

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]

BILLING CODE 8010-01-P

## 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").

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt new Amex Rule 118 and to amend Amex Rules 1, 3, 7, 24, 115, 170, 175, 190, 205 and Section 950 of the Amex Company Guide to provide for the trading of Nasdaq National Market securities pursuant to unlisted trading privileges. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

### Rule 1. Hours of Business

No change.

Commentary

.01 through .04. No change.

.05 *The hours of business for a security traded on the Exchange pursuant to unlisted trading privileges shall be the same as the hours during which the security is traded in the primary market for such security.*

### Rule 3. Excessive Dealing

(a) No change.

(b) Trading with non-member.

No regular or options principal member shall effect, in the rooms of the Exchange, a transaction with an associate member or with a non-member, in any security dealt in on the Exchange; but this rule shall not prohibit transactions permitted by Rule 118, Rule 152 or by Section 7 of Part II of the Rules of the Exchange or with an employee of the Exchange or American Stock Exchange Clearing Corporation engaged in carrying out arrangements approved by the Board of Governors to facilitate the borrowing and lending of money.

(c) through end. No change.

### Rule 7. Short Sales

No change.

Commentary

.01 No change.

.02 *This Rule 7 does not apply to transactions on the Exchange in Nasdaq National Market securities pursuant to unlisted trading privileges effected under Exchange Rule 118.*

### Rule 24. Block Transactions

(a) No change.

(b) The restrictions of paragraph (a) shall not apply to:

(i) through (v) No change.

(vi) *orders in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.*

### Rule 115. Exchange Procedures for Use of Unusual Market Exception

No change.

Commentary .01.

1. and 2. No change.

3. The Market Operations Division, either upon receiving notification from a Floor Official with respect to a specialist as provided in paragraph 1(b) or upon making its own determination with respect to the Exchange as provided in paragraph 2, shall notify the Securities Industry Automation Corporation (and request that it notify quotation vendors) *or, with respect to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges, the Processor for Nasdaq National Market securities, regarding the Exchange's inability to accurately collect, process, and make available the quotation data required by SEC.*

### Rule 11Ac1-1.

4. No change.

Commentary .02 No change.

### Trading in Nasdaq National Market Securities

#### Rule 118. (a) Definitions

(i) *The term "Nasdaq National Market security" shall mean any security designated as such pursuant to National Association of Securities Dealers ("NASD") Rule 4200 and as to which the Exchange has extended unlisted trading privileges pursuant to Section 12(f) of the Securities Exchange Act of 1934.*

(ii) *The term "Nasdaq System" shall mean the Nasdaq's Automated Quotation System.*

(b) *Except to the extent that the provisions of Rule 118 govern, or unless the context otherwise requires, the provisions of the Constitution and Rules of the Exchange are applicable to trading in Nasdaq National Market securities.*

(c) *Each Exchange specialist shall permit each Nasdaq System market maker, acting in its capacity as market maker, direct telephone access to the specialist post in each Nasdaq National Market security in which such market maker is registered as a market maker. Such access shall include appropriate procedures to assure the timely response to communications received through telephone access. Nasdaq System market makers may use such telephone access to transmit orders for execution on the Exchange. Any order received on the Floor via telephone from a Nasdaq System market maker shall be effected in accordance with the rules relating to the making of bids and offers and transactions on the Floor, subject to exceptions to Exchange rules applicable to trading in Nasdaq National Market*

*Securities as set forth in Commentary .01 to this Rule.*

(d) *The Exchange will display on its trading floor the quotations distributed by any Nasdaq System market maker in Nasdaq National Market securities. Exchange specialists may send orders from the Floor of the Exchange for execution via telephone to any Nasdaq System market maker in each Nasdaq National Market security in which it displays quotations. Quotations in Nasdaq National Market securities from other market centers shall have no standing in the trading crowds on the Floor.*

(e) *Pursuant to the Nasdaq Unlisted Trading Privileges Plan ("Plan"), the Exchange shall report to the Plan Processor intermarket transactions effected on the Exchange for which the Exchange member is the seller.*

(f) *Comparison of intermarket transactions in Nasdaq National Market securities will be made pursuant to procedures to be established between Nasdaq and the Exchange.*

(g) *Registration of Specialists—Specialists who wish to trade Nasdaq National Market securities must be registered and qualified by the Exchange. Such persons will be required to:*

(1) *if conducting business with the public, obtain a Series 7, General Securities Representative license; and,*

(2) *complete a training period as deemed adequate by the Exchange.*

(h) *Non-Liability of Exchange—Article IV, Section 1(e) of the Exchange Constitution shall apply to trading of Nasdaq National Market securities on the Exchange pursuant to unlisted trading privileges, and the Exchange, its affiliates, and any of its or their respective officers, governors, committee members, employees or agents shall not be liable to a member of the Exchange, a member organization, or a person associated with a member or member organization to the extent provided in Article IV, Section 1(e).*

(i) *Specialists in Nasdaq National Market securities are subject to the financial requirements set forth in Rule 171, Commentary .04.*

Commentary

.01 *The following rules refer to trading in Nasdaq National Market securities and should be consulted by members and member organizations trading Nasdaq National Market securities on the Floor: Rule 1 (Commentary .05); Rule 3; Rule 7 (Commentary .02); Rule 24(b); Rule 115 (Commentary .01); Rule 170 (Commentary .11); Rule 175 (Commentary .01); Rule 190*

(Commentary .06); and Rule 205 (Commentary .05).

Rule 170. Registration and Functions of Specialists

(a) through (e) No change.

Commentary

.01 through .10 No change.

.11 *The following provisions of this Rule shall not apply to the trading of Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges: paragraph (e), Commentary .01, .02, .05, .07, .08 and .09.*

Rule 175. Specialist Prohibitions

(a) through (c) No change.

Commentary

.01 *Paragraph (a)(1) and paragraph (b) of this Rule shall not apply to the trading of Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges. In addition, "Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 175" shall not apply to such trading.*

Rule 190. Specialists' Transactions with Public Customers

(a) through (e) No change.

Commentary

.01 through .05 No change.

.06 *Paragraph (b) of this Rule shall not apply to the trading of Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.*

Rule 205. Manner of Executing Odd-Lot Orders

No change.

Commentary

.01 through .04. No change.

.05 *With respect to odd-lot market and marketable limit orders in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges, orders to sell (buy) shall be filled at the best bid (offer) disseminated pursuant to SEC Rule 11Ac1-1 at the time the order has been received at the trading post or through the Amex Order File.*

Company Guide Sec. 950 Explanation of Difference Between Listed and Unlisted Trading Privileges

First paragraph—No change.

*Subject to Commentary .01 of this section, [S] securities other than those fully listed on the Exchange were, in the past, admitted to dealings on the Exchange under the designation "admitted to unlisted trading*

*privileges". Securities in this category were admitted to dealings without a formal listing application or request for listing by the issuing company. Most of these securities were admitted to dealings prior to 1934, and further admission of securities to this type of dealings has been virtually terminated. Since companies whose securities are admitted to unlisted trading privileges never filed any listing application or request with the Exchange for trading privileges in their securities, they are not subject to any of the listing agreements applicable to fully listed companies.*

Commentary

.01 *Notwithstanding the provisions of Section 950, the Exchange may extend unlisted trading privileges to Nasdaq National Market securities pursuant to Section 12(f) of the Securities Exchange Act of 1934. Nasdaq National Market securities are designated as such by the NASD, pursuant to NASD rules. The Exchange has implemented certain rules applicable to trading in Nasdaq National Market securities. See Amex Rule 118.*

\* \* \* \* \*

## 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.

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

#### 1. Purpose

The Exchange is proposing rules to accommodate trading of Nasdaq National Market securities on the Exchange pursuant to unlisted trading privileges ("UTP"), in accordance with provisions of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan"). The Exchange is a participant

in the Plan. Exchange trading in Nasdaq National Market securities will be governed by proposed Amex Rule 118. The Exchange intends to limit Nasdaq UTP trading to Nasdaq National Market issues and not to include Nasdaq SmallCap issues at this time.

Proposed Rule 118 includes the following provisions:

(a) Defines Nasdaq National Market security and Nasdaq System.

(b) States that the Exchange Constitution and rules apply to trading Nasdaq National Market securities, except to the extent that Rule 118 governs or unless the context otherwise requires.

(c) Requires Amex specialists to permit Nasdaq market makers direct telephone access to the specialist post and allows Nasdaq market makers to use telephone access to transmit orders for execution on the Amex.

(d) Provides that quotations distributed by Nasdaq market makers will be displayed on the Floor, that Amex specialists may send orders from the Floor for execution via telephone to Nasdaq market makers, and that quotations in Nasdaq securities from other market centers have no standing on the Floor.

(e) Provides that the Exchange will report intermarket transactions in which the Exchange member is the seller to the Nasdaq UTP Processor.

(f) Provides that comparison of intermarket transactions in Nasdaq National Market securities will be made pursuant to procedures to be established between Nasdaq and the Exchange.<sup>4</sup>

(g) Provides that specialists in Nasdaq securities must be registered and qualified, and includes specified testing and training requirements.

(h) Provides for a disclaimer of Exchange liability with request to transactions on the Exchange in Nasdaq National Market securities, in accordance with Article IV, Section 1(e) of the Exchange Constitution.

(i) Provides that the specialist financial requirements of Rule 171, Commentary .04 apply to specialists in Nasdaq securities. Rule 171, Commentary .04 currently provides that a specialist in a security principally traded or priced in another U.S. market must maintain a cash or net liquid asset position sufficient to assume a position of 20 trading units. For Amex-listed securities, the requirement is 60 trading units.

<sup>4</sup> The Commission notes that these procedures must be established before the Commission can take final action on this proposal.

The following existing Amex rules also would be amended to accommodate Nasdaq UTP trading<sup>5</sup>:

*Rule 1, Comm. .05*

Provides that the hours of business for securities traded on the Exchange pursuant to UTP are the same as the hours of trading in the primary market for such securities (Comm. .05).<sup>6</sup>

*Rule 3*

Exempts trading with non-member Nasdaq market makers from the prohibition on trading with non-members.

*Rule 7*

States that Rule 7, which includes the short selling "tick-test" restriction of SEC Rule 10a-1, does not apply to transactions in Nasdaq National Market securities effected under Rule 118.

*Rule 24*

Exempts Nasdaq National Market securities from the rule's block transactions restrictions. Rule 24 states that, after learning about a trade executed or about to be executed on the Floor involving 10,000 shares or more, a member or employee of a member or member organization cannot initiate or transmit to the Floor an order for the account of a member or member organization for two minutes following the print of such trade on the tape. The Exchange does not believe it is appropriate to apply the restrictions in Rule 124 to Nasdaq National Market securities, for which Amex would not be the primary market.

*Rule 115*

Amends Commentary .01(3) to provide for notification to the Processor for Nasdaq National Market securities in the event unusual market activity or an unusual condition exists that prevents the specialist from updating quotations on a timely basis.

*Rule 170, Comm. .10*

Exempts specialists from Rule 170, paragraph (e) and specified Commentary to the rule. Rule 170(e) restricts members or persons affiliated with a specialist or the specialist's member

organization from purchasing or selling a specialty security for an account in which such person or party has an interest, except when the specialist is acting pursuant to Rule 170(c) or (d) (e.g., is engaged in dealings reasonably necessary to maintain a fair and orderly market, and to maintain price continuity and reasonable depth). The requirements of Rule 170 are imposed by Amex as a primary market but are not imposed by regional exchanges or Nasdaq. Therefore, the proposed exemption provides regulatory parity with other markets trading Nasdaq securities. The Exchange notes that the requirements of Rules 150 and 155 will apply to orders entered with a specialist in Nasdaq National Market securities from affiliates of the specialist.

The rationale underlying the proposed exemption from paragraph (e) also underlies the proposed exemptions from the stabilization and liquidating transaction restrictions of Commentaries .01 and .02;<sup>7</sup> restrictions on adjustment of a LIFO inventory (Commentary .05), and restrictions on assignment to the specialist's investment account (Commentary .07). Commentaries .08 and .09, which relate to transactions in the Intermarket Trading System ("ITS") are inapplicable insofar as Nasdaq securities are not traded in ITS.

*Rule 175*

Provides that Rule 175(a)(1) and (b) and Rule 175 "Guidelines" shall not apply to Nasdaq UTP securities. Rule 175(a)(1) provides that a specialist, the specialist's member organization, or other specified persons cannot acquire, hold or grant an interest in any option to purchase or sell or to receive or deliver shares of the specialist's specialty stock, except as provided by Rule 175. Paragraph (b) sets out restrictions on specialists' ability to establish or maintain positions in listed options overlying their specialty securities, which positions must conform to the rule's "Guidelines." The Exchange does not believe these provisions are appropriately applied to options positions overlying Nasdaq UTP securities insofar as the Exchange would not be the primary market for these securities, and restrictions such as those in Rule 175 are not imposed by regional exchanges or Nasdaq.

<sup>7</sup> Stabilization requirements refer to Amex rules that generally prohibit Amex specialists from buying on plus ticks (i.e., a trade at a positive variation from the prior transaction) or selling on minus ticks (i.e., a trade at a negative variation from the prior transaction). The Exchange currently has a proposed rule change pending with the Commission that would revise stabilization requirements as applied to Amex specialists. See SR-Amex-2001-54.

*Rule 190*

Provides that paragraph (b) shall not apply to Nasdaq UTP securities. Paragraph (b) prohibits specialists from accepting an order to buy or sell the specialist's specialty securities directly from specified entities, including the issuer; an officer, director or 10% shareholder in the issuer; a pension fund; or a bank, insurance company or investment company. The Exchange does not view the potential abuses addressed by paragraph (b) as raised by trading in Nasdaq UTP securities insofar as the Exchange would not be the primary market for these securities, and restrictions such as those in Rule 190(b) are not imposed by regional exchanges or Nasdaq.

*Rule 205, Comm. .05*

Provides that odd-lot and marketable limit orders should be filled at the best bid or offer disseminated through Nasdaq.

*Company Guide*

*Section 950.*

Adds Commentary .01 to state that the Exchange may trade Nasdaq securities pursuant to UTP. This provision would distinguish Nasdaq UTP trading from Amex securities that were admitted to unlisted trading privileges and that, for the most part, were traded on the Amex prior to 1934.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> in particular, which requires, among other things, that the rules of an exchange be designed 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 mechanism 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.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> The Exchange has separately filed pursuant to Rule 19b-4 allocation procedures applicable to Nasdaq National Market securities (SR-Amex-2001-107).

<sup>6</sup> The Commission notes that the Plan defines Primary Market. However, in draft Plan Amendment No. 13, the Plan participants propose to delete the Primary Market definition and add a Listing Market definition. If the Primary Market definition is ultimately deleted and the Listing Market definition is added to the Plan, the Exchange should reflect this change in its rules where applicable.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change 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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change 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 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 Exchange. All submissions should refer to File No. SR-AMEX-2001-106 and should be submitted by February 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-2793 Filed 2-5-02; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45366; File No. SR-Amex-2002-06]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Implementation of a Fee for the Issuance of Temporary Identification Badges**

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 January 24, 2002, 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 Amex, pursuant to Rule 19b-4 of the Act, proposes to charge a flat fee of \$50 per occasion for the issuance of temporary identification badges for any member or member firm employee who fails to bring his or her badge to the Exchange. According to the Exchange, members and/or their firms will be automatically billed monthly for each temporary identification badge for both affiliated employees and members.

The text of the proposed rule change is available at the Office of the Secretary, the 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 regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

**1. Purpose**

The Amex represents that current circumstances require heightened security measures, and thus, that the Amex's Security Department's resources need to be focused on these measures. According to the Amex, issuing temporary identification badges interferes with more important duties and is an expense to the Exchange. As a result, the Amex is proposing to charge a flat fee of \$50 per occasion for the issuance of temporary identification badges for any member or member firm employee who fails to bring his or her badge to the Exchange. Members and/or their firms will be automatically billed monthly for each temporary identification badge for both affiliated employees and members.

**2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b)<sup>3</sup> of the Act, in general, and Section 6(b)(4) of the Act,<sup>4</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members 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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received with respect to the proposed rule change.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)<sup>5</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>6</sup> thereunder. At any time within 60 days of the filing of the 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

<sup>3</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

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

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

<sup>10</sup> 17 CFR 200.30-3(a)(12).