

Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Open Meeting scheduled for Tuesday, April 1, 2003 will be:

The Commission will consider whether to adopt new rules and amendments to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements established by the Sarbanes-Oxley Act of 2002. These requirements relate to: The independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee. The rule implements the requirements of Section 10A(m)(1) of the Securities Exchange Act of 1934, as added by Section 301 of the Sarbanes-Oxley Act of 2002.

The subject matter of the Closed Meeting scheduled for Tuesday, April 1, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature; Institution and settlement of injunctive actions; and Adjudicatory matters.

The subject matter of the Open Meeting scheduled for Wednesday, April 2, 2003 will be an oral argument:

The Commission will hear oral argument on an appeal by John J. Kenny and Nicholson/Kenny Capital Management, Inc., a registered investment adviser, from the decision of an administrative law judge. Kenny is a former associated person of a broker-

dealer and chairman and chief executive officer of Nicholson/Kenny.

The law judge found that Kenny engaged in schemes to defraud, in violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, and aided, abetted, and was a cause of violations of those provisions by another person. The law judge further found that Kenny and Nicholson/Kenny violated Section 206 of the Investment Advisers Act of 1940.

The law judge barred Kenny from association with any broker, dealer, or investment adviser; revoked Nicholson/Kenny's registration as an investment adviser; ordered respondents to cease and desist from committing or causing violations or future violations of the antifraud provisions; assessed civil penalties of \$700,000 against Kenny and \$500,000 against Nicholson/Kenny; and ordered respondents, jointly and severally, to pay disgorgement in the amount of \$1,333,000.

Among the issues likely to be argued are:

1. Whether respondents committed the alleged violations; and
2. If so, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Wednesday, April 2, 2003 will be: Post-argument Discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: the Office of the Secretary at (202) 942-7070.

Dated: March 25, 2003.

**Jonathan G. Katz,**

*Secretary.*

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

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

<sup>3</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division of Market Regulation ("Division"), Commission, dated March 6, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified that market makers from other options exchanges sending Principal Acting as

Agent Orders through the options intermarket linkage ("Linkage") that are executed at the Exchange will pay the same fees that are paid for transactions executed on the Exchange by Exchange specialists and registered options traders. In addition, Amex amended the Options Fee Schedule to reflect that these linkage fees are pursuant to a one-year pilot program.

<sup>4</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis,

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47562; File No. SR-Amex-2003-14]

### 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 a One-Year Pilot Program in Connection With Exchange Fees for Options Intermarket Linkage Orders

March 21, 2003.

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 February 28, 2003, 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 March 7, 2003, Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 19, 2003, Amex submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> On March 21, 2003, Amex submitted Amendment No. 3 to the proposed rule change.<sup>5</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 Exchange proposes to amend its Options Fee Schedule in order to clarify that market makers on other exchanges that send orders through the Linkage ("Linkage Orders") to the Amex for execution will be charged the same fees that the Exchange charges Exchange specialists and registered options traders ("ROTs") for the orders these entities execute on the Exchange. Because of the lack of experience in operating the Linkage, however, the Exchange proposes, along with the other options exchanges, a one-year pilot program in connection with the fees applicable to Linkage Orders.

The text of the proposed rule change is below. Proposed language is

Attorney, Division, Commission, dated March 18, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange made corrections to its fee schedule.

<sup>5</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division, Commission, dated March 20, 2003 ("Amendment No. 3"). In Amendment No. 3, the Exchange marked its fee schedule to show the changes it had made in Amendment No. 2.

italicized; deleted language is in brackets.

\* \* \* \* \*

### OPTIONS FEE SCHEDULE

[Options fees]

Type	Firm <sup>(2)</sup>	Specialist, Market Maker (ROTs) <sup>(1)(6)</sup>	Broker/Dealer	Customer <sup>(3)</sup>
I Options Transaction Fee <sup>(1)(6)</sup> (per contract side)				
Equity Options .....	\$0.19	\$0.26	\$0.19	No Charge
Index Options .....	\$0.15	\$0.21	\$0.15	\$0.15
Options on S&P100 iShares	Same as Equity Options	Same as Equity Options	Same as Equity Options	\$0.15
II Options Comparison Fee <sup>(1)(6)</sup> (per contract side)				
Equity Options .....	\$0.04	\$0.05	\$0.04	No Charge
Index Options .....	\$0.04	\$0.05	\$0.04	\$0.04
III Options Floor Brokerage Fee <sup>(1)(6)</sup> (per contract side)				
Equity Options .....	\$0.03	\$0.05	\$0.03	No Charge
Index Options .....	\$0.03	\$0.05	\$0.03	\$0.03
IV Options Marketing Fee <sup>(4)</sup> (per contract side)				
Equity Options .....	No Charge	\$0.40	No Charge	No Charge
V Options Licensing Fee (per contract side)				
MNX, NDX and QQQ .....	No Charge	\$0.10	No Charge	No Charge
Type:				
OEF .....	No Charge	\$0.05	No Charge	No Charge
LQD .....	No Charge	\$0.10	No Charge	No Charge
ICF .....	No Charge	\$0.09	No Charge	No Charge
VI Options Order Cancellation Fee <sup>(5)</sup>	\$1.00	\$1.00	\$1.00	\$1.00
VII Broker-Dealer Auto-Ex Fees (per contract side)				
Options Transaction Fee				
Equity Options .....	\$0.50	\$0.50	\$0.50	N/A
Index Options .....	\$0.50	\$0.50	\$0.50	N/A
Options on S&P100 iShares .....	\$0.50	\$0.50	\$0.50	N/A
Options Comparison Fee				
Equity Options .....	\$0.04	\$ [0.50] 0.05	\$0.04	N/A
Index Options .....	\$0.04	\$ [0.50] 0.05	\$0.04	N/A
Options Floor Brokerage Fee				
Equity Options .....	\$0.03	\$ [0.50] 0.05	\$0.03	N/A
Index Options .....	\$0.03	\$ [0.50] 0.05	\$0.03	N/A

Notes:

<sup>(1)</sup> The increase of \$0.09 in transaction fees, of \$0.01 in comparison fees, and of \$0.02 floor brokerage fees will not be imposed on contracts executed for the accounts of specialists, registered options traders, and non-member broker dealers as either an accommodation trade (also known as "Cabinet Trades") or part of the following strategies: (a) Reversals and conversions; (b) dividend spreads; and (c) box spreads. A Fee Reimbursement Form must be submitted to the Exchange in order to receive a reimbursement of the fee increases charged.

<sup>(2)</sup> Customer facilitated orders will continue to be charged a transaction fee of \$0.07 per contract side.

<sup>(3)</sup> Index Options machine delivered < 30 contracts are not assessed a transaction fee.

<sup>(4)</sup> Excludes options trades between and among Registered Options Traders and Specialists. Effective August 1, 2001, this fee has been suspended.

<sup>(5)</sup> The executing clearing member is charged \$1.00 for every order that it cancels through the Amex Order File in a given month when the total number of orders the executing clearing member canceled through AOF in that month exceeds the total number of orders that same Clearing Member executed through AOF in that same month. This fee will not apply to executing Clearing Members that cancel fewer than 500 orders through AOF in a given month.

<sup>(6)</sup> Pursuant to a one-year pilot program, the fees applicable to specialists, market maker (ROTs) [I]include members of other options exchanges executing Linkage transactions except for Satisfaction Orders.

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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, 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Amex proposes to adopt fees applicable to certain Linkage Orders executed on the Exchange. The Plan for

the Purpose of Creating and Operating an Intermarket Options Market Linkage (“Linkage Plan” or “Plan”) was originally approved by the Commission on July 28, 2000,<sup>6</sup> and subsequently amended on June 27, 2001,<sup>7</sup> May 30, 2002,<sup>8</sup> January 29, 2003,<sup>9</sup> and January 31, 2003.<sup>10</sup> For the purpose of implementing the Linkage Plan, Amex filed and received Commission approval of the Exchange’s rules governing the operation of the Intermarket Linkage (“Linkage”) on January 31, 2003.<sup>11</sup> The Exchange, with the other options exchanges, launched Phase I of the Linkage on January 31, 2003.

In connection with the launch of the Linkage, the Exchange seeks to clarify that the existing fee amount of \$0.36 per contract side<sup>12</sup> for equity options that currently is charged to Exchange specialists and registered options traders (“ROTS”) will also apply to executions resulting from Linkage Orders. As a result, market makers from other exchanges sending Principal Acting as Agent Orders (“P/A Orders”) or Principal Orders (“P Orders”) will pay the same execution fees applicable to Exchange specialists and ROTS. The Exchange believes it is appropriate to charge market makers on other option exchanges the same fees members pay for proprietary transactions when such market makers access the liquidity available on the Amex.

As set forth in Amendment No. 4 of the Plan recently approved by the Commission, fees will not be charged to a member of another options exchange that is seeking to satisfy customer orders

<sup>6</sup> See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). On October 19, 1999, the Commission issued an order under section 11A(a)(3)(B) of the Act, directing the options exchanges to file a national market systems plan within 90 days to link the options markets. See Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999). The options exchanges that are participants to the Plan include Amex, Chicago Board Options Exchange, Inc., Pacific Exchange, Inc., Philadelphia Stock Exchange, Inc. and the International Securities Exchange, Inc. (“options exchanges”).

<sup>7</sup> See Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

<sup>8</sup> See Securities Exchange Act Release No. 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002).

<sup>9</sup> See Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (“Amendment No. 4”).

<sup>10</sup> See Securities Exchange Act Release No. 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003).

<sup>11</sup> See Securities Exchange Act Release No. 47297 (January 31, 2003), 68 FR 6526 (February 7, 2003).

<sup>12</sup> The fee amount of \$0.36 per contract side consists of a \$0.26 options transaction fee, a \$0.05 options comparison fee, and a \$0.05 options floor brokerage fee.

(i.e., Satisfaction Orders) on its book that were traded through.<sup>13</sup>

Due to the lack of experience that the options exchanges have in operating the Linkage, the Exchange has proposed that a one-year pilot program be instituted with respect to the application of Linkage Order fees. In this manner, the Amex, as well as the other options exchanges, will be able to monitor the operation of the Linkage during its first year of operation and reassess whether the proposed fees are adequate and reasonable.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act<sup>14</sup> regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

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

The Exchange believes that the proposed rule change will impose no 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 self-regulatory organization 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 amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the

<sup>13</sup> A trade-through occurs when a broker-dealer executes an order on one exchange at a price inferior to another exchange’s disseminated price.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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 Amex. All submissions should refer to File No. SR–Amex–2003–14 and should be submitted by April 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47559; File No. SR–CBOE–2003–10]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Suspend on a Pilot Basis an Access Fee for Non-Customer Orders in Equity Options Classes Executed Through the Retail Automatic Execution System

March 21, 2003.

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 March 10, 2003, the Chicago Board Options Exchange, Inc. (“CBOE” 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.

<sup>1</sup> 17 CFR 200.30–3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.