

("CBOE")<sup>5</sup> requiring specified persons who bring legal proceedings against the Exchange and/or persons acting on the Exchange's behalf but who do not prevail to reimburse the Exchange for all costs associated with defending such proceedings when these costs exceed fifty thousand dollars. The proposed rule would not apply to disciplinary actions by the Exchange, administrative appeals of Exchange actions or in any specific instance where the Board has granted a waiver of this provision.

## 2. Statutory Basis

The proposed rule change is consistent with section 6(b)<sup>6</sup> of the Act, in general, and furthers the objectives of section 6(b)(5),<sup>7</sup> 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, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

### *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 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 in response to the proposed rule change.

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

The Amex has stated that because the proposed rule change 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 (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<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate

the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,<sup>10</sup> the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. Amex has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>11</sup> The Commission believes that waiving the pre-filing requirement and accelerating the operative date will not affect investors because the proposed rule change only applies to Exchange members, member organizations, limited trading permit holders, approved persons or persons associated with any of the foregoing. Furthermore, as Amex has noted, the proposed new rule is similar to one already in effect at the CBOE.<sup>12</sup> For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

## 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. Amex-2003-35 and should be submitted by June 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47822; File No. SR-Amex-2003-14]

### **Self-Regulatory Organizations; Order Approving Proposed Rule Change as Amended by Amendments No. 1, 2, and 3 Thereto, and Notice of Filing and Accelerated Approval of Amendment No. 4 Thereto, by the American Stock Exchange LLC, Relating to a One-Year Pilot for Options Intermarket Linkage Fees**

May 9, 2003.

On February 28, 2003, 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its fee structure to clarify which fees apply to trades pertaining to the options intermarket linkage ("Linkage") and to specify that such fees are for a one-year pilot. On March 7, 2003, Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 19, 2003, Amex submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> On March 21, 2003, Amex submitted Amendment No. 3 to the proposed rule

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division of Market Regulation ("Division"), Commission, dated March 6, 2003 ("Amendment No. 1").

<sup>4</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division, Commission, dated March 18, 2003 ("Amendment No. 2").

<sup>5</sup> See CBOE Rule 2.24.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> 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. 15 U.S.C. 78c(f).

<sup>12</sup> See n. 5, supra.

change.<sup>5</sup> The Commission published the amended proposal for comment in the **Federal Register** on March 28, 2003.<sup>6</sup> The Commission received no comments on the proposal. On May 8, 2003, Amex submitted Amendment No. 4 to the proposal.<sup>7</sup> This order approves the proposal rule change, as amended by Amendments No. 1, 2, 3, and 4. The Commission also solicits comment from interested persons on Amendment No. 4.

Three Amex fees would apply to Linkage trades other than satisfaction orders: a per transaction per contract side fee of \$.26; a \$.05 options floor brokerage fee; and a \$.05 options comparison fee. Each of these Linkage-related fees would be implemented as a one-year pilot, expiring on January 31, 2004.

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<sup>8</sup> and, in particular, the requirements of Section 6 of the Act.<sup>9</sup> The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>10</sup> which requires that the rules of an exchange provide equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes the one-year pilot will give the Exchange and the Commission the opportunity to evaluate whether these fees are appropriate.

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>11</sup> to approve Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the notice that was published in the **Federal Register**<sup>12</sup> indicated that the Linkage fees were subject to a one-

year pilot and Amendment No. 4 merely specifies the expiration date. Therefore, Amex's proposal for the one-year pilot program to expire on January 31, 2004 was subject to notice and comment. Accordingly, the Commission believes good cause exists, pursuant to Sections 6(b)(5) and 19(b) of the Act<sup>13</sup> to accelerate approval of Amendment No. 4 to the proposed rule change.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, including whether it 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-2003-14 and should be submitted by June 9, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Amex-2003-14), as amended, is approved on a pilot basis until January 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47820; File No. SR-NASD-00-12]

### Self-Regulatory Organization; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Concerning Amendments to Rules Governing Member Communications With the Public

May 9, 2003.

#### I. Introduction

On June 9, 2000, the National Association of Securities Dealers, Inc. ("NASD") and through its subsidiary, NASD Regulation, Inc. ("NASD Regulation"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> filed a proposed rule change to amend NASD Rule 2210 and the Interpretive Materials thereunder, promulgate new NASD Rule 2211, and renumber existing NASD Rule 2211.<sup>3</sup> On August 8, 2001, NASD Regulation filed Amendment No. 1 to the proposed rule change. On December 12, 2001, NASD Regulation filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 31, 2001.<sup>4</sup> The Commission received ten comment letters on the proposed rule change.<sup>5</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The NASD originally submitted the proposed rule change to the Commission on March 21, 2000, however, because the submission did not comply with the requirements of Exchange Act Rule 19b-4, the Commission does not consider the proposed rule change filed on the date. Rather, the Commission considers the proposed rule change to be filed on June 9, 2000, the date on which the deficiencies were corrected.

<sup>4</sup> See Securities Exchange Act Release No. 45181 (December 20, 2001), 66 FR 67586.

<sup>5</sup> See letters from Amy B.R. Lancellota, Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated February 13, 2002 ("ICI Letter"); Christopher R. Franke, Chairman, Self-Regulatory and Supervisory Practices Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated February 14, 2002 ("SIA Letter"); James R. Anderson, Vice President and Chief Compliance Officer, AIM Distributors, Inc. to Jonathan G. Katz, Secretary, Commission, dated February 13, 2002 ("AIM Letter"); James Anderson, Vice President and Chief Compliance Officer, Fund Management Company, to Jonathan G. Katz, Secretary, Commission, dated February 13, 2002 ("FMC Letter"); Michel de Konkoly Thege, Vice President and Associate General Counsel, The Bond Market Association, to Jonathan G. Katz, Secretary, Commission, dated February 15, 2002 ("BMA Letter"); Brandon Becker, Wilmer, Cutler &

<sup>5</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division, Commission, dated March 20, 2003 ("Amendment No. 3").

<sup>6</sup> See Securities Exchange Act Release No. 47562 (March 21, 2003), 68 FR 15250.

<sup>7</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division, Commission, dated May 8, 2003 ("Amendment No. 4"). In Amendment No. 4, Amex proposes to amend its fee schedule to clarify that the one-year pilot program for Linkage fees expires on January 31, 2004.

<sup>8</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> See *supra* note 6.

<sup>13</sup> 13 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> CFR 200.30-3(a)(12).