

impose the same regulatory standards on Amex members as those imposed on members of other exchanges and the NASD/Nasdaq. Based on the above, the Commission finds good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act¹⁸ to approve the Amex's proposal and Amendment No. 1 on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-Amex-2003-100) and Amendment No. 1 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48886; File No. SR-Amex-2003-103]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Issuer Fees

December 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 25, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") 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. 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 Sections 140, 141, 142 and 144 of the Amex *Company Guide* to designate as non-refundable the current one-time \$5,000 application processing fee, to establish a late charge of \$2,500 payable by issuers whose annual listing fees are more than 60 days past due, and to increase fees for listing additional

shares. The Exchange proposes to further amend Sections 141 and 142 of the Amex *Company Guide* to clarify that annual listing fees and additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

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 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. 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

Sections 140 through 146 of the Amex *Company Guide* describe the Exchange's listing fees. In this proposed rule change, the Exchange proposes to amend Sections 140, 141, 142 and 144 to: (i) Designate as non-refundable the current one-time \$5,000 application processing fee, (ii) establish a late charge of \$2,500 payable by issuers whose annual listing fees are more than 60 days past due, and (iii) increase fees for listing additional shares. The Exchange believes these fee changes are necessary to adequately fund the Exchange's listed equities business and to develop value-added services for Amex listed issuers. In addition, the Exchange proposes to further amend Sections 141 and 142 to clarify that annual listing fees and additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

(i) *Section 140 (Original Listing Fees) and Section 144 (Refunds of Listing Fees)*. The Exchange collects original listing fees for new equity, warrant and debt issues in accordance with Section 140 of the Amex *Company Guide*. In addition to original listing fees, a one-time \$5,000 application processing fee is assessed companies that do not have a stock, warrant or debt issue already listed on the Exchange.³ Pursuant to

paragraphs (a) and (b) of Section 144, the Exchange refunds \$3,500 of the application processing fee if the applicant: (i) Withdraws its application, (ii) fails to gain listing approval, or (iii) cancels a listing authorization without issuing the authorized securities. The Exchange proposes to amend Sections 140 and 144 to designate the full amount of the \$5,000 application processing fee as non-refundable.

(ii) *Section 141 (Annual Fees)*. The Exchange collects annual listing fees in accordance with Section 141 of the Amex *Company Guide*. Currently, no penalties are assessed issuers that do not pay such fees in a timely manner. To encourage timely payment, the Exchange proposes to amend Section 141 to establish a late charge of \$2,500 payable by issuers that fail to remit annual listing fees within 60 days of the billing date.⁴ The Exchange proposes to delete the requirement that annual fees that are prorated are payable within thirty days of the date the company receives the invoice. In addition, the Exchange also proposes to delete the requirement that annual fees that are prorated for bond issues are payable in December of year in which they are listed. According to the Exchange, these deletions would result in these fees being payable within sixty days of the invoice date, after which time the proposed late fee would apply.⁵ Finally, the Exchange proposes to amend Section 141 to clarify that annual listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges as specified in Commentary .01 of Section 950 of the Amex *Company Guide*.

(iii) *Section 142 (Additional Listing Fees)*. In accordance with paragraph (a) of Section 142 of the Amex *Company Guide*, the current fee for listing additional shares is 2 cents per share, subject to a minimum fee of \$2,000 (for 100,000 shares or less) and a maximum fee of \$22,500 (for 1,125,000 shares or more) per application. The annual maximum fee per company for listing additional shares is currently \$45,000. The Exchange proposes to amend paragraph (a) of Section 142 to: (i) Increase the maximum fee per application from \$22,500 to \$45,000

Amex *Company Guide* are assessed an original listing fee of \$5,000 for each series or fund, but not an application processing fee.

⁴ The proposed \$2,500 late fee will not apply to Trust Issued Receipts, Index Fund Shares, or debt issues.

⁵ Telephone conversation between Eric Van Allen, Assistant General Counsel, Amex and Kelly M. Riley, Senior Special Counsel, Division of Market Regulation, Commission, on December 5, 2003.

¹⁸ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Index Fund Shares listed under Rule 1000A, Trust Issued Receipts listed under Rule 1200 and Closed-End Funds listed under Section 101 of the

and, as a result, raise the number of shares associated with the maximum fee from 1,125,000 to 2,250,000 shares (\$0.02 × 2,250,000 = \$45,000); and (ii) increase the annual maximum fee per company from \$45,000 to \$60,000. The minimum fee per application would remain unchanged. The Exchange also proposes to amend paragraph (d) of Section 142 (“Substitution Listing”) to raise the maximum fee for substituted shares and excess shares from \$27,500 to \$50,000 per application (corresponding to the proposed \$22,500 increase in maximum fees for listing additional shares under Section 142(a)). Furthermore, similar to the abovementioned proposed amendment to Section 141, the Exchange proposes to amend Section 142(a) to clarify that the additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges as specified in Commentary .01 of Section 950 of the Amex *Company Guide*.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁷ in particular in that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using Exchange facilities.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Amex 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

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.

The Amex has requested accelerated effectiveness pursuant to Section 19(b)(2) of the Act.⁸ In support of its request, the Exchange represents that these fee changes are necessary to adequately fund the Exchange’s listed equities business and develop value-added services for Amex listed issuers.

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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2003–103. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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–2003–103 and should be submitted by January 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48879; File No. SR–CBOE–2003–36]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Trading Crowd Space Dispute Resolution Procedures

December 4, 2003.

I. Introduction

On October 20, 2003, the Chicago Board Options Exchange, Inc. (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² a proposed rule change to adopt new CBOE Rule 24.21, “Index Crowd Space Dispute Resolution Procedures,” which establishes guidelines and procedures for resolving disputes among CBOE members concerning the ability to occupy a space in an index option trading crowd.

The proposed rule change was published for comment in the **Federal Register** on October 31, 2003.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁴ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.⁵ The proposal is also consistent with Section 6(b)(4) of the Act,⁶ which requires, among other things, the equitable allocation of reasonable dues, fees and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 48702 (October 27, 2003), 68 FR 62122.

⁴ 15 U.S.C. 78f(b)(5).

⁵ In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78(f)(b)(4).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30–3(a)(12).