction between whether the Chairman/CEO was serving in his capacity as the Chairman or the CEO and used the term "Chairman" for both of these functions. To allow for separate persons to serve as Chairman and CEO, Amex examined its rules and made a determination as to whether a particular function was normally handled by the Chairman or CEO. Based on this examination, Amex then changed the term "Chairman" to CEO when it determined that Chairman/CEO was acting in his capacity as the CEO. Amex had to make choices, however, when the function was properly performed by either the Chairman or the CEO. In addition, Article II, Section 3 (Chairman) and Article II, Section 4(a) (Chief Executive Officer), discussing the selection and authority of the Chairman and CEO respectively, have been appropriately rearranged. Other than splitting the Chairman and CEO roles and making the above-mentioned conforming changes, the Amex represents that there are no substantive changes being made.

III. Discussion

The Commission finds that the proposed rule change is consistent with

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFT 240.19b-4(f)(2).

¹⁷ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4

³ See Securities Exchange Act Release No. 42307 (January 3, 2000), 65 FR 1206.