

proposed Rule 7101(a)(1) and (2), to include all public companies and investment companies, regardless of their market capitalizations, and also include issuers with only registered debt securities. Some commenters also suggested establishing a minimum fee for small issuers as an alternative to the formula provided in the Act. The Board's proposal to restrict the Equity Issuers class to issuers whose average monthly market capitalization exceeds \$25 million and to restrict the Investment Company class to issuers whose average monthly market capitalization (or net asset value) exceeds \$250 million was to ensure that the rules can be administered in a reliable and cost-effective manner. As discussed above, reliable market data is difficult to obtain with respect to issuers that are not traded on an exchange or on Nasdaq, and based on the Board's inquiry, data may not consistently be available with respect to issuers below the proposed rule's thresholds. Based in part on these comments, however, the Board has clarified Rule 7101(a) to more explicitly exclude from those classes issuers whose market capitalization (or net asset value) on a monthly, or more frequent, basis is not publicly available. Also, with respect to issuers of debt securities, section 109(g) of the Act only provides for the assessment of a share of the accounting support fee based on "equity" market capitalization.

The Board also received a comment suggesting that preferred stock should be included in the definition of issuer market capitalization. The Board proposed that the definition of issuer market capitalization include capitalization of all classes of common stock. After consideration, the Board believes that determining whether each issuer's preferred stock resembles equity or debt would unduly burden the Board's administration of its funding system. Therefore, the Board did not adopt this suggestion.

While one commenter supported the proposed rules with respect to investment companies as proposed, another commenter suggested that the 90 percent reduction in investment company market capitalizations (or net asset values), for purposes of calculating the accounting support fee in proposed Rule 7101(b)(1), was too great a reduction. This commenter did not provide any data to support its position, although it recommended further study of this issue. Based on a comparison of audit fees paid by investment companies to audit fees paid by publicly-traded companies, which was provided by the commenter who supported the Board's proposal, the

Board has determined that assessing investment companies at ten percent of that assessed public companies was appropriate.

In addition, the Board received several comments from accounting firms, suggesting that the Board rely on its referral of delinquent issuers to the Commission instead of require, pursuant to proposed Rule 7103(b), that registered public accounting firms ascertain, before signing an unqualified audit opinion, that issuer audit clients have no outstanding past-due shares of the accounting support fee. While the Board has proposed to refer delinquent issuers to the Commission, the uncertainty, given the Commission's limited resources and other priorities, that the Commission would bring civil actions against such issuers makes a referral alone an unreliable collections mechanism. These commenters also suggested that the Board clarify how this rule would work in practice. In response, the Board has clarified that Rule 7103(b) may be satisfied by obtaining a representation from the issuer that no past due share of the fee is outstanding. The Board has also made clear that an issuer that has filed a written petition for a correction of its share will not be deemed to have a past due share outstanding.

Finally, the Board held two informational meetings during the comment period, one in Washington, DC, and one in San Francisco, CA, with representatives of issuers to explain the proposed rules on funding. No substantive comments were received as a result of either meeting.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents the Commission will:

- (a) By order approve the Board's proposed rules on funding; or
- (b) Institute proceedings to determine whether the Board's proposed rules on funding should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the requirements of Title I of the Sarbanes-Oxley Act and the Exchange 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 that are filed with the Commission, and all written communications relating to the proposed rule 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All submissions should refer to File No. PCAOB-2003-02 and should be submitted by July 18, 2003.

By the Commission.
Margaret H. McFarland,
Deputy Secretary.
 [FR Doc. 03-16269 Filed 6-26-03; 8:45 am]
 BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48066; File No. SR-Amex-2003-49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Revise Its Fee Schedule in Connection With the Administration of Forms U-4 and U-5 Through NASD's Web-Based Central Registration Depository System

June 19, 2003.

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 May 28, 2003, 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 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 Exchange proposes to revise its fee schedule in connection with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

administration of Forms U-4 and U-5 through the National Association of Securities Dealers, Inc.'s ("NASD") Web-based Central Registration Depository system ("Web CRD")³. The proposed fee schedule is available at the Office of the Secretary, the Amex, and at the Commission.⁴

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 and discussed any comments it received on the proposed rule change. 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 340 currently requires Amex members and member organizations to submit Forms U-4 (Uniform Application for Securities Industry Registration or Transfer) and U-5 (Uniform Termination Notice for Securities Industry Registration) for their employees with access to the trading floor (e.g., members and clerks). The Exchange also has long required persons who seek either to become members or to own a membership to submit Forms U-4 in connection with their membership applications. These forms currently are submitted to the Exchange's Membership Services Division as paper documents.

The Exchange is now proposing to require all its members, member organizations and seat owners to use NASD's Web CRD as the mechanism for submitting required Forms U-4 and U-5 filings to the Exchange.⁵ The

Exchange anticipates that, during the period between September 3 and September 19, 2003, Amex members and member organizations will electronically file Forms U-4 with Web CRD for all individuals who then work on the trading floor who have not previously submitted a Form U-4 to Web CRD. Going forward from September 3, 2003, the Exchange also will require individuals who have not previously registered with the Exchange and who (i) seek to become a regular, options principal, or associate member, (ii) seek to become a limited trading permit holder, (iii) seek to own a regular, options principal, associate membership or limited trading permit, or (iv) are or should be an approved person or allied member, to electronically file Form U-4 with Web CRD.

The CRD system is a Web-based system that provides broker-dealers and their associated persons with "one-stop filing" with the Commission, NASD, and other self-regulatory organizations ("SROs") and regulators. The CRD system is operated by NASD and is used by participating regulators in connection with registering and licensing broker-dealers and their associated persons. The Exchange believes that automating the review of registration applications and termination notices by transitioning all Forms U-4 and U-5 filings to Web CRD would enable the Exchange to more efficiently perform its regulatory responsibilities with respect to members and member organizations and, thereby, would ultimately enhance investor protection.

In addition, the Exchange is proposing to revise its registration fees in connection with the implementation of Web CRD for filing Forms U-4 and U-5. The new registration fees would take effect when the Exchange requires the use of Web CRD, which currently is scheduled for September 3, 2003. Members and member organizations would be instructed to pay the CRD processing fees directly to NASD through Web CRD. NASD would collect the appropriate processing fees in connection with the Amex member or member organization effecting a registration through Web CRD and retain or disburse to Amex the fee as described below.

The following are the proposed Web CRD processing fees. First, the proposed revisions to the fee schedule would implement an \$85 CRD Processing Fee

charged by NASD for all Initial, Dual Registration, Transfer, and Re-license Form U-4 filings. This fee, combined with the current, corresponding Amex fees, would bring the total amount paid to NASD for Initial Individual and Dual Registrations to \$145 (\$60 Amex Standard Application Fee plus \$85 CRD Processing Fee), and the total amount paid to NASD for Transfer and for Re-licensing to \$125 (\$40 Amex Standard Application Fee plus \$85 CRD Processing Fee). The Amex Application Fees of \$60 (for Initial Individual Registration) and \$40 (for Transfers and for Re-licensing) would be collected on behalf of and disbursed back to Amex by NASD. These fees would offset the costs to the Amex of reviewing and processing all applications.

Second, the proposed revisions to the fee schedule would implement a \$95 Disclosure Processing Fee charged by NASD in connection with Forms U-4 and U-5 for all filings with new or amended disclosure information. There is no corresponding Amex fee. The Amex, however, would continue to assess a \$30 Termination Fee in connection with all Form U-5 filings. The Termination Fee would be collected by NASD on behalf of and disbursed back to Amex.

Third, the proposed revisions to the fee schedule would implement a \$30 NASD Annual System Processing Fee assessed only during renewals. Therefore, the total annual processing/maintenance cost charged at the renewal cycle per registered person would be \$77, which includes the current \$47 Amex annual Renewal fee that would be collected on behalf of Amex by NASD and covers the costs of the Exchange associated with the registration program.

Fourth, the proposal would raise the current \$25 fee for fingerprinting to \$35 and transfers this fee from the "Member Fee" to the "Registration" section of the Exchange's fee schedule. This fee would be retained by NASD, as the NASD would process fingerprint cards as part of the Exchange's migration to the Web CRD system. (The NASD would remit \$22.00 of this fee to the FBI as its processing fee.) The Amex also would implement a \$13.00 fee for Posting Fingerprint Results Processed through other SROs. This fee would be retained by NASD and would be imposed where NASD accepts the results of fingerprints processed by the NASD through another SRO.

In addition to the fees outlined above, Amex members and member organizations would be required to pay a one-time Web CRD System Transition Fee of \$85 per person to transition to

³ CRD is a registered trademark of NASD and the North American Securities Administrators Association, Inc.

⁴ In connection with the instant proposal, the Exchange filed an effective on filing rule proposal to amend Amex Rule 340, Disapproval of Employees, and Amex Rule 341, Approval of Registered Employees and Officers, and to adopt new Amex Rule 359, Application and Termination Forms (Forms U-4 and U-5), to provide for the processing of the Form U-4 and Form U-5 by the Web CRD system for all individuals required to be registered with or approved by the Exchange. See Securities Exchange Act Release No. 48067 (File No. SR-Amex-2003-48).

⁵ A number of individuals that work on the trading floor already have submitted Forms U-4 to

Web CRD if they work for dual Amex/NASD member firms and their job responsibilities require registration with NASD.

Web CRD the individuals currently registered with Amex that are not on Web CRD. This is a fee payable to the NASD to cover its processing costs for the migration to Web CRD. Furthermore, any individual transitioned to Web CRD who has a "yes" answer to a disclosure question on the U-4 would be assessed a \$95 Disclosure Fee which would be retained by NASD.

In connection with this filing, the Exchange also proposes to delete language in its fee schedule that pertains to a fee waiver that has expired. In addition, the Exchange proposed to update the "Electronic access fee" under "Membership Fees" in the fee schedule to reflect a change to electronic access fees approved by the Commission in SR-Amex-2001-15.⁶ This item is amended to delete the "10% of average membership seat sale price, set annually" provision and to replace it with the access fee of \$61,363.00.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4)⁹ in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

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 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

Written comments on the proposed rule change were neither solicited nor received.

⁶ See Securities Exchange Act Release No. 44337 (May 22, 2001), 66 FR 29369 (May 30, 2001).

⁷ Amex corrects the figure in this proposed rule change from \$61,262.00, as it was stated in the filing, to \$61,363.00, which is the electronic access fee adopted from SR-Amex-2001-15. Amex notes that the fee schedule that was attached to the proposed rule change does correctly state \$61,363.00 as the fee. Telephone conversation between Bill Floyd-Jones, Associate General Counsel, Amex, and Cyndi Rodriguez, Special Counsel, Division of Market Regulation, Commission, on June 10, 2003.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder¹¹ because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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 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 the 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-2003-49 and should be submitted by July 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-16335 Filed 6-26-03; 8:45 am]

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¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48072; File No. SR-Amex-2003-64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to the Automatic Execution of Option Linkage Orders

June 20, 2003.

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 June 19, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 Exchange is proposing to amend Amex Rule 941(e) for the purpose of permitting the automatic execution of Linkage Orders even though the Exchange's Auto-Ex system ("Auto-Ex") has been (i) disengaged because of an influx of orders or (ii) by-passed whenever a locked market causes an inversion in the quote.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

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 and discussed any comments it received on the proposed rule change. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.