

to add new Section VII entitled "Broker-Dealer Auto-Ex Fee" to the Options Fee Schedule for the purpose of adopting a \$0.50 transaction fee per contract side for all broker-dealer orders⁷ executed via the Exchange's automatic execution system ("Auto-Ex").⁸ Broker-dealer orders executed through Auto-Ex would also be subject to the Exchange's existing options comparison fee and options floor brokerage fee. For firms and broker-dealers, the comparison fee and floor brokerage fee is \$0.04 and \$0.03 per contract side, respectively, while for specialists and market makers these charges per contract side are each \$0.05.

The Exchange represents that broker-dealer orders subject to the proposed fee, include without limitation, firm orders, specialist orders, market maker orders and orders for the account of registered broker-dealers. The Amex notes that it will only charge this fee to member firms through the customary monthly billing that occurs shortly after the close of each trading month. The Amex represents that non-members will not be subject to this proposed fee. Accordingly, the Amex will assess this fee solely against firms executing orders for the accounts of broker-dealers.

Broker-dealers who want to access the Exchange's markets without paying this additional fee may continue to send their orders to a floor broker for manual execution. However, broker-dealer orders that are automatically executed through Auto-Ex are not subject to fees otherwise imposed by an Amex floor broker in connection with a manual execution. The Amex believes that the benefits of automatic execution outweigh the potential burden of paying the proposed fee.

The Exchange submits that the proposed fee will provide additional revenue and recoup the costs associated with permitting the automatic execution of broker-dealer orders. In addition, the Amex submits that this fee will help to allocate to broker-dealer orders a fair share of the related costs of operating Auto-Ex and related Exchange systems. The Exchange further asserts that

permitting the Auto-Ex system to accept and execute broker-dealer orders requires design modification, programming and testing. Accordingly, the Exchange believes that the proposed fee is reasonable.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act,⁹ in general, and with Section 6(b)(4)¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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.

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 foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2) thereunder.¹² 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-2002-114 and should be submitted by February 21, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47229; File No. SR-Amex-00-30]

Self-Regulatory Organizations; Notice of Filing of Amendments to Proposed Rule Change by the American Stock Exchange LLC Relating to the Allocation of and Participation in Options Trades

January 22, 2003.

On May 30, 2000, 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 relating to the allocation of and participation in options trades on the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 28, 2000.³ On August 25, 2000, August 30, 2001, February 19, 2002, April 22, 2002, September 16, 2002, and December 20, 2002, respectively, the Amex filed Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change.⁴

¹³ 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. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

⁴ See letters from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 24, 2000 (Amendment No. 1) and August 29, 2001 (Amendment No. 2); and from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated February 15, 2002 (Amendment No. 3), April 22, 2002 (Amendment

2002), 67 FR 37888 (May 30, 2002) (SR-CBOE-2002-22) (CBOE six-month pilot program permitting broker-dealer orders for QQQ options to be Executed on RAES); and 46113 (June 25, 2002), 67 FR 44486 (SR-CBOE-2002-35) (July 2, 2002) (extending CBOE pilot to all index products).

⁷ A broker-dealer order is an order for the account of a registered broker-dealer.

⁸ The Commission has approved the adoption of broker-dealer automatic execution fees for other options exchanges. See Securities Exchange Act Release Nos. 45662 (March 27, 2001), 67 FR 16786 (April 8, 2002) (SR-PCX-2002-10); 46212 (July 16, 2002), 67 FR 48235 (July 23, 2002) (SR-Phlx-2002-36); and 46455 (September 3, 2002), 67 FR 57468 (September 10, 2002) (SR-CBOE-2002-42).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).