

Amex Rule 18 by complying with all applicable laws in effect in the state of Minnesota, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing and registration under section 12(b) of the Act<sup>3</sup> and shall not affect its obligation to be registered under section 12(g) of the Act.<sup>4</sup>

On January 15, 2002, the Board of Directors of the Issuer ("Board") approved a resolution to withdraw the Issuer's Security from the Amex. On January 31, 2002, the Issuer held a special meeting of its shareholders to approve and adopt a plan of liquidation and dissolution of the Issuer that will authorize: (i) The sale of the assets of the Issuer and the distribution to shareholders pursuant to the plan; (ii) the deregistration of the Issuer's Security under the Act; and (iii) the dissolution of the Issuer pursuant to the Minnesota Business Corporation Act. The Board believes it advisable and in the best interest of the Issuer to withdraw its Security from listing and registration on the Amex in connection with the plan of liquidation and resolution.

Any interested person may, on or before February 28, 2002 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45403; File No. SR-Amex-2001-100]

### Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the American Stock Exchange LLC Relating to the Initial and Annual Listing Fees, Fees for Listing Additional Shares and the One-Time Charge for Listing Shares Issued in Connection With Acquisition of a Listed Company by an Unlisted Company

February 6, 2002.

#### I. Introduction

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 amend sections 140, 141, 142, 144 and 341 of the *Amex Company Guide* relating to the Exchange's initial listing fee, annual fee, the fee for listing additional shares and a one-time charge for listing shares issued in connection with the acquisition of a listed company by an unlisted company. The Exchange filed Amendment No. 1 to the proposed rule change on December 26, 2001.<sup>3</sup> The Exchange filed Amendment No. 2 to the proposed rule change on December 26, 2001.<sup>4</sup> The Exchange filed Amendment No. 3 to the proposed rule change on January 5, 2002.<sup>5</sup> The proposed rule

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

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

<sup>3</sup> See letter from Michael J. Ryan, Executive Vice President and General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 13, 2001 ("Amendment No. 1"). In Amendment No. 1, the Amex requested that Commission grant accelerated approval to the proposed rule change.

<sup>4</sup> See letter from Michael J. Ryan, Executive Vice President and General Counsel, Amex, to Marc McKayle, Special Counsel, Division, Commission, dated December 20, 2001 ("Amendment No. 2"). In Amendment No. 2, the Amex stated that it seeks to implement the revised Annual Fee schedule under section 141 as of January 1, 2002 and the revisions to sections 140, 142, 144 and 341 upon Commission approval. In addition, the Amex made a minor correction to the proposed rule change, clarified that it will not reimburse part of the annual fee paid under section 141 to issuers whose securities are removed from listing and registration for the portion of the year remaining after the date of removal, and added additional reasons for amending the Refund of Listing Fees under section 144.

<sup>5</sup> See letter from Michael Cavalier, Associate General Counsel, Amex, to Christopher Solgan, Law

change, as amended by Amendments Nos. 1 and 2, was published for comment in the *Federal Register* on January 10, 2002.<sup>6</sup> No comments were received regarding the proposed rule change, as amended. This order approves the proposed rule change, as amended, on an accelerated basis.

#### II. Description of the Proposed Rule Change

The Exchange proposes to amend sections 140, 141, 142, 144 and 341 of the *Amex Company Guide* to modify initial and annual listing fees, fees for listing additional shares and the one-time charge for listing shares issued in connection with the acquisition of a listed company by an unlisted company.

Specifically, the Exchange proposes to amend section 140 of the *Company Guide* by increasing the original listing fees for stock issues, excluding securities listed under sections 106 (Currency and Index Warrants) and 107 (Other Securities) of the *Company Guide*. The Exchange also proposes that the one time-charge of \$5,000 for issuers who do not have a stock or warrant issue listed on the Exchange would now be designated an application processing fee. The original listing fee for Index Fund Shares (e.g., iShares, VIPERs) listed under Rule 1000A and Trust Issued Receipts (e.g., HOLDRs) listed under Rule 1200 is \$5000 for each series, with no application processing fee.

The Exchange proposes to amend section 141 of the *Company Guide* by increasing annual fees for stock issues and for issues listed under sections 106 and 107 of the *Company Guide*. In addition, the Exchange proposes to codify an existing procedure in section 141 of the *Company Guide* to provide that the annual fee for Index Fund Shares and Trust Issued Receipts is based on the number of shares of a series outstanding at year-end, with multiple series aggregated for purposes of the fee calculation. Finally, the Exchange proposes that it would no longer reimburse issuers whose securities are removed from Exchange listing for part of any previously paid annual fee applicable to the portion of the year remaining after the date of suspension from dealings.

For issues over 100,000 shares, the Exchange proposes to amend section

Clerk, Division, Commission, dated January 4, 2002 ("Amendment No. 3"). In Amendment No. 3, the Amex made a minor correction to the text of the proposed rule change. This is a technical amendment and is not subject to notice and comment.

<sup>6</sup> See Securities Exchange Act Release No. 45235 (January 4, 2002), 67 FR 1373.

<sup>3</sup> 15 U.S.C. 781(b).

<sup>4</sup> 15 U.S.C. 781(g).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

142 of the *Company Guide* to increase the maximum fee per company for listing additional shares to \$22,500 for issues of 1,125,000 shares or more. In addition, the Exchange proposes a maximum fee per company in any one year for listing additional shares of \$45,000. Section 142(a) of the *Company Guide* would also be amended to make clear that section 142 fees apply to Amex securities admitted to unlisted trading privileges (*i.e.*, the relatively few Amex-traded issues grandfathered under section 12 of the Act<sup>7</sup> and not required to execute a listing agreement with the Exchange), comparable to the provision in section 141 of the *Company Guide* for annual fees.

The Exchange proposes to amend section 142(d) of the *Company Guide* ("Substitution Listing") by raising the fee for listing of new substituted shares from \$2,500 to \$5,000, and raising the maximum fee for substituted shares and excess shares from \$20,000 to \$27,500 per quarter, (corresponding to the sum of the proposed \$5,000 increase in maximum fees for listing additional shares under section 142(a) of the *Company Guide* and the \$2,500 fee increase for listing new substituted shares).

The Exchange proposes to increase the service charge under section 144 of the *Company Guide* to \$1,500 for applicants that withdraw their applications or for applications that are not approved. In addition the Exchange proposes to increase the minimum charge if an issuer cancels a listing authorization without issuing such authorized shares from \$1,000 to \$1,500.

Lastly, the Exchange proposes to amend section 341 of the *Company Guide* to increase the one-time charge imposed in connection with acquisition of a listed company by an unlisted company from \$7,500 to \$10,000.

### III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act<sup>8</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>10</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 the Exchange has represented it incurs for services provided to issuers. As represented by the Exchange, it has incurred significantly increased regulatory and technology costs over the last several years. In addition, the Exchange stated that the proposed fee increases are necessary to adequately fund the Exchange's listed equities business and development of value-added services for Amex-listed companies and to allow it to relieve pressures on other revenue sources that have traditionally underwritten short falls in regulatory related fees.<sup>11</sup>

The Exchange seeks to implement the proposed annual fees set forth in section 141 of the *Company Guide* as of January 1, 2002. The Commission believes that it is reasonable for the Amex to implement these annual fee increases as of January 1, 2002. As noted above, the Exchange stated that it had incurred increased costs over the last several years and has not increased its annual fees for listing since 1993.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change and Amendment Nos. 1 and 2 were noticed for the full 21-day comment period and the Commission received no comments regarding the proposed rule change, as amended. The Commission believes that granting accelerated approval to the proposed rule change will permit the Exchange to implement the new annual fees as of January 1, 2002, and other fees as of the date of this Order, therefore allowing it to adequately fund its listed equities business and issuer services. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act<sup>12</sup> to approve the proposed rule change, as amended, on an accelerated basis.

### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-Amex-2001-

100), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45401; File No. SR-Amex-2002-07]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Amend Amex Rule 393 Relating to Section 31 Transaction Fees

February 6, 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 February 4, 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 Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 amend Amex Rule 393 relating to transaction fees pursuant to section 31 of the Act.<sup>6</sup> The text of the proposed rule change is below. New text is in *italics*; deletions are in brackets.

Rule 393. Securities and Exchange Commission Transaction Fee

There shall be paid to the Exchange by each member or member organization in such manner and at such time as the Treasurer of the

<sup>14</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> 15 U.S.C. 78s(b)(3)(A).

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

<sup>5</sup> The Exchange asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> 15 U.S.C. 78ee.

<sup>7</sup> 15 U.S.C. 781.

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

<sup>9</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>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> See Amendment No. 1, *supra* note 3.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> *Id.*