

electronic report. The Exchange also anticipates that the proposed change to the processing of FOK and IOC orders would reduce message traffic by eliminating the need for persons seeking an immediate automatic execution or cancellation to send a separate cancellation message following the entry of the order.

The proposed rule change would not affect the processing of market and marketable limit orders that are sent to the order book electronically that are not subject to the FOK and IOC qualifications. Likewise, there would be no change to the processing of FOK and IOC orders sent to a floor broker for execution. The Exchange intends to implement the proposed revisions to IOC and FOK order processing when it implements its proposed enhanced Auto-Ex functionality.⁶

2. Statutory Basis

The Exchange 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange believes that the proposed rule change, as amended, will 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, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

Because the foregoing proposed rule change, as amended, does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) 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 Act,⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ 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.¹¹

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-2004-40 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-2004-40. 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 the filing also will be available for inspection and copying at the principal office of the 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-2004-40 and should be submitted on or before August 4, 2004.

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. 34-49986; File No. SR-Amex-2004-37]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to a Change in the Options Transaction Fee Reductions for Non-Member Broker-Dealers in Connection With Cabinet Trades and Spread Trades

July 8, 2004.

On May 19, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to lower the amount of the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange provided 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 of the proposed rule change.

¹¹ For purposes of calculating the 60-day 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 June 10, 2004, the date on which the Amex filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ See, Securities Exchange Act Release Nos. 49921 (June 25, 2004), 69 FR 40690 (July 6, 2004) (approval order); and 49449 (March 19, 2004), 69 FR 15411 (March 25, 2004) (notice) (SR-Amex-2004-04).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

reductions of options transaction fees that are available to non-member broker-dealers in connection with equity options and QQQ options contracts executed as part of an accommodation or cabinet trade ("Cabinet Trades") and reversals and conversions, dividend spreads, box spreads and butterfly spreads ("Spread Trades"). On May 28, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 10, 2004.⁴ No comments were received regarding the proposal, as amended. This order approves the proposed rule change, as amended, on an accelerated basis.

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 exchange⁵ and, in particular, the requirements of section 6(b) of the Act⁶ and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to lower the amount of the reduction of options transaction fees applicable to non-member broker-dealers in connection with Cabinet Trades and Spread Trades is consistent with section 6(b)(4) of the Act,⁷ which requires the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using Exchange facilities. According to Amex, the proposed fee changes should better reflect the actual cost of transactions on the Exchange. Further, the proposal provides non-member broker-dealers with the same options fee reductions for Cabinet Trades and Spread Trades that are applicable to specialists, registered options traders ("ROT's") and member broker-dealers.⁸

Amex requested accelerated approval of the proposal in order to provide for uniform options transaction fee reductions for non-member broker-dealers and specialists, ROT's and

member broker-dealers. Therefore, Amex has requested that the Commission find good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The Commission notes that the proposal and Amendment No. 1 were noticed for the full 21-day comment period, and the Commission received no comments regarding the proposal, as amended. As discussed more fully above, the Commission believes that the proposed rule change is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using Exchange facilities. The Commission also believes that adjusting the options transaction fee reductions applicable to non-member broker-dealers to equal the fee reductions applicable to specialists, ROT's and member broker-dealers for the same types of transactions will promote uniformity in options fees charged by the Exchange. Accordingly, the Commission finds good cause pursuant to section 19(b)(2) of the Act⁹ to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-Amex-2004-37), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49978; File No. SR-CHX-2004-14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Handling of Preopening Orders in Nasdaq/NM Securities

July 7, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the

"Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 19, 2004, the Chicago Stock Exchange, Incorporated ("CHX" 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 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 CHX proposes to amend CHX Article XX, Rule 37, regarding the execution of preopening orders in Nasdaq/NM securities. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Guaranteed Execution System and Midwest Automated Execution System

RULE 37. (a) **Guaranteed Executions.** The Exchange's Guaranteed Execution System (the BEST System) shall be available, during the Primary Trading Session and the Post Primary Trading Session, to Exchange member firms and, where applicable, to members of a participating exchange who send orders to the Floor through a linkage pursuant to Rule 39 of this Article, in all issues in the specialist system which are traded in the Dual Trading System and [NASDAQ/NM] *Nasdaq/NM Securities*. System orders shall be executed pursuant to the following requirements:

(1) No change to text.

(2) No change to text.

(3) No change to text.

(4) **Preopenings.** Preopening orders in Dual Trading System issues must be accepted and filled at the primary market opening trading price. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in [NASDAQ/NM] *Nasdaq/NM securities* must be accepted and filled on a single price opening at or better than the NBBO at the first unlocked, uncrossed market *that occurs on or after 8:30 a.m., to the extent that those orders can be matched at a single price. The specialist will be responsible for executing any imbalance of shares in Nasdaq/NM securities left after the offset process, in accordance with Exchange rules that govern the handling of orders during the Primary Trading Session.* In trading halt situations,

³ See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 27, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected a typographical error in the text of the proposed rule change.

⁴ See Securities Exchange Act Release No. 49800 (June 3, 2004), 69 FR 32639.

⁵ In approving this proposal, 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).

⁷ 15 U.S.C. 78f(b)(4).

⁸ See Securities Exchange Act Release No. 49763 (May 24, 2004), 69 FR 30967 (June 1, 2004) (notice of filing and immediate effectiveness of File No. SR-Amex-2004-28).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ *Id.*

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.