

1. The Investing Fund will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts Investing Funds from investing in Direct Investments as described in the application.

2. Prior to reliance on the requested order, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory fees, if any, charged under an Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Same Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Same Group Fund or (b) advisory fees are only charged at either the Investing Fund level or Same Group Fund level. In addition, in connection with the approval of any investment advisory contract pursuant to section 15 of the Act subsequent to such initial determination, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory fees, if any, charged under the Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Same Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Same Group Fund or (b) advisory fees are only charged at either the Investing Fund level or Same Group Fund level.

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. 34-50394; File No. SR-Amex-2004-63]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the American Stock Exchange LLC Relating to the Handling of Linkage Orders

September 16, 2004.

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 August 3, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to 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 Amex. On September 10, 2004, the Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</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 proposes to amend its rules to conform to Joint Amendment No. 13 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

\* \* \* \* \*

#### Rule 940. Options Intermarket Linkage

(a) (No Change).

(b) Definitions—The following terms shall have the meaning specified in this Rule solely for the purpose of this Section 4:

(1) through (6) (No Change).

(7) "Firm Customer Quote Size" with respect to a P/A Order means the lesser of: (a) the number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for

execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. The number shall be at least 10 *unless the receiving Participant Exchange is disseminating a quotation of less than 10 contracts, in which case this number may equal such quotation size.*

(8) "Firm Principal Quote Size" means the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be at least 10, *however if the Participant Exchange is disseminating a quotation size of less than 10 contracts, this number may equal such quotation size.*

(9) through (20) (No Change).

\* \* \* \* \*

#### 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 had 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 purpose of this filing is to conform Amex's Linkage rules to proposed Joint Amendment No. 13 to the Linkage Plan, which would accommodate "natural size" of quotations.<sup>4</sup> Specifically, the Linkage Plan and Amex rules currently require that the Exchange be firm for both Principal Acting as Agent ("P/A") and Principal Orders for at least 10 contracts (the "10-up" requirement). The proposed rule change would permit

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

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

<sup>3</sup> See Letter from Jeffery P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 9, 2004 ("Amendment No. 1"). In Amendment No. 1, the Amex amended the proposed rule text to reflect a technical change.

<sup>4</sup> The participants in the Linkage Plan ("Participants") have filed an amendment to the Linkage Plan to change the definitions of "Firm Customer Quote Size" ("FCQS") and "Firm Principal Quote Size" ("FPQS") (Joint Amendment No. 13). See Securities Exchange Act Release No. 50211 (August 18, 2004), 69 FR 52050 (August 26, 2004) (File No. 4-429).

Amex members to be firm for the actual size of their quotation, even if this amount is less than 10 contracts.

The Participants adopted the 10-up requirement for the Linkage Plan at a time when all the exchanges had rules requiring that their quotations be firm for customer orders for at least 10 contracts.<sup>5</sup> The Amex recently amended Exchange Rule 958A to permit the dissemination of customer limit orders representing the best bid or offer in sizes of less than ten (10) contracts.<sup>6</sup> Accordingly, the Amex now seeks to conform its quotation requirements for incoming Principal and P/A Orders with the quotation requirements for non-Linkage orders.

The proposed rule change would amend the definitions of both FCQS and FPQS. While Amex's Linkage rules would maintain a general requirement that the FCQS and FPQS be at least 10 contracts, that minimum would not apply if the Amex were disseminating a quotation of fewer than 10 contracts. In that case, the Exchange may establish a FCQS or FPQS equal to its disseminated size.

As with Principal and P/A Orders today, if the order is of a size eligible for automatic execution ("auto-ex"),<sup>7</sup> the receiving exchange must provide for auto-ex of the order. If this is not the case (for example, the receiving exchange's auto-ex system is not engaged), the receiving exchange still must provide a manual execution for at least the FCQS or FPQS, as appropriate (in this case, the size of its disseminated quotation of less than 10 contracts).

## 2. Statutory Basis

The Amex believes that the proposed rule is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(5)<sup>9</sup> in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system,

<sup>5</sup> See Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001) (SR-Amex-2001-18; SR-CBOE-2001-15; SR-ISE-2001-07; SR-PCX-2001-18; and SR-Phlx-2001-37).

<sup>6</sup> See Securities Exchange Act Release No. 48957 (December 18, 2003), 68 FR 75294 (December 30, 2003) (SR-Amex-2003-24).

<sup>7</sup> At the request of the Amex, Commission staff removed an extraneous reference provided in the original filing regarding the automatic execution size at exchanges sending and receiving Principal Orders. Telephone conversation between Jeff Burns, Associate General Counsel, Amex, and Tim Fox, Attorney, Division, Commission, on August 31, 2004.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

and protect investors and the public interest.

### 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

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 Amex consents, the Commission will:

- (A) By order approve such proposed rule change, as amended; or
- (B) Institute proceedings to determine whether the proposed rule change, as amended, 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 Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-63 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File Number SR-Amex-2004-63. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-63 and should be submitted on or before October 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50402; File No. SR-FICC-2004-01]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Government Securities Division and the Mortgage-Backed Securities Division Membership Rules

September 16, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 9, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on April 28, 2004, amended the proposed rule change described in items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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