

(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, as amended, is consistent with the Exchange 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 Amex. All submissions should refer to File No. SR-Amex-2002-84 and should be submitted by January 17, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47053; File No. SR-Amex-2002-107]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to an Extension of a Temporary Waiver of Associate Member Fees for Persons Trading Nasdaq Securities Admitted to Unlisted Trading Privileges Through the Exchange's Electronic Order Routing Systems

December 19, 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 16, 2002, the American Stock Exchange LLC ("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 Exchange. The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 extend through March 31, 2003 the waiver of: (1) Membership Dues, Initiation Fee, Application Processing Fee, Initial Registration Fee and the Electronic Access Fee for new Associate Members that trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the waiver, and (2) the Electronic Access Fee for existing Associate Members that currently do not have electronic access privileges and that trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the waiver.

The proposed Fee schedule is available at the Office of the Secretary of 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 its proposal and discussed any comments it received regarding the proposal. 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 Exchange is proposing to extend to March 31, 2003, the temporary waiver of Associate Member and Electronic Access Fees for broker/dealer firms that currently do not have electronic access to the Amex Order File ("AOF"). The waiver currently is set to expire on December 31, 2002 and applies to firms that trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the waiver. Broker/dealers that become Associate Members during the waiver period will not have to pay: (1) 2002 and 2003 dues applicable to Associate members, (2) Associate Member Initiation Fee, (3) Application Processing Fee, (4) Initial Registration Fee, and (5) the Electronic Access Fee. Existing Associate Members that currently do not have electronic access to AOF also could upgrade to electronic access privileges without paying the customary Electronic Access Fee provided they trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the fee waiver.

At the end of the waiver period, firms that become Associate Members during the waiver and trade only Nasdaq stocks through AOF would have to:

(1) Acquire a regular membership and pay the fees and dues associated with becoming a regular member,

(2) Continue their Associate Membership and pay: (i) 75% of the 2003 dues, (ii) the Associate Member Initiation Fee, (iii) Application Processing Fee, (iv) the Renewal Registration Fee, and (v) 75% of the Electronic Access Fee for 2003, or

(3) Terminate their Associate Membership.

New Associate Members that terminate their Associate Membership on or prior to March 31, 2003 will not have to pay 2002 and 2003 dues, Associate Member Initiation Fee, Application Processing Fee, Initial Registration Fee and Electronic Access Fee for 2002 and 2003.

At the end of the waiver period, firms that already were Associate Members prior to the waiver and upgraded to electronic access privileges during the waiver and traded only Nasdaq stocks through AOF would have to: (1) Acquire a regular membership and pay the fees and dues associated with becoming a regular member, or (2) pay the 2003 dues and Electronic Access Fee for 2003 applicable to Associate Members.

<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)(ii).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Amex members and issuers and other persons using the Amex's facilities.

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

The proposed fee change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### 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 proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>7</sup> because it establishes or changes a due, fee, or other charge imposed by the Amex. 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 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, including whether the proposal 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 Amex. All submissions should refer to file number SR-Amex-2002-107 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47031; File No. SR-BSE-2002-05]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Boston Stock Exchange, Inc. Relating to the Trading of Nasdaq Securities on the Exchange

December 18, 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 May 13, 2002, the Boston Stock Exchange, Inc. ("BSE" 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 BSE amended the proposed rule change on June 13, 2002,<sup>3</sup> on October 22, 2002,<sup>4</sup> and on November 21, 2002.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>8</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 John Boese, Assistant Vice President, Legal and Regulatory, BSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated June 12, 2002 ("Amendment No. 1").

<sup>4</sup> See File No. SR-BSE-2002-05, Amendment No. 2, dated October 18, 2002 ("Amendment No. 2").

<sup>5</sup> See File No. SR-BSE-2002-05, Amendment No. 3, dated November 20, 2002 ("Amendment No. 3").

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

The Exchange proposes to amend its trading rules for securities listed on The Nasdaq Stock Market, Inc. ("Nasdaq") to allow for extended hours and remote trading of Nasdaq securities. The text of the proposed rule change, as amended, is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

### Chapter XXXV

#### Trading in Nasdaq Securities

\* \* \* \* \*

#### Dealings on the Floor—Hours

Section 8. [Pursuant to Chapter I-B, Sec. 2, Dealings on the Floor—Hours, no member or member organization shall make any bid, offer or transaction upon the floor of the Exchange, issue a commitment to trade through ITS or send an order for a Nasdaq security to a Nasdaq System market maker other than during the hours the Exchange is open for the transaction of business. Nasdaq securities will not be eligible to participate in the Post Primary Session.] *For the purposes of transacting business in Nasdaq securities only, the Exchange shall be open from 7:00 a.m. until 6:30 p.m. Only transactions in Nasdaq securities will be permitted outside the hours of 9:30 a.m. and 4:15 p.m., in accordance with Chapter I-B, Business Hours, Section 1, Primary Session, and Section 1(a) Post Primary Session.*

#### Remote Trading in Nasdaq Securities

*Section 31. Nasdaq trading terminals and related equipment will be provided to remote member firm locations for specialist trading. The remote terminals will be linked to the Exchange's Nasdaq trading system and will provide the same functionality as is available to on-floor specialists. There will be no remote Nasdaq floor brokerage services. Floor broker orders will be routed to remote specialists under the same criteria by which they are routed to on-floor specialists.*

*(a) All rules and policies of the Board of Governors of the Exchange shall apply except as specifically excluded or amended under this section.*

*(b) Any eligible firm may apply to the Market Performance Committee to participate in the program. All applicants must meet the current minimum requirements for Nasdaq specialists set forth in Chapters XV and XXXV, including, but not limited to their background, experience, staffing, training procedures, adequacy of*

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).