

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 suspend transaction charges for customer orders for the following Amex-listed securities: (1) MidCap SPDRs™ (Symbol: MDY); (2) all series of Select Sector SPDRs, including Basic Industries (XLB), Consumer Services (XLV), Consumer Staples (XLP), Cyclical/Transportation (XLY), Energy (XLE), Financial (XLF), Industrial (XLI), Technology (XLK), and Utilities (XLU); and (3) all series of HOLDRs, including: Biotech (BBH), Broadband (BDH), B2B Internet (BHH), Europe 2001 (EKH), Internet (HHH), Internet Architecture (IAH), Internet Infrastructure (IIH), Market 2000+ (MKH), Oil Service (OIH), Pharmaceutical (PPH), Regional Bank (RKH), Retail (RTH), Semiconductor (SMH), Software (SWH), Telecom (TTH), Utilities (UTH), and Wireless (WMH).

Off-floor orders (*i.e.*, customer and broker-dealer orders) in these securities currently are charged \$.006 per share (\$.60 per 100 shares), capped at \$100 per trade (16,667 shares). Orders entered electronically into the Amex Order File from off the floor ("System Orders") for up to 5,099 shares are currently not assessed a transaction charge, while System Orders over 5,099 shares are subject to a \$.006 per share transaction charge, capped at \$100 per trade. The Exchange proposes to suspend transaction charges applicable to customer orders. The Exchange will continue to impose, and is not suspending, existing transaction charges applicable to entities other than customers, including Exchange specialists, registered traders, and member organizations.

The Exchange believes a suspension of fees for these securities for customer orders is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to Section 19(b)(3)(A) of the Act.³

2. Statutory Basis

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

of the Act,⁵ in particular, because it is intended to assure 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.⁶

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 Act⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder⁸ 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 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. 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-2002-32 and should be submitted by May 16, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45782; File No. SR-Amex-2002-34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Exchange's Booth Automated Routing System (BARS)

April 18, 2002.

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 April 17, 2002, 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 Amex. Amex has designed the proposed rule change as "non-controversial" under Rule 19b-4(f)(6),³ thus rendering it immediately effective. 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 is filing enhancements to its order routing technology known as BARS (Booth Automated Routing System). There is no proposed rule text as such.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 15 U.S.C. 78f(b)(4).

⁶ At the request of Amex, the Commission revised this sentence. Telephone call between Michael Cavalier, Associate General Counsel, Amex, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on April 17, 2002.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 15 U.S.C. 78f(b).

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

In its filing with the Commission, 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. 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

BARS is an order routing system with no order execution capabilities. Amex understands BARS to be functionally similar to the Broker Booth Support System ("BBSS") of the New York Stock Exchange ("NYSE") and the Order Routing System ("ORS") of the Chicago Board Option Exchange. BARS allows brokers to manage and route orders for Amex-traded securities. There is also a market look function that allows floor brokers to provide booth clerks with information regarding the state of the market for a particular security.

Since it is an integrated part of the Exchange's order routing and processing systems, BARS accepts only orders that these systems can process (*i.e.*, CMS-eligible orders).⁴ Currently, multi-legged option orders (*e.g.*, spreads) and certain contingency orders⁵ are not CMS-eligible. The maximum size for a BARS order is 99,900 shares for a stock and 30,000 contracts for an option. These are system limitations.

Orders can be received electronically into BARS from CMS. Brokers can program different algorithms for each Amex security into BARS to determine which orders are routed to the specialist for execution or "booking," and which orders are routed to the broker's booth on the Amex floor. These algorithms can be changed dynamically and can be a combination of order size, order type, and security. Booth clerks also can enter orders into BARS that are telephoned to the floor (*i.e.*, orders that are not

systematized when they arrive on the Exchange). BARS users can determine whether to route an order to the specialist, to a broker on the floor via a BARS handheld terminal ("HHT"), or print the order for manual handling. BARS HHT uses the Exchange's wireless data network to maintain communications between the HHT and the booth. Orders that are printed remain in BARS and, thus, a complete record of these orders is maintained. BARS automatically routes requests to cancel or modify orders to the appropriate user for his or her action.

As noted above, a BARS user can route orders to a particular BARS HHT. The BARS HHT provides a broker with the order management and trade reporting⁶ functions required by brokers. All information regarding trades entered either through the BARS booth terminal or a broker HHT is automatically sent to the Exchange's trade processing facilities. Floor brokers also can use BARS HHT to route orders to other brokers or back to the booth.

Since BARS provides an electronic order management system, it allows brokers to have a complete electronic record in a single location of orders handled by the firm. Amex believes that BARS thereby facilitates audit trail and billing functions.

As of April 1, 2002, all Amex floor brokers have BARS terminals in their booths. With this initial implementation complete, BARS HHTs are being rolled out firm by firm. Currently, there are approximately 50 floor brokers representing 12 firms with assigned BARS HHTs. This is approximately 40 percent of the total number of BARS HHTs that ultimately will be assigned.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(5)⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices; 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. Amex also believes that the proposed rule change is not designed to permit unfair

discrimination between customers, issuers, brokers, and dealers.

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

Amex has stated that BARS would impose no burden on competition 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Amex has stated that, because the proposed rule change does not (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

Amex has requested that the Commission waive the 30-day pre-operative period under Rule 19b-4(f)(6)(iii). The Commission finds that waiving the pre-operative period is consistent with the protection of investors and the public interest.¹¹ Rule 19b-4(f)(6) also requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days before doing so (or such shorter time as designated by the Commission). Amex also has requested that the Commission waive the five-day pre-filing requirement. The Commission hereby grants this request.

At any time within 60 days of the filing of the 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.

⁴ The Common Message Switch ("CMS") is the means by which member firms may send electronic orders to both Amex and the NYSE.

⁵ CMS currently accommodates market on close, market or better, stop, stop limit, all or none, fill or kill, immediate or cancel, and opening options orders. CMS accommodates the same contingencies for equity orders with the addition of market with or without and close orders.

⁶ "Reporting" in this sense does not refer to disseminating last sale information through the Consolidated Trade System. Rather, it refers to advising the persons who are handling an order of its execution and submitting the trade to comparison.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-34 and should be submitted by May 16, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45774; File No. SR-CBOE-2002-15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to CBOE Rule 8.51

April 17, 2002.

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 April 15, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" 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 CBOE. 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 adopt a new interpretation and policy under CBOE Rule 8.51. Below is the text of the proposed rule change. Additions are italicized.

Rule 8.51 Trading Crowd Firm Disseminated Market Quotes

(a)-(b) No change.

* * * Interpretations and Policies:

.01-.08 No change.

.10 *For purposes of determining when the firm quote obligations under Rule 8.51 attach in respect of orders received at a PAR workstation in a DPM trading crowd and how the exemptions to that obligation provided in paragraph (e) of that Rule apply, the responsible broker or dealer shall be deemed to receive an order, and an order shall be deemed to be presented to the responsible broker or dealer, at the time the order is received on the DPM's PAR workstation.*

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 CBOE 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 CBOE 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 proposed rule change provides an interpretation of CBOE Rule 8.51 to clarify when the firm quotation obligation of the trading crowd under that rule arises in the case of orders received at PAR workstations in DPM trading crowds, and to interpret how the exemptions from that obligation apply in the case of such orders. CBOE Rule 8.51(b)(1) obligates "the responsible broker or dealer to sell (buy) at least the established number of contracts at the offer (bid) which is displayed when the responsible broker or dealer receives a buy (sell) order at the trading station where the reported security is located

for trading." Paragraph (e) of CBOE Rule 8.51 provides certain exemptions from the firm quote obligation that are tied to when an order is "presented." For purposes of CBOE Rule 8.51 "the responsible broker or dealer" is defined as the trading crowd in a series or class of option.³ This proposed rule change adds Interpretation and Policy .10 to make it clear that for the purposes of CBOE Rule 8.51 in respect of orders received at a PAR workstation in a DPM trading crowd, the responsible broker or dealer is deemed to receive an order, and an order is deemed to be presented to the responsible broker or dealer, at the time the order is received on the DPM's PAR workstation.⁴

2. Statutory Basis

By clarifying the time when firm quote obligations attach under CBOE Rule 8.51 in respect of orders received over PAR workstations in DPM trading crowds, the Exchange believes that the proposed rule change will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest, and will not permit unfair discrimination between customers, issuers, brokers or dealers, in furtherance of the objectives of Section 6(b)(5) of the Exchange Act.⁵

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

The CBOE 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

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the

³ The Commission noted in the approval order of SR-CBOE-2002-07 that "any member of the trading crowd who submits a manual quote that improves the Exchange's disseminated quote would be considered to be the responsible broker or dealer pursuant to Rule 11Ac1-1(c) under the Act." Exchange Act Release No. 45677 (March 29, 2002), 67 FR 16476, 16477 (April 5, 2002).

⁴ In SR-CBOE-01-67 filed with the Commission in December 2001, the Exchange proposed an Interpretation and Policy .09, which makes clear that a trading crowd may voluntarily agree to honor its disseminated quotes for a larger number of contracts than required by rule.

⁵ 15 U.S.C. 78f(b)(5).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.