

Proposed Rule Change by American Stock Exchange  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input type="checkbox"/>	Amendment <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Jeffrey"/>	Last Name	<input type="text" value="Burns"/>
Title	<input type="text" value="Vice President and Associate General Counsel"/>		
E-mail	<input type="text" value="jeffrey.burns@amex.com"/>		
Telephone	<input type="text" value="(212) 306-1822"/>	Fax	<input type="text" value="(212) 306-5724"/>

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By  (Name)  (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**SR-Amex-2008-51  
Partial Amendment No. 2**

The American Stock Exchange LLC (the “Exchange” or “Amex”) hereby submits this Partial Amendment, constituting Amendment No. 2 to its rule filing SR-Amex 2008-51 originally filed on June 25, 2008. The Exchange proposes to make the following revisions to the rule text set forth in Exhibit 5. In particular, the Exchange proposes to revise the text relating to the definition of “Independently Prepared Reprint” set forth in proposed Rule 991(a)(vi). In addition, the Exchange proposes to make conforming changes to Commentary .01 to Rule 991.

Except for these changes, the rest of the original filing and Partial Amendment No. 1 shall remain the same. All capitalized and undefined terms used in this Amendment No. 2 have the meanings assigned to them in the original filing.

\* \* \* \*

**SR-Amex-2008-51  
EXHIBIT 5**

**AMERICAN STOCK EXCHANGE LLC  
Proposed Rule Change**

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It is proposed that the following provisions of the Rulebook of the American Stock Exchange LLC be amended as set forth below. Additions are underlined and deletions are [bracketed].

**Rule 921. Opening of Accounts**

(a) through (g) No Change

••• *Commentary* -----

**.01** In fulfilling its obligations pursuant to paragraph (c) of this Rule with respect to options customers that are natural persons, a member organization shall seek to obtain the

following information at a minimum (information shall be obtained for all participants in a joint account):

1. Investment objectives (e.g., safety of principal, income, growth, trading profits, speculation)
2. Employment status (name of employer, self-employed or retired)
3. Estimated annual income from all sources
4. Estimated net worth (exclusive of family residence)
5. Estimated liquid net worth (cash, securities, other)
6. Marital status; number of dependents
7. Age, name, Tax Identification Number, address and telephone number
8. Investment experience and knowledge (e.g., number of years, size, frequency and types of transactions) for options, stocks and bonds, commodities, other

In addition, the customer's account records shall contain the following information, if applicable:

- a. Source or sources of background and financial information (including estimates) concerning the customer
- b. Discretionary trading authorization: agreement on file; name, relationship to customer and experience of person holding trading authority
- c. Date appropriate Options Disclosure Document(s) furnished to customer
- d. Nature and types of transactions for which account is approved (e.g., buying, covered writing, uncovered writing, spreading, discretionary transactions)
- e. Name of registered representative
- f. Name of ROP approving account; date of approval
- g. Dates of verification of currency of account information

The member organization should consider utilizing a standard account approval form so as to ensure the receipt of all the required information.

**.02 through .04** No Change

**Rule 991. Options Communications [to Customers]**

[(a) **General Rule.**—No member or member organization or person associated with a member shall utilize any advertisement, educational material, sales literature or other communications to any customer or member of the public concerning options which:

- (i) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

- (ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labelled as forecasts;
- (iii) contains hedge clauses or disclaimers which are not legible, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such communication; or
- (iv) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act.]

(a) Definitions. For purposes of this Rule and any interpretation thereof, “Options Communications” consist of:

- (i) Advertisements. The term “Advertisement” shall include any material concerning options, other than an independently prepared reprint and institutional sales material, that is published, or used in any electronic or other public media, including any Web site, newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, or telephone directories (other than routine listings).
- (ii) Sales Literature. The term “Sales Literature” shall include any written or electronic communication concerning options other than an advertisement, independently prepared reprint, institutional sales material and correspondence, that is generally available to customers or the public, including circulars, research reports, market letters, performance reports or summaries, worksheets, form letters, telemarketing scripts, seminar texts, reprints (that are not independently prepared reprints) or excerpts of any other advertisement, sales literature or published article and press release concerning a member or member organization’s products or services.
- (iii) Correspondence. The term “Correspondence” shall include any written letter or electronic mail message distributed by a member or member organization to: (A) one or more of its existing retail customers; and (B) fewer than 25 prospective retail customers within any 30 calendar day period.
- (iv) Institutional Sales Material. The term “Institutional Sales Material” shall include any communication concerning options that is distributed or made available only to institutional investors. The term institutional investor shall mean any qualified investor as defined in Section 3(a)(54) of the Securities Exchange Act of 1934.
- (v) Public Appearance. The term “Public Appearance” shall include, without limitation, any participation in a seminar, forum (including an interactive electronic forum), radio, television or print media interview, or other public speaking activity concerning options.

- (vi) Independently Prepared Reprint. The term “Independently Prepared Reprint” shall include any reprint or excerpt of any article concerning options issued by a publisher, provided that: (1) the publisher is not an affiliate of the member or member organization using the reprint or any underwriter or issuer of a security mentioned in the reprint or excerpt and that the member or member organization is promoting; (2) neither the member or member organization using the reprint or excerpt nor any underwriter or issuer of a security mentioned in the reprint or excerpt has commissioned the reprinted or excerpted article; and (3) the member or member organization using the reprint or excerpt has not materially altered its contents except as necessary to make the reprint or excerpt consistent with applicable regulatory standards or to correct factual errors;
- (b) **Approval by Registered Options Principal**—(i) All advertisements, [educational material and] sales literature (except completed worksheets), and independently prepared reprints issued by a member or member organization pertaining to options shall be approved in advance by an appropriate Registered Options Principal designated by the member or member organization's written supervisory procedures. [Copies thereof, together with the names of persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the member or member organization and be kept at an easily accessible place for examination by the Exchange for a period of three years.]
- (ii) Correspondence need not be approved by a Registered Options Principal prior to use unless such correspondence is distributed to 25 or more existing retail customers within any 30 calendar day period and makes any financial or investment recommendation or otherwise promotes a product or service of the member. All correspondence is subject to the supervision and review requirements of Rule 922.
- (iii) Institutional sales material relating to options need not be approved by a Registered Options Principal prior to use, but is subject to the supervision and review requirements as set forth in the written supervisory procedures of the member or member organization.
- (iv) Copies of the options communications shall be retained by the member or member organization in accordance with Rule 17a-4 under the Securities Exchange Act of 1934. The names of the persons who prepared the options communications, the names of the persons who approved the options communications and the source of any recommendations contained therein, shall be retained by the member or member organization and be kept in accordance with Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934.
- (c) **Exchange Approval Required[ for Options Advertisements and Educational Material]**—In addition to the approval required by paragraph (b) of this Rule, [every] all advertisements, [and all educational material] sales literature and independently prepared

reprints of a member or member organization pertaining to standardized options that is not accompanied or preceded by the applicable current options disclosure document (“ODD”) shall be submitted to the Exchange at least ten calendar days prior to use (or such shorter period as the Exchange may allow in particular instances) for approval and, if changed or expressly disapproved by the Exchange, shall be withheld from circulation until any changes specified by the Exchange have been made or, in the event of disapproval, until the communication [advertisement or educational material] has been resubmitted for, and has received. Exchange approval. The requirements of this paragraph shall not be applicable to:

(i) [advertisements or educational material] options communications submitted to another self-regulatory organization having comparable standards pertaining to such communications [advertisements and educational material] and

(ii) communications [advertisements or educational material] in which the only reference to options is contained in a listing of the services of [a] the member or member organization.

(d) General Rule. No member or member organization or associated person shall use any options communication which:

(i) Contains any untrue statement or omission of a material fact or is otherwise false or misleading.

(ii) Contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts.

(iii) Contains cautionary statements or caveats that are not legible, are misleading or are inconsistent with the content of the materials.

(iv) Contains statements suggesting the certain availability of a secondary market in options.

(v) Fails to reflect the risks attendant to options transactions and the complexities of certain options investment strategies. Any statement referring to the potential opportunities presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities must be avoided.

(vi) Fails to include a warning to the effect that options are not suitable for all investors or contains suggestions to the contrary.

(vii) Fails to include a statement that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.

Paragraphs (vi) and (vii) shall not apply to institutional sales material as defined in this Rule 991.

(e) Standards Applicable to Options Communications.

(i) Unless preceded or accompanied by the ODD, options communications, with the exception of public appearances, shall:

(A) Be limited to general descriptions of the options being discussed;

(B) Contain contact information for obtaining a copy of the ODD; and

(C) Not contain recommendations or past or projected performance figures, including annualized rates of return or names of specific securities.

(ii) Options communications used prior to ODD delivery may:

(A) Contain a brief description of options, including a statement that identifies registered clearing agencies for options. The text may also contain a brief description of the general attributes and method of operation of the exchanges on which options are traded, including a discussion of how an option is priced.

(B) Include any statement required by any state law or administrative authority.

(C) Include advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics, provided such material is not misleading.

**[(d) Delivery of Disclosure Document(s).—**Except with respect to educational material, or as otherwise provided in the Commentary hereunder, no written materials respecting options may be disseminated to any person who has not previously or contemporaneously received the appropriate current Options Disclosure Document(s).]

**[(e) Definitions.—**For purposes of this Rule, the following definitions shall apply:

(i) The term "advertisement" shall include any sales material that reaches a mass audience through either public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video device, telecommunications device, billboards, signs, or through written communications to customers or the public that are not required to be accompanied or preceded by the appropriate current Options Disclosure Document(s).

(ii) The term "educational material" shall include any explanatory material distributed or made generally available to customers or the public that is limited to information describing the general nature of the standardized options markets or one or more strategies.

(iii) The term "sales literature" shall include any written communication (not defined as an "advertisement" or as "educational material") distributed or made available to customers or the public that contains any analysis, performance report, projection or

recommendation with respect to options, underlying securities or market conditions, any standard forms of worksheets, or any seminar text which pertains to options and which is communicated to customers or the public at seminars, lectures or similar such events.]

••• *Commentary* -----

**.01** The Rule 991(e)(i)(B) requirement to include contact information for obtaining a copy of the ODD may be satisfied by providing a name and address or one or more telephone numbers from which the current options disclosure document may be obtained; directing existing clients to contact their registered representative; or including a response card through which a current ODD may be obtained. An internet address may also be used, however, such an address must be accompanied by either a telephone number or mailing address for use by those investors who do not have access to the internet. [The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any advertisement, educational material or sales literature which discusses the uses or advantages of options. Such communications shall include a warning to the effect that options are not suitable for all investors. In the preparation of written communications respecting options, the following guidelines should be observed:

A. Any statement referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as "with options, an investor has an opportunity to earn profits while limiting his risk of loss," should be balanced by a statement such as "of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

B. It shall not be suggested that options are suitable for all investors.

C. Statements suggesting the certain availability of a secondary market for options shall not be made.]

**[.02** Advertisements pertaining to options shall conform to the following standards:

A. Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received the appropriate Options Disclosure Document(s)) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer.

Advertisements under this Rule shall state the name and address of the person from whom the appropriate current Options Disclosure Document(s) may be obtained<sup>1</sup>. Such advertisements may have the following characteristics:

(i) The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is The Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of The Options Clearing Corporation, including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);

(ii) The advertisement may include any statement required by any state law or administrative authority;

(iii) Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

B. The use of recommendations or of past or projected performance figures, including annualized rates of return, is not permitted in any advertisement pertaining to options.

**.03** Educational material, including advertisements, pertaining to options may be used if the material meets the requirements of Rule 134a under the Securities Act of 1933 (the "Act"). Those requirements are as follows:

(i) The potential risks related to options trading generally and to each strategy addressed are explained;

(ii) No past or projected performance figures, including annualized rates of return are used;

(iii) No recommendation to purchase or sell any option contract is made;

(iv) No specific security is identified other than

(a) a security which is exempt from registration under the Act or an option on such exempt security, or

(b) an index option, including the component securities of the index; and

(v) The material contains the name and address of a person or persons from whom the appropriate current Options Disclosure Documents(s), as defined in Rule 9b-1 of the Securities Exchange Act of 1934, may be obtained.<sup>1]</sup>

**.02[.04]** Projections. [Sales literature pertaining to options shall conform to the following standards:

A. Sales literature shall state that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.]

[B.] Options [Such] communications may contain projected performance figures (including projected annualized rates of return), provided that:

(i) All such communications are accompanied or preceded by the ODD.

(ii)[(i)] n]No suggestion of certainty of future performance is made.[:]

(iii)[(ii)] p]Parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.)[:].

(iv)[(iii)] a]All relevant costs, including commissions, fees and interest charges ([if] as applicable [with regard to margin transactions]) are disclosed[:].

(v)[(iv)] s]Such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation[:].

(vi)[(v) a] All material assumptions made in such calculations are clearly identified (e.g., "assume option exercised," etc.)[:];

(vii)[(vi) t] The risks involved in the proposed transactions are also discussed[:];

(viii)[(vii) i] In communications relating to annualized rates of return, that such returns are not based upon any less than a sixty-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

**.03**[C.] Historical Performance. [Such] Options communications may feature records and statistics which portray the performance of past recommendations or of actual transactions, provided that:

(i) All such communications are accompanied or preceded by the ODD.

(ii)[(i) a] Any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific "universe" that can be fully isolated and circumscribed and that covers at least the most recent 12-month period[:];

(iii)[(ii) s] Such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request[:];

(iv)[(iii) such communications disclose a] All relevant costs, including commissions, fees and interest charges ([if] as applicable [with regard to margin transactions]) are disclosed. [and,]

(v) Whenever such communications contain annualized rates of return [are used], all material assumptions used in the process of annualization are disclosed[:];

(vi)[(iv) a] An indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid[:];

(vii)[(v) s] Such communications state that the results presented should not and cannot be viewed as an indicator of future performance[: and];

(viii)[(vi) a] A Registered Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

**.04**[D.] Options Program. In communications regarding [the case of] an options program (i.e., an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

[E. Standard forms of options worksheets utilized by member organizations, in addition to complying with the requirements applicable to sales literature, must be uniform within a member organization for each product type (e.g. equity, index, interest rate, etc.).

F. If a member organization has adopted a standard form of worksheet for a particular options strategy, non-standard worksheets for that strategy may not be used.

G. Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts of customers involved.]

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