

violations should preclude them from obtaining the requested relief.

### Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

### Temporary Order

The Commission has considered the matter and finds that applicants have made the necessary showing to justify granting of a temporary exemption.

Accordingly, *it is hereby ordered*, under section 9(c), that the Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Final Judgment, subject to the condition in the application, until the Commission takes final action on an application for a permanent order.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-2794 Filed 2-5-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-45360; File No. SR-Amex-2001-102)

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change Relating to a Retroactive Increase in Floor, Membership and Options Trading Fees

January 29, 2002.

#### I. Introduction and Description of the Proposal

On December 6, 2001, 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 apply retroactively fee increases made under SR-Amex-2001-101,<sup>3</sup> which was filed for immediate effectiveness pursuant to section 19(b)(3)(A)(ii) of the Act.<sup>4</sup> Specifically, the Exchange proposed to increase floor, membership and option trading fees and to impose the increased license fees and to eliminate of the fee cap for options as of October 1, 2001. Amendment No. 1 was filed with the Commission on December 17, 2001.<sup>5</sup>

The proposed rule change was published for comment, as amended, in the **Federal Register** on December 27, 2001.<sup>6</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

#### II. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act<sup>7</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act<sup>9</sup>, which requires, among other things, that the rules of a national securities exchange be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the increase reflects additional costs that Amex has represented it has incurred since August 2001 for services provided to issuers. The Amex stated that it has committed additional resources to provide enhancements to the Floor, and major improvements in technology, facilities and services, which included a major expansion of the Amex Trading Floor in

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

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

<sup>3</sup> See Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001) for a description of these increased fees. (SR-Amex-2001-101).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>5</sup> See letter from Claire P. McGrath, Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 14, 2001 ("Amendment No. 1"). In Amendment No. 1, the Amex provided greater detail as to the basis for the proposed rule change.

<sup>6</sup> See Securities Exchange Act Release No. 45165 (December 27, 2001), 66 FR 66957.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> In approving this proposed rule change, the Commission 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(b)(4).

2001. The Exchange represented that the increase in options transactions charges is necessitated by the large and increasing costs incurred by the Exchange in implementing options trading technology. The Exchange further represented that it has subsidized such expenses before August 1, 2001.

#### III. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act<sup>10</sup>, that the proposed rule change (File No. SR-Amex-2001-102), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-2791 Filed 2-5-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45365; File No. SR-AMEX-2001-106]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Unlisted Trading Privileges in Nasdaq National Market Securities

January 30, 2002.

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> notice is hereby given that on December 17, 2001, 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 Amex filed an amendment to its proposal on January 14, 2002.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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 Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Katherine England, Assistant Director, Division of Market Regulation, Commission (January 11, 2002) ("Amendment No. 1").