

Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 5, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04-607 Filed 1-12-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting Notice of Application of One Liberty Properties, Inc. To Withdraw Its Common Stock, \$1.00 par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1-11083

January 7, 2004.

One Liberty Properties, Inc., a Maryland corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors of the Issuer unanimously approved a resolution on December 15, 2003 to withdraw the Issuer's Security from listing on the Amex and to list the Security on New York Stock Exchange ("NYSE"). The Issuer states that it is taking such action to avoid the direct and indirect costs and the division of the market resulting from dual listing on Amex and NYSE.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Maryland, 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 withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act³ shall not affect its obligation to be registered under Section 12(g) of the Act.⁴

Any interested person may, on or before February 3, 2004, 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.⁵

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49022; File No. SR-Amex-2001-46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the American Stock Exchange LLC Relating to the Adoption of a Facilitation Rule and Member Firm Guarantee for Index Shares

January 5, 2004.

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 July 11, 2001, 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. On November 7, 2001, Amex filed Amendment No. 1 to the proposed rule change.³ On September 24, 2003, Amex filed Amendment No. 2 to the proposed rule change.⁴ On December 4, 2003,

¹ 17 CFR 200.30-3(a)(1).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 5, 2001. In Amendment No. 1, Amex increased the proposed participation guarantee for member firms facilitating transactions in Portfolio Depository Receipts and Index Fund Shares from 30% or 40% of the facilitation trade to 40% or 50% of the facilitation trade.

⁵ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated September 23, 2003. In Amendment No. 2, which replaced the original

Amex filed Amendment No. 3 to the proposed rule change.⁵ 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 proposes to adopt a facilitation rule and a member firm participation guarantee for member firms facilitating transactions in Portfolio Depository Receipts and Index Fund Shares and to codify the Exchange's policy prohibiting the use of non-public information received during the facilitation process. The text of the proposed rule change, as amended, is set forth below. *Italics* indicate material to be added.

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Rule 1000 Portfolio Depository Receipts

(a) through (b) No change.

* * * Commentary

.01 through .04 No change.

.05 (1) *Facilitation Orders*—A member who holds both an order for a public customer of a member organization and a facilitation order may cross such orders if:

(a) the member organization discloses on its order ticket for the public customer order which is subject to facilitation, all the terms of such order, including, if applicable, any contingency involving options or other related securities; and

(b) the member requests bids and offers for the shares subject to facilitation, then discloses the public customer order and any contingency respecting such order which is subject to facilitation and identifies the order as being subject to facilitation; and

(c) after providing an opportunity for such bids and offers to be made, the member, on behalf of the public customer whose order is subject to facilitation, either bids above the highest bid or offers below the lowest offer in the market. After all other market participants are given an opportunity to accept the bid or offer made on behalf of the public customer whose order is subject to facilitation, the member may cross all or any remaining

filing and previous amendment, Amex clarified the specialist's allocation of executed shares in facilitation transactions and made other, minor changes.

⁵ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated December 3, 2003. In Amendment No. 3, Amex made a technical correction to the proposed rule text.

¹ 15 U.S.C. 78(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 781(b).

⁴ 14 U.S.C. 781(g).

part of such order and the facilitation order at such customer's bid or offer by announcing in public outcry that (s)he is crossing such orders stating the quantity and price(s).

(2) Member Firm Participation—(a) Notwithstanding provisions of paragraph (c), a member firm seeking to facilitate its own public customer's Portfolio Depository Receipt order for the eligible order size will be permitted to participate in the firm's proprietary account as the contra-side of that order to the extent of the percentages set forth below:

(i) 40% of the order if the order is traded at the best bid or offer given by the trading crowd in response to a floor broker's request for a market; or

(ii) 50% of the order if the member firm improves the market that was provided by the trading crowd in response to a floor broker's request and the order is traded at that best bid or offer.

If, however, a public customer order on the specialist's book or represented in the trading crowd has priority over the facilitation order, the member firm may participate in only those shares remaining after the public customer's order has been filled.

(b) the eligible order size shall be 25,000 shares or larger, unless the Exchange has established a smaller eligible order size.

(c) if a facilitation transaction pursuant to this subparagraph (2) occurs at the specialist's bid or offer, the specialist shall be allocated the greater of either (i) 10% of the executed shares if the facilitating member firm, pursuant to subparagraph (2)(a)(i), has participated to the extent of 40% of the executed shares; or (ii) a share of the executed shares that have been divided equally among the specialist and other participants to the trade. The specialist's participation allocation shall only apply to the number of shares remaining after all public customer orders and the member firm's facilitation order have been satisfied. However, the total number of shares guaranteed to be allocated to the member firm and the specialist in the aggregate shall not exceed 50% of the facilitation transaction. If the facilitation transaction occurs at a price at which the specialist is not on parity, the specialist is entitled to no guaranteed participation allocation.

(d) nothing in this Commentary .05 is intended to prohibit a member firm or specialist from trading more than their guaranteed participation allocations if the other members of the trading crowd choose not to trade the remaining portion of the facilitation order.

With respect to paragraphs (1) and (2) above, when accepting a bid or offer made on behalf of a public customer whose order is subject to facilitation, all contingencies of the public customer order must be satisfied. Once the bid or offer has been made on behalf of the public customer whose order is subject to facilitation, such order has precedence over any other bid or offer in the crowd to trade immediately with the facilitation order.

For purposes of this Commentary .05 the term "public customer of a member organization" means a customer that is neither a member nor a broker/dealer.

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.06 It may be considered conduct inconsistent with just and equitable principles of trade for any member or person associated with a member, who has knowledge of all material terms and conditions of (i) an order being facilitated, or (ii) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell a Portfolio Depository Receipt that is the subject of the order, an order to buy or sell the overlying option class, or an order to buy or sell any related instrument until either (i) all the terms of the order and any changes in the terms and conditions of the order of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of this Commentary .06, an order to buy or sell a "related instrument," means an order to buy or sell securities comprising ten percent or more of the component securities in the Portfolio Depository Receipt or an order to buy or sell a futures contract on any economically equivalent index.

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Rule 1000A Index Fund Shares

(a) through (b) No change.

* * * Commentary

.01 through .05 No change.

.06 (1) Facilitation Orders—A member who holds both an order for a public customer of a member organization and a facilitation order may cross such orders if:

(a) the member organization discloses on its order ticket for the public customer order which is subject to facilitation, all the terms of such order, including, if applicable, any contingency involving options or other related securities; and

(b) the member requests bids and offers for the shares subject to

facilitation, then discloses the public customer order and any contingency respecting such order which is subject to facilitation and identifies the order as being subject to facilitation; and

(c) after providing an opportunity for such bids and offers to be made, the member, on behalf of the public customer whose order is subject to facilitation, either bids above the highest bid or offers below the lowest offer in the market. After all other market participants are given an opportunity to accept the bid or offer made on behalf of the public customer whose order is subject to facilitation, the member may cross all or any remaining part of such order and the facilitation order at such customer's bid or offer by announcing in public outcry that (s)he is crossing such orders stating the quantity and price(s).

(2) Member Firm Participation—(a) Notwithstanding provisions of paragraph (c), a member firm seeking to facilitate its own public customer's Index Fund Share order for the eligible order size will be permitted to participate in the firm's proprietary account as the contra-side of that order to the extent of the percentages set forth below:

(i) 40% of the order if the order is traded at the best bid or offer given by the trading crowd in response to a floor broker's request for a market; or

(ii) 50% of the order if the member firm improves the market that was provided by the trading crowd in response to a floor broker's request and the order is traded at that best bid or offer.

If, however, a public customer order on the specialist's book or represented in the trading crowd has priority over the facilitation order, the member firm may participate in only those shares remaining after the public customer's order has been filled.

(b) the eligible order size shall be 25,000 shares or larger, unless the Exchange has established a smaller eligible order size.

(c) if a facilitation transaction pursuant to this subparagraph (2) occurs at the specialist's bid or offer, the specialist shall be allocated the greater of either (i) 10% of the executed shares if the facilitating member firm, pursuant to subparagraph (2)(a)(i), has participated to the extent of 40% of the executed shares; or (ii) a share of the executed shares that have been divided equally among the specialist and other participants to the trade. The specialist's participation allocation shall only apply to the number of shares remaining after all public customer orders and the member firm's

facilitation order have been satisfied. However, the total number of shares guaranteed to be allocated to the member firm and the specialist in the aggregate shall not exceed 50% of the facilitation transaction. If the facilitation transaction occurs at a price at which the specialist is not on parity, the specialist is entitled to no guaranteed participation allocation.

(d) nothing in this Commentary .06 is intended to prohibit a member firm or specialist from trading more than their guaranteed participation allocations if the other members of the trading crowd choose not to trade the remaining portion of the facilitation order.

With respect to paragraphs (1) and (2) above, when accepting a bid or offer made on behalf of a public customer whose order is subject to facilitation, all contingencies of the public customer order must be satisfied. Once the bid or offer has been made on behalf of the public customer whose order is subject to facilitation, such order has precedence over any other bid or offer in the crowd to trade immediately with the facilitation order.

For purposes of this Commentary .06 the term "public customer of a member organization" means a customer that is neither a member nor a broker/dealer.

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.07 It may be considered conduct inconsistent with just and equitable principles of trade for any member or person associated with a member, who has knowledge of all material terms and conditions of (i) an order being facilitated, or (ii) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell a Index Fund Share that is the subject of the order, an order to buy or sell the overlying option class, or an order to buy or sell any related instrument until either (i) all the terms of the order and any changes in the terms and conditions of the order of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of this Commentary .06, an order to buy or sell a "related instrument," means an order to buy or sell securities comprising ten percent or more of the component securities in the Index Fund Share or an order to buy or sell a futures contract on any economically equivalent index.

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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. The Exchange 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

Amex is proposing amendments to Amex Rules 1000 and 1000A to provide for the adoption of a facilitation rule and participation guarantee for member firms facilitating public customer orders in Portfolio Depository Receipts and Index Fund Shares ("Index Shares"). As explained by Amex, a facilitation order is utilized to cross a public customer order with an order for a member firm. Other market participants can compete only with the member firm order by accepting the bid or offer made on behalf of the public customer. According to Amex, since, under the proposed facilitation rule, other market participants would not be permitted to compete with the public customer side of the order, using the facilitation rule will assure that the public customer's order is completely executed. Members wishing to engage in a facilitation cross on behalf of their public customers would be required to comply with the procedures set forth in the proposed amendments.⁶

Amex states that member firms, however, believe that when seeking to facilitate large public customer Index Share orders with an order for the firm's own proprietary account, they should be able to participate to some extent with their customer's order. Therefore, Amex proposes that Commentary .05 to Rule 1000 and Commentary .06 to Rule 1000A be adopted to provide that a member firm whose proprietary account is facilitating its own customer's order of 25,000 Index Shares or more may

⁶ The proposed procedures provide that a member who holds both an order for a public customer of a member organization and a facilitation order may cross such orders if the member organization discloses, for the public customer order, all the terms of such order, requests bids and offers, identifies the order as being subject to facilitation and bids/offers above/below the highest bid/lowest offer.

participate as contra-party to the extent of either 50% or 40% the trade.⁷ The member firm would be required to follow the procedures set forth in the proposed rules for the facilitation of a public customer order to be eligible for the participation guarantee.

Amex states that member firms should be aware that public customer orders on the specialist's book or represented in the crowd would have priority over the member firm's guaranteed participation, and that therefore, a member firm's minimum participation would be 50% or 40% of the number of Index Shares remaining after the public customer orders with priority have been filled. For example, if there is a public customer order on the book or represented in the trading crowd for 10,000 Index Shares to buy, the member firm facilitating its customer order to sell 25,000 Index Shares would have a guaranteed 50% or 40% participation on only the remaining 15,000 Index Shares.

In addition, proposed subparagraphs 2(c) of Commentary .05 to Rule 1000 and Commentary.06 to Rule 1000A set forth the specialist's participation in executed shares allocated after all public customer orders and the member firm's facilitation order have been satisfied. Subparagraphs 2(c) provide that the specialist would be allocated the greater of either (i) 10% of the executed shares if the facilitating member firm, pursuant to subparagraphs (2)(a)(i) of Commentary .05 to Rule 1000 and Commentary.06 to Rule 1000A, has participated to the extent of 40% of the executed shares; or (ii) a share of the executed shares that have been divided equally among the specialist and other participants to the trade.

The Exchange believes that providing member firms that are seeking to facilitate their own public customer orders with a guaranteed participation will provide an incentive for the member firms to bring large Index Share orders to the floor of the Amex rather than to the floor of another exchange or to the over-the-counter market. Thus, the Exchange believes that this proposal is necessary for it to remain competitive.

⁷ A member firm seeking to facilitate its own public customer's order would be permitted to participate in the firm's proprietary account as the contra-side of that order to the extent of 50% of the order if the member firm improves the market provided by the trading crowd in response to the floor broker's initial request for a market and the order is executed at the improved bid or offer. A member firm would be guaranteed to participate to the extent of 40% of the order if the order is traded at the best bid or offer given by the trading crowd in response to a floor broker's request for a market.

The adoption of Commentary .06 to Rule 1000 and Commentary .07 to Rule 1000A would prohibit the use of non-public information received during the facilitation processes. As discussed above, facilitation orders are orders in which a member or member organization executes a crossing transaction with an order for a public customer. The facilitation rule provides procedures that allow the customer's order to be completely executed and prohibits the trading floor from supplanting the customer.

Amex states that since the proposed facilitation rule is designed to promote the interaction of orders in an open-outcry auction, the proposed rule requires the disclosure of information to the trading crowd in order to provide the crowd with an opportunity to participate in the transaction with the facilitating member. These proposed rules impose order exposure requirements on floor brokers seeking to cross buy orders and sell orders, and seek to reconcile these practices with the rules and practices of the auction market. According to Amex, affording trading crowds an opportunity to participate in transactions from which they may be excluded results in more competitive markets and executions for customers at the best available prices. In furtherance of that effort, the Exchange now seeks to codify and expand its policy that prohibits the use of non-public information, by either a member or a person associated with a member, for their own benefit, by trading in the Index Shares or in related instruments prior to that information being disclosed. Use of such non-public information by such member or associated person (regardless of whether that party ultimately completes the Index Shares transaction) is generally considered conduct inconsistent with just and equitable principles of trade.

Thus, Amex proposes to adopt provisions for both Portfolio Depository Receipts and Index Fund Shares that state that it may be inconsistent with just and equitable principles of trade for any member or associated person, who has knowledge of all the material terms of (i) an order being facilitated, or (ii) orders being crossed, to enter an order to buy or sell an Index Share or other related instrument prior to the time the order's terms are disclosed to the trading floor crowd or the execution of the facilitated transaction can no longer reasonably be considered imminent. The term "related instrument" is defined in the proposed rules as a security comprising ten percent or more of the component securities in the Portfolio Depository Receipt or the

Index Fund Share or a futures contract on any economically equivalent index.

Amex states that the purpose of this policy is to prevent members and associated persons from using undisclosed information about imminent Index Share transactions to trade the relevant Index Shares or any closely-related instrument in advance of persons represented in the trading crowd. Without this prohibition, such trading can threaten the integrity of the auction market or disadvantage other market participants.

2. Statutory Basis

The Exchange states 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 is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

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

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.

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-2001-46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review 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 the filing will also be available for inspection and copying at the principal offices of the Amex. All submissions should refer to File No. SR-Amex-2001-46 and should be submitted by February 3, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49025; File No. SR-Amex-2003-106]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to the Retroactive Application of a Monthly Options Transaction Fee Cap for Specialists and Registered Options Traders

January 6, 2004.

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 December

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.