

Commission reserve jurisdiction over this proposal pending completion of the record.

### 3. Nonutility Subsidiaries

Applicants propose that the Nonutility Subsidiaries (including CEH, ACE REIT, CAG, CDG, CPGI and the New Utility Subsidiaries upon the receipt of EWG status) be permitted to pay dividends, from time to time through the Authorization Period, out of capital and unearned surplus, to the extent permitted under applicable corporate law.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45727; File No. SR-Amex-2002-08]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to Specialist Unit Fees

April 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on February 7, 2002, the American Stock Exchange LLC ("Exchange" or "Amex") 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. On March 13, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 18, 2002, the Amex submitted Amendment No. 2 to the

proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Amex is proposing to modify its Member Fee Schedule to pass through to Amex specialist units any fee paid by the Exchange to a third party in connection with the listing and trading of a security allocated to such specialist unit.

The text of the proposed rule change, as amended, is available at 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 Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, 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 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

In connection with the listing and trading of certain securities on the Exchange, the Exchange may be required to pay fees to third parties as a condition to listing. For example, the Exchange may pay license fees to index providers to list index options or exchange-traded funds based on a stock index. The Exchange may also pay other types of fees to third parties in connection with a particular listing.

The Exchange proposes to pass such fees through to the Amex specialist unit

allocated a security for which the Exchange pays such fees. This fee, which will be included in the Amex Member Fees Schedule under "Membership Fees," will be applicable to any securities traded on the Exchange for which the Exchange pays a fee in connection with Amex listing or trading, including equities, options, structured products, exchange-traded funds and Trust Issued Receipts.

The Exchange currently imposes license fees on a per transaction basis applicable to specialists and registered options traders in connection with trading of options on the Nasdaq 100 Index Tracking Stock (symbol QQQ), Nasdaq 100 Index (symbol: NDX), Mini NDX (symbol: MNX), and options on S&P 100 iShares (symbol: OEF). These fees were filed with the Commission in SR-Amex-2001-101.<sup>5</sup> The Exchange represents that it will not pass through fees to the specialist unit that the Exchange pays to third parties, if the Exchange imposes a license fee on a per transaction basis with respect to the allocated security, (e.g., the Options Licensing Fee imposed under the Options Fee Schedule, as described in SR-Amex-2001-101).

The Exchange represents that any fee passed through to the specialist unit pursuant to this filing will reflect only actual costs incurred by the Exchange in connection with Exchange listing or trading of the allocated security. Such fee could be imposed in connection with any security traded on the Exchange, whether a listed security or a security traded pursuant to unlisted trading privileges. The fee is not intended to cover any form of payment for order flow by the Exchange (in the event the Exchange determines to engage in such payment), and any imposition of fees on members or member organizations to permit the Exchange to recoup such payment would be filed separately with the Commission pursuant to Rule 19b-4.<sup>6</sup>

###### 2. Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6 of the Act,<sup>7</sup> in general, and with section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it is 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.

<sup>5</sup> See Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001).

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

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<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 Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 12, 2002 ("Amendment No. 1"). In Amendment No. 1, the Amex: (1) Removed its discretion to waive all or a portion of the proposed fee; (2) described its existing license fees and their application; (3) explained that the proposed fee is intended to recoup costs incurred by the Exchange; (4) represented that the proposed fee will be imposed on any security traded on the Exchange, whether listed or traded pursuant to unlisted trading privileges; and (5) asserted that the proposed fee is not intended to cover any form of payment for order flow.

<sup>4</sup> See letter from Claire McGrath, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 14, 2002 ("Amendment No. 2"). In Amendment No. 2, the Amex added rule text and a made a conforming change to the purpose section stating that it would not pass through any proposed fee to a specialist unit allocated a security if the Exchange imposes a license fee on such specialist unit on a per transaction basis with respect to trading in the same security. The Amex also made a technical correction to the purpose section. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on March 18, 2002, the date the Amex filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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

The Amex does not believe that the proposed rule change, as amended, 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 on the proposed rule change, as amended, were neither solicited nor received.

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

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of March 18, 2002,<sup>11</sup> 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.<sup>12</sup>

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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, as amended, 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 Amex. All submissions should refer to File No. SR-Amex-2002-08 and should be submitted by May 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45728; File No. SR-Amex-2002-17]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to IntraDay Comparison Fees for Equities

April 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 20, 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 Exchange proposes to amend the Amex's Registration and IntraDay Comparison ("IDC") Fees Schedule relating to Equity IDC Fees. New language is in italics.

#### Registration and IDC Fees

##### I. Membership Registration

No change

##### II. Options IDC

No change

##### III. Equities IDC

*Dedicated Access \$200/month*

*User I.D. 50/month*

#### Transaction Processing Fee

*(applied to T0 trades):*

#### Shares per side

*1-999 0.00 per side*

*1,000-2,999 0.03 per side*

*3,000 + 0.09 per side*

#### Questioned Trade Charge

*(applied to T+1, T+2, etc. trades):  
0.20 per side*

### 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 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 will be implementing a new trade comparison system for equities called Intra-Day Comparison System for Equities ("IDC-E"), as developed by the Securities Industry Automation Corporation ("SIAC"). IDC-E will provide real-time intra-day trade comparisons applicable to all trades, including system and non-system trades. System trades include executions of orders entered in the Amex Order File ("AOF"), the Exchange's automated order routing facility; non-system trades include execution of orders not entered into AOF (e.g., crowd to crowd trades). The benefits of intra-day comparison include reduction of the uncompleted rate for equities, improvement in trade processing efficiency, and reduction of risk to member firms resulting from open positions.

Amex proposes to charge the following IDC-E transaction processing fees to Amex clearing firm members, effective May 1, 2002. The Questioned Trade Charge per questioned trade (applied to T+1, T+2, etc. trades) will be \$0.20 per side. The transaction processing fee for transactions submitted for trade date comparison (per side) will be \$0.03 for transactions of 1,000-2,999 shares per side, and \$0.09 for transactions of 3,000 shares or more per side. (Transactions of less than 1,000 shares per side will not be charged.)

The Exchange also proposes to charge each clearing firm member a Dedicated Remote Access Fee of \$2,400 annually. This is equal to Amex's Dedicated Remote Access fee of \$2,400 per year for Intra-Day Comparison for Options ("IDC-O"). The Exchange will charge each clearing firm member \$600

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> See *supra* note 4.

<sup>12</sup> See 15 U.S.C. 78s(b)(3)(C).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).