

outstanding. Amex proposes that the annual fees be increased as follows:

Number of shares	Current fee	Proposed fee
5,000,000 shares or less	\$15,000	\$16,500
5,000,001 to 10,000,000 shares	17,500	19,000
10,000,001 to 25,000,000 shares	20,000	21,500
25,000,001 to 50,000,000 shares	22,500	24,500
50,000,001 to 75,000,000 shares	30,000	32,500
In excess of 75,000,000 shares	30,000	34,000

Amex also proposes other minor technical changes to Sections 140 and 141 of the Amex Company Guide, which will not further alter the fees but will clarify the text of these Sections.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,⁶ in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Commission notes that the Exchange has represented that the proposal is necessary to cover increased costs it has incurred in the enhancement and development of its trading technology and improvements in the overall level of services provided to its members and listed companies. The Commission also notes that the Exchange's original and annual listing fees have not increased since 2002, and that pursuant to the proposed rule change, companies with a fewer number of shares will continue to be charged less than companies with a greater number of shares. The new original listing fees and annual fees therefore are consistent with the Exchange's stated goals of attracting and retaining the listing of small and mid-size companies and in recognition of the greater impact of fees on small and mid-size companies. In addition, with respect to non-U.S. companies, the Exchange represents that the amended original listing fee is below the lowest rate paid by U.S. companies, but is still competitive with rates charged by other markets.

The Exchange has requested accelerated approval of the proposed

rule change. The Exchange represents that its practice is to invoice its issuers the annual fee in January, and that therefore billing of the annual fee this year has been delayed until the Commission approved this proposal.⁷ The Exchange represented that issuers have contacted the Exchange regarding the delay in billing and in one instance that they noted that they need the invoice for accrual purposes.⁸ The Exchange believes that further delay in approving the proposal, as well as uncertainty in knowing when invoices will be issued, will continue to place a burden on the Exchange's issuers.⁹ The Exchange also notes that this delay in invoicing the annual fee has resulted in at least a two month delay in the Exchange collecting the increased revenue generated by the annual listing fees, and that it had anticipated that the increase in the original listing fee would be in place in January as well.¹⁰ The Exchange believes that further delay in the implementation of the increased annual listing fee and original listing fees will negatively impact the collection of this necessary revenue.¹¹ In addition, the Commission notes that the proposed rule change was published for a full notice and comment period and no comments were received. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹² for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the

⁷ See e-mail from Claire McGrath, Senior Vice President and General Counsel, Amex, to Heather Seidel, Senior Special Counsel, Division of Market Regulation, Commission, dated March 2, 2006.

⁸ *Id.*

⁹ *Id.*

¹⁰ See *id.* The Exchange represents that based upon 2005 financial statements, the revenue generated by the annual fee accounts for 6% of the Amex's total revenues and is used to fund the operations and regulatory programs of the Exchange.

¹¹ *Id.*

¹² 15 U.S.C. 78s(b)(2).

¹³ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-Amex-2005-124) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53415; File No. SR-Amex-2006-10]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Its Fee Cap Program for Certain Options Spread Trades

March 3, 2006.

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 February 2, 2006, 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. On February 28, 2006, Amex submitted Amendment No. 1 to the proposed rule change.³ Amex has designated the proposed rule change, as amended, as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Amex proposes to make the revised fee cap program for dividend spreads, merger spreads, and short stock interest spreads a six-month pilot program expiring August 1, 2006.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

⁵ 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).

⁶ 15 U.S.C. 78f(b)(4).

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 Exchange proposes to amend the Options Fee Schedule relating to its fee cap program for certain options spread trades.

The text of the proposed rule change, as amended, is available on Amex's Web site at <http://www.amex.com>, at the Office of the Secretary at Amex, 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, as amended, and discussed any comments it received on the proposal. 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

Currently, the Exchange provides a fee cap program in which it limits to \$2,000 per trade the transaction, comparison and floor brokerage fees (hereinafter referred to collectively as "transaction-based fees") charged to specialists, registered options traders, non-member market makers, member firms, broker dealers and non-member broker dealers (referred to hereinafter as "non-customer market participants") for accommodation and spread trades.⁶ The fee cap program does not apply to the license fees that are charged for transactions in some option classes. The program requires the submission to the Exchange of a Fee Reimbursement Form together with appropriate documentation for fees collected in excess of the cap to be reimbursed to the non-customer market participants. Currently, there is no time limit within

which the Fee Reimbursement Form must be submitted.

Over the years, the execution of certain types of spread trades have grown in popularity—in particular, option transactions that are part of dividend spreads⁷, merger spreads,⁸ and short stock interest spreads⁹ have grown significantly with two to three million contracts a day being executed. In order to become more competitive with fee cap programs in place at other options exchanges, the Exchange is now proposing to revise its cap program. The following revisions are being proposed:

First, for dividend spreads, merger spreads, and short stock interest spreads, the Exchange proposes to convert the cap on transaction-based fees from a per trade cap to a cap on all transactions executed as part of these spreads on the same trading day in the same option class and reduce the amount of fees charged before the cap is applied to \$1,000 per day. The Exchange is making these revisions to its fee cap program to match similar fee cap programs at other exchanges.¹⁰

Second, the Exchange proposes to add a monthly fee cap of \$50,000 on transaction-based fees per initiating firm for transactions in dividend spreads, merger spreads, and short stock interest spreads. The purpose of this revision is to also match similar fee cap programs at other exchanges.¹¹

Third, the Exchange proposes to provide a \$2,000 per trade cap on transaction-based fees charged to members for customer box spread transactions¹² in index options. The

recent options fee increases have significantly altered the economics for customers engaging in box spread transactions in index options. In order to retain this type of order flow, the Exchange is proposing to expand the fee cap program to customer box transactions in index options as a way of remaining competitive with the other options exchanges.

Fourth, the Exchange proposes to establish that the Fee Reimbursement Form must be submitted within three business days of the transaction. The Exchange believes that a limited time for submission of the Form will assist it in more efficiently processing the reimbursement requests and that while the timeframe is limited, market participants, including firms seeking reimbursements for transaction-based fees charged for customer box spreads, should be able to meet the proposed deadline, which is already in effect at other options exchanges with similar fee cap programs.

Lastly, the Exchange proposes to establish the revised fee cap program for dividend spreads, merger spreads, and short stock interest spreads as a six-month pilot program expiring August 1, 2006. The Exchange intends to implement the proposed revisions to the fee cap program effective February 6, 2006.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(4)¹⁴ in particular in that 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. Specifically, the Exchange is proposing to implement revisions to a fee cap program that is competitive with similar programs at other options exchanges.

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

Amex believes that the proposed rule change, as amended, 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, as amended.

⁶ Accommodation trades (also known as cabinet trades) are transactions to close out positions in worthless or nearly worthless out-of-the-money option contracts. Spread trades include: (i) Reversals and conversions, (ii) dividend spreads, (iii) box spreads, (iv) butterfly spreads, (v) merger spreads, and (vi) short stock interest spreads.

⁷ A dividend spread transaction is defined as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options.

⁸ A merger spread transaction is defined as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same option class and expiration date, but different strike prices followed by the exercise of the resulting long option position. Merger spreads are executed prior to the date that shareholders of record in a stock subject to a merger are required to elect their respective form of consideration (*i.e.*, cash or stock).

⁹ A short stock interest spread is defined as a spread that uses two deep in-the-money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position. This strategy is used to capture short stock interest.

¹⁰ See PCX Options Fee Schedule and Securities Exchange Act Release No. 53171 (January 24, 2006) (SR-CBOE-2005-117).

¹¹ *Id.*

¹² This is a combination of a long synthetic stock or index position (long call plus short put) and a short synthetic stock position (long put plus short call), which expire simultaneously and have different strike prices. Box spreads are used primarily to "borrow" or "lend" money. A lender is said to "buy" the box and a borrower is said to "sell" the box. Boxes are evaluated essentially on the basis of returns on the cash they tie up or free up.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

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 Act¹⁵ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁶ because it establishes or changes a due, fee, or other charge. 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.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. 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. Please include File Number SR-Amex-2006-10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-10. 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 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 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-2006-10 and should be submitted on or before April 3, 2006.

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

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53410; File No. SR-CBOE-2006-24]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rule 8.3 To Extend for an Additional Year a Pilot Program Relating to Market-Makers Quoting Outside Their Appointed Trading Station

March 3, 2006.

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 2, 2006, 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 CBOE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders

the proposal effective upon filing with the Commission.⁵ 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 CBOE Rule 8.3 to extend for an additional year a pilot program relating to Market-Makers quoting outside their appointed trading station. The text of the proposed rule change is below. Proposed additions are in *italics* and proposed deletions are in brackets:

Rule 8.3—Appointment of Market-Makers

Rule 8.3. This Rule governs the appointment of Market-Makers other than Remote Market-Makers. Rule 8.4 governs the appointment of Remote Market-Makers.

- (a) No change.
- (b) No change.
- (c) Absent an exemption by the appropriate Market Performance Committee, an appointment of a Market-Maker confers the right to quote as described below:

- (i) No change.
- (ii) No change.
- (iii) No change.

With respect to classes located at his/her appointed trading station, a Market-Maker may submit, [for a one-year] *as part of a pilot program* [period] ending March 24, 2007 [2006], electronic quotations from a location outside of the appointed trading station in his/her appointed Hybrid classes and his/her appointed Hybrid 2.0 Classes. Any Market-Maker affiliated with an e-DPM or RMM shall be ineligible to submit electronic quotations from outside of its appointed trading station pursuant to this rule in any class in which the affiliated e-DPM or RMM has an appointment.

- * * * * *
- (d) No Change.
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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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ The effective date of the original proposed rule change is February 2, 2006, the date of the original filing, and the effective date of Amendment No. 1 is February 28, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 28, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ As required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii), the CBOE submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.