

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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-38 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46146; File No. SR-Amex-2002-51]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Amending Exchange Rules 576 and 585, and Sections 722 and 725 of the Amex Company Guide

June 28, 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 June 3, 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 Exchange Rules 576 and 585, and Sections 722 and 725 of the *Amex*

*Company Guide*. The proposed changes would implement the same fee structure governing the reimbursement of member organizations for costs incurred in the transmission of proxy and other shareholder communications that was recently adopted by the New York Stock Exchange, Inc. ("NYSE").

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deleted language is [bracketed].

\* \* \* \* \*

#### Transmission of Proxy Material to Customers

Rule 576. (a). No change.

(b) Such member organization shall transmit with such material either:

(1) A request for voting instructions and, as to matters which may be voted without instructions under Rule 577, a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser, at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock; or

(2) A signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records of such member organization, and also a letter informing the beneficial owner or the beneficial owner's designated investment adviser, of the necessity for completing the proxy form and forwarding it to the person soliciting proxies in order that the shares may be represented at the meeting.

*This rule shall not apply to beneficial owners outside the United States.*

#### \* \* \* Commentary

.10 through .70 No change.

.80 Schedule of approved charges by member organization in connection with proxy solicitations.—The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in

connection with proxy solicitations pursuant to Rule 576 and in mailing interim reports or other material pursuant to Rule 585. *In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.[:]*

#### Charges for Initial Proxy and/or Annual Report Mailings

[60¢] 40¢ for each set of proxy material, i.e. proxy statement, form of proxy and annual report when mailed as a unit, *unless an opposition proxy statement has been furnished to security holders* [for those meetings that do not include a proposal which requires beneficial owner instructions, plus postage], with a minimum of \$5.00 for all sets mailed;

[70¢] \$1.00 for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, *for a meeting for which an opposition proxy statement has been furnished to security holders* [for those meetings which include a proposal requiring beneficial owner instructions, plus postage], with a minimum of \$5.00 for all sets mailed;

[20¢] 15¢ for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum charge of \$3.00 for all sets mailed.

*The Exchange has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees: \$20.00 per nominee plus (i) 10¢ for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5¢ for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.*

#### Charges for Proxy Follow-up Mailings

40¢ for each set of follow-up materials, plus postage. [, when the follow-up material is mailed to all beneficial owners;]

[60¢ for each set of follow-up materials, plus postage, when the follow-up material is mailed only to beneficial owners who have not responded to the initial mailing;]

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

**Charges for Interim Report Mailings**

[20¢] 15¢ for each copy, plus postage, for interim reports, *annual reports if mailed separately*, post meeting reports or other material, with a minimum of \$2.00 for all sets mailed[;]. Member organizations may charge for envelopes, provided they are not furnished by the person soliciting proxies.

**Incentive Fees**

An "Incentive Fee" (as defined below) for proxy material mailings, including the annual report, and 10¢ for interim report mailings, with respect to each account where the member organization has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically.)

With respect to issuers whose shares are held in at least 200,000 nominee accounts, the Incentive Fee shall be 25¢.

With respect to issuers whose shares are held in fewer than 200,000 nominee accounts, the Incentive Fee shall be 50¢.

[Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates; provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.]

.90 No change

.91 No change

.92 No change

.93 Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates; provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.

.94 "Householding" of Reports. Rules 576 and 585 require member organizations to transmit issuer-

supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Member organizations are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC Rule 14b-1 under the Securities Exchange Act of 1934).

\* \* \* \* \*

**Transmission of Interim Reports and Other Material**

Rule 585. No change.

**\* \* \* Commentary**

.10 No change.

.20 Mailing charges by member organizations.—These charges are set forth at [Commentary] Commentaries .80, .90, .91, .93 and .94 to Rule 576.

\* \* \* \* \*

**Amex Company Guide**

Sec. 722. *Transmission of Proxy Material to Customers (See Exchange Rule 576)*

(a) and (b) No change.

**\* \* \* Commentary**

.10 through .70 No change.

.80 Schedule of approved charges by member organization in connection with proxy solicitations.—The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 576 and in mailing interim reports or other material pursuant to Rule 585. In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.[:]

**Charges for Initial Proxy and/or Annual Report Mailings**

[60¢] 40¢ for each set of proxy material, i.e. proxy statement, form of

proxy and annual report when mailed as a unit, unless an opposition proxy statement has been furnished to security holders [for those meetings that do not include a proposal which requires beneficial owner instructions, plus postage], with a minimum of \$5.00 for all sets mailed;

[70¢] \$1.00 for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders [for those meetings which include a proposal requiring beneficial owner instructions, plus postage], with a minimum of \$5.00 for all sets mailed;

[20¢] 15¢ for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum charge of \$3.00 for all sets mailed.

The Exchange has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees:

\$20.00 per nominee plus (i) 10¢ for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5¢ for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.

**Charges for Proxy Follow-up Mailings**

40¢ for each set of follow-up materials, plus postage. [, when the follow-up material is mailed to all beneficial owners;]

[60¢ for each set of follow-up materials, plus postage, when the follow-up material is mailed only to beneficial owners who have not responded to the initial mailing;]

**Charges for Interim Report Mailings**

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same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically.)

With respect to issuers whose shares are held in at least 200,000 nominee accounts, the Incentive Fee shall be 25¢.

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[Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates; provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.]

.90 No change

.91 No change

.92 *Rescinded* [Form of bill to be used by member organizations-The form of bill to be used by member organizations is set forth at Commentary .30 to Rule 585.]

.93 Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates: provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.

.94 "Householding" of Reports. Rules 576 and 585 require member organizations to transmit issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Member organizations are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC Rule 14b-1

under the Securities Exchange Act of 1934).

\* \* \* \* \*

### Transmission of Interim Reports and Other Material

#### (See Exchange Rule 585)

Section 725. No change.

#### Commentary

\* \* \*

.10 No change.

.20 Mailing charges by member organizations. " These charges are set forth at [Commentary] *Commentaries* .80, .90, .91, .93 and .94 to Rule 576.

\* \* \* \* \*

### 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 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

The Commission recently approved changes to the NYSE's rules regarding the reimbursement of member organizations for costs incurred in the transmission of proxy and other shareholder communications.<sup>3</sup> In light of these changes, the Amex is proposing to amend its rules regarding the reimbursement of these costs to conform them to those of the NYSE. The Amex also is amending its rules to permit the "householding" of reports and annual mailings if done in compliance with Rule 14b-1 under the Act.<sup>4</sup> The Amex believes that these changes will facilitate compliance by members with applicable self-regulatory organization rules by establishing consistent fees and

<sup>3</sup> See Securities Exchange Act Release No. 45644 (March 25, 2002), 67 FR 15440 (April 1, 2002) (order approving File No. SR-NYSE-2001-53).

<sup>4</sup> See Securities Exchange Act Release No. 7912 (October 27, 2000), 65 FR 65736 (November 2, 2000) (amending proxy rules under Act relating to householding of materials); and 43993 (February 22, 2001), 66 FR 13364 (March 5, 2001) (File No. SR-NYSE-01-03) (amending NYSE rules to conform to the Commission's rules on householding of materials).

rules for shareholder communications between the Amex and NYSE.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>5</sup> in general and furthers the objectives of section 6(b)(5) of the Act<sup>6</sup> in particular in that it is 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 investor and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The proposed rule change also furthers the objectives of section 6(b)(4) of the Act<sup>7</sup> in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its member, issuers and other persons using its facilities.

#### 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

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(6)<sup>9</sup> thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) Does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

to the filing date of the proposed rule change.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Amex has requested that the Commission waive the 30-day pre-operative waiting period. The Amex believes that acceleration of the operative date will permit the immediate harmonization of exchange fee schedules for the transmission of shareholder communications and, thus, will ease member firm compliance burdens. In addition, the Amex believes that the Commission has recently considered all issues raised by the Amex's filing in connection with its approval of the NYSE's proposal.

The Commission, consistent with the protection of investors and the public interest, has waived the thirty-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative as of the date of filing to allow the Amex to implement its revised proxy fee schedule immediately.<sup>12</sup> The Commission notes that it has already considered and addressed issues that may be raised by this proposal when it approved similar proposals by the NYSE.<sup>13</sup> The Commission further notes that this proposal will allow for consistency in proxy fees between the Amex and the NYSE. 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

<sup>10</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

<sup>13</sup> See Securities Exchange Act Release No. 45644 (March 25, 2002), 67 FR 15440 (April 1, 2002) (order approving File No. SR-NYSE-2001-53); and 43993 (February 22, 2001), 66 FR 13364 (March 5, 2001) (order approving File No. SR-NYSE-01-03).

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. 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-2002-51 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-16848 Filed 7-3-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46129; File No. SR-ISE-2002-17]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. To Extend Its Enhanced Size Pilot

June 26, 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 June 19, 2002, the International Securities Exchange, Inc. ("ISE" 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 ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>14</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.

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

The Exchange proposes to extend its "Enhanced Size Pilot" (the "Pilot") until October 31, 2002. The Exchange also proposes to add 17 new options to the Pilot and to amend the definition of "deep-in-the-money" options that are excluded from the Pilot. The text of the rule change is available at the Office of the Secretary of the Exchange 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 ISE 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 ISE 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 the proposed rule change is to extend and expand the Exchange's Enhanced Size Pilot. On April 25, 2002, the Commission approved the Pilot, requiring market makers to quote in larger size for 19 of the 25 most-actively-traded options.<sup>3</sup> This is currently a three-month Pilot scheduled to expire on July 25, 2002. The initial analysis of trading pursuant to the Pilot indicates: the average size of the ISE's quotations in these options has increased; there has been no adverse effect on quotation spreads; and ISE market share has increased in these options.

Based on these initial, though limited results, the Exchange proposes to extend the Pilot for an additional three months, through October 31, 2002. ISE also proposes to increase the Pilot to include 17 additional options out of the 50 most-active options: Banc of America; Ciena; Dell; Fannie Mae; Motorola; Merrill Lynch; Nvidia; Xilinx; Amazon.com; Halliburton; Nextel Communications; J.P. Morgan Chase; ADC Telecommunication; Best Buy; Calpine; General Motors; and Hewlett

<sup>3</sup> Securities Exchange Act Release No. 34-45823 (April 25, 2002); 67 FR 22143 (May 2, 2002) (File No. SR-ISE-20010-23).