

that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant believes that this concern does not arise in connection with its application because neither applicant nor the Sponsor has discretion in choosing the portfolio securities or percentage amount purchased. The security must first be included in the Financial Times Index or the Hang Seng Index, which indexes are unaffiliated with the Sponsor and applicant, and must also qualify as one of the ten highest dividend yielding securities.

4. Applicant also believes that the effect of a Trust's purchase on the stock of parents of broker-dealers would be *de minimis*. Applicant asserts that the common stocks of securities related issuers represented in the Financial Times Index of the Hang Seng Index are widely held, have active markets, and that potential purchases by any Trust would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. Accordingly, applicant believes that it is highly unlikely that Trust purchases of these securities would have any significant impact on the securities' market value.

5. Another potential conflict of interest could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the portfolio of a Trust nor any affiliate thereof will act as a broker for any Trust in the purchase or sale of any security for its portfolio. In light of the above, applicant believes that its proposals meets the section 6(c) standards.

#### Condition

Applicant and each Series agree that any order granted under this application may be conditioned upon no company held in a Trust's portfolio nor any affiliate thereof acting as broker for any Trust in the purchase or sale of any security for a Trust's portfolio.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35142; File No. SR-Amex-94-58]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Its Options Floor Brokerage Fee and Bond Charge

December 23, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on December 14, 1994, the American Stock Exchange, Inc. ("Amex") or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 proposes to increase two charges imposed on members and member organizations—its options floor brokerage fee and its bond charge. The schedule of fee changes 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 self-regulatory organization 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 self-regulatory organization 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 proposes to increase two charges imposed on members and member organizations—its options floor brokerage fee and its bond charge. The options floor brokerage fee payable by clearing firms of \$.015 per contract side for all customer and non-market making member firm principal activity would be increased to \$.03. The bond charge of

\$.00005 (per dollar face value of the bond) on bonds up to a face value of \$1 million would be increased to \$.0001 (per dollar face value of the bond) with no cap on the face value of the bond. In addition, the charge, previously imposed only on corporate bonds, would now be imposed on government bonds as well. These two fee increases are scheduled to take effect on January 3, 1995.

###### 2. Statutory Basis

The fee change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons using the Exchange's facilities.

##### B. Self-Regulatory organization's Statement on Burden on Competition

The fee change will impose no burden on competition.

##### 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 with respect to the fee change.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-94-58 and should be submitted by January 25, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35146; File No. SR-Amex-94-50]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Proposed Commentary .02 to Rule 60**

December 23, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 14, 1994, the American Stock Exchange, Inc. ("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 self-regulatory organization. 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 text of the proposed rule change is as follows: *italics* indicate words to be added.

Rule 60 Commentary

.01 Electronic Display Book—NYSE

Disclaimer

No Change.

.02 On-Line Comparison System and Other NYSE Facilities

*The Amex has entered into an agreement with the New York Stock Exchange under which Amex members and member organizations will be utilizing the NYSE's On-Line Comparison System ("OCS") for the comparison of Amex equity and bond transactions. The Amex may enter into*

*additional agreements with the NYSE in the future relating to the use of other NYSE systems, services, or facilities by Amex members and member organizations. In connection with member or member organization use of OCS or any such other NYSE system, service, or facility, the New York Stock Exchange shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment thereof by the member or member organization.*

**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 self-regulatory organization 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 self-regulatory organization 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 has reached agreement with the New York Stock Exchange to integrate the Amex's Equity Intra-Day Comparison System ("IDC") into the NYSE's On-Line Comparison System ("OCS"), so that Amex equity and bond transactions can be compared through OCS. This will enable members to utilize the same computer terminal for the comparison of both Amex and NYSE securities and thus lessen the cost to the member firm community. The integration is being accomplished in two steps. Amex listed corporate bonds began to be compared through OCS on October 21, 1994 and equities are expected to be phased in by the end of the first quarter of 1995.

The Amex Constitution (Article IV, Section 1(e)) currently provides that the Exchange shall not be liable for any damages incurred by a member firm growing out of its use of the facilities afforded by the Exchange for the conduct of its business (which includes the use of the Exchange's trading systems), except as the Exchange may otherwise provide. The NYSE Constitution has a similar provision regarding use of its facilities by its members. These provisions reflect the common understanding that exchanges should not bear the risk and liability associated with member firm use of their systems. In connection with the

OCS agreement, the NYSE is requiring that, like the Amex, it be protected from liability with regard to Amex member firm use of OCS. This is similar to protection which the NYSE requested and obtained when the Amex licensed the NYSE's electronic equity display book for use on the Amex floor in 1992. At that time, the Exchange adopted a Commentary under Rule 60 providing the protection requested by the NYSE with respect to Amex member firm use of the display book.

As the Exchange may enter into additional agreements with the NYSE in the future relating to the use of other NYSE systems, services, or facilities by Amex member firms, it is proposed that the Exchange adopt a liability disclaimer provision that covers not only the current situation involving the use of OCS, but also all future situations where Amex member firms are using other NYSE facilities in accordance with similar agreements with the NYSE.<sup>1</sup> The new Commentary to Rule 60 will be disseminated to the membership, upon SEC approval.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposed rule change is also consistent with Section 17A of the Act in that it fosters the accurate clearance and settlement of securities transactions.

**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**

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

<sup>1</sup> The NYSE acknowledges that under New York State Common Law, a liability disclaimer such as the instant one does not insulate the NYSE from loss due to gross negligence or willful misconduct. Conversation between Steve Abrams and Michael Simon, Milbank, Tweed, Hadley & McCloy, Counsel to NYSE, and Amy Bilbija, Attorney, Commission, dated December 2, 1994.