

(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the open meeting scheduled for Tuesday, April 30, 2002, will be:

1. The Commission will consider proposing rules that would require companies to discuss "critical accounting estimates" in their "Management's Discussion and Analysis" (MD&A) section of annual reports, registrations statements, proxy and information statements. Quarterly updates to disclose material changes would be required under the proposals. The proposed disclosure is designed to provide additional key information about a company's financial statements to enhance investors' understanding of a company's financial condition and to provide information about the quality of, and potential variability of, a company's earnings. The proposed amendments reflect the changes to MD&A rules that the Commission announced its intention to propose in Press Release 2002-22 on February 13, 2002.

2. The Commission will consider a recommendation to issue an exemptive order under Section 36 of the Exchange Act, which would permit broker-dealers to pledge a wider range of collateral when entering into borrowing transactions governed by paragraph (b)(3) of Rule 15c3-3. The provisions in this paragraph apply when broker-dealers borrow fully paid and excess margin securities from customers. The conditions for such borrowings include the requirement that broker-dealers provide customers with full collateral consisting of certain specified financial instruments or cash. The order would expand the types of collateral that could be provided, subject to certain conditions in addition to those required in the Rule.

The Commission also will consider a recommendation to delegate its authority to issue such orders regarding permissible collateral to the Director of the Division of Market Regulation.

3. The Commission will consider a proposal to amend Rule 31-1 under the Securities Exchange Act of 1934 to clarify how to calculate assessments that are required to be paid by national securities exchanges and national securities associations pursuant to Section 31(d) of the Exchange Act for security futures transactions. The proposed amendments to Rule 31-1 also would provide guidance on how to calculate fees that are required to be paid by national securities exchanges and national securities associations pursuant to Sections 31(b) and (c) of the Exchange Act, respectively, for sales of

securities that result from the physical settlement of security futures.

4. The Commission will consider a recommendation to propose amendments to Rules 10f-3, 12d3-1, 17a-6, 17d-1, and 17e-1 and new Rule 17a-10 under the Investment Company Act of 1940. The proposed amendments to Rules 17a-6 and 17d-1 would expand the current exemptions for investment companies to enter into principal transactions and joint arrangements with portfolio companies that are affiliated with an investment company because the investment company controls the portfolio company, or owns more than five percent of the portfolio's voting securities. The proposed amendments to Rules 10f-3, 12d3-1, and 17e-1 and new Rule 17a-10 would permit investment companies and their affiliated subadvisers to enter into a variety of transactions together without first obtaining an exemptive order from the Commission.

The Commission also will consider whether to adopt amendments to Rule 10f-3 under the Investment Company Act of 1940. Rule 10f-3 permits investment companies to purchase certain securities in an underwriting in which an affiliated underwriter is participating. The amendments to Rule 10f-3 would include government securities among the types of securities that investment companies may purchase under the rule.

5. The Commission will consider whether to amend its rules to delegate authority to the Secretary of the Commission to enter orders instituting previously authorized administrative proceedings based on the entry of an injunction or a criminal conviction.

Because the open meeting will be held in Room 6600, there will be limited seating available. Additional seating will be provided in Room 1C50, where there will be a simultaneous telecast of the meeting. The meeting also will be audio webcast live at www.sec.gov/news/openmeetings.shtml.

The subject matter of the closed meeting scheduled for Wednesday, May 1, 2002, will be: institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

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: April 23, 2002.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45784; File No. SR-Amex-2002-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Options Trading Fees

April 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on March 1, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Amex filed Amendment No. 1 to the proposed rule change on April 16, 2002.³ The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

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

The Exchange has proposed to amend one of its options trading fees under File No. SR-Amex-2002-11,⁴ which was filed for immediate effectiveness pursuant to section 19(b)(3)(A)(ii) of the Act.⁵ The Exchange now seeks to impose this fee change, as set forth in File No. SR-Amex-2002-11 and described below, as of December 1, 2001.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Clair P. McGrath, Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 12, 2002 ("Amendment No. 1"). In Amendment No. 1, the Amex amended the proposal to incorporate the Exchange's reasons for not charging specialists and registered options traders the recent increase in transaction, comparison and floor brokerage fees for accommodation trades or trades executed pursuant to reversals and conversions, dividend spreads, and box spreads. Amex also provided an explanation of the December 1, 2001 implementation date for the elimination of the fee cap.

⁴ See Securities Exchange Act Release No. 45783 (April 18, 2002) for a description of these fees changes.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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 Exchange recently (1) increased transaction, comparison and brokerage fees for all specialist and registered options trader transactions in both equity and index options;⁶ and (2) eliminated the cap on the number of options contracts subject to the transaction, comparison and floor brokerage fees on a given day.⁷ This fee increase went into effect on December 1, 2001.⁸

The Exchange also determined, at the time, that accommodation trades (also known as "Cabinet Trades")⁹ and trades occurring as part of certain types of strategies would continue to be eligible for the cap on that portion of the transaction, option clearance and floor brokerage fees that represented the increase in fees. Thus, for contracts executed in excess of 3,000 on a given day, the transaction fee increase of \$0.09, the options comparison fee increase of \$0.01 and the floor brokerage fee increase of \$0.02 were to be reimbursed. Transaction, options

comparison and floor brokerage fees were to continue to be charged for only the first 3,000 contracts executed as an accommodation trade or pursuant to one of the following strategies: (1) Reversals and conversions;¹⁰ (2) dividend spreads;¹¹ and (3) box spreads.¹²

The Exchange proposes not to charge the recent increase in transaction, comparison and floor brokerage fees (a total increase of \$0.12) for the entire number of contracts executed as an accommodation trade or pursuant to one of the above strategies. Thus, specialists and registered traders will pay a (1) transaction fee of only \$0.17 for equity options and \$0.12 for index options; (2) comparison fee of \$0.04; and (3) floor brokerage fee of \$0.03 for contracts executed as an accommodation trade or pursuant to a reversal or conversion, a dividend spread or a box spread.

The Exchange proposes not to apply the fee increases to accommodation transactions in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity as an accommodation to investors seeking to close out worthless option positions. In addition, the Exchange proposes not to apply the fee increases to reversals, conversions, dividend spreads and box spreads in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity for these types of financing strategies. The Exchange represents that these financing strategies are usually entered into by professionals whose profit margins are generally narrow. In addition, the Exchange states that it has determined to keep fees for accommodation transactions and spread strategies comparable with the fees charged by other options exchanges for these types of transactions.

The Exchange represents that its billing system is unable to distinguish among these types of transactions; therefore, it has developed a manual procedure. Specifically, within thirty calendar days of the particular

transaction date, a Fee Reimbursement Form must be completed and submitted to the Exchange. Upon acceptance, the Exchange will deliver to that member's clearing firm a reimbursement check in the amount of the transaction, clearance and brokerage fee increases (a total of \$0.12) charged on contracts executed pursuant to an accommodation trade or one of the strategies described above.

The Exchange proposed these fee changes in File No. SR-Amex-2002-11, which became effective upon filing with the Commission.¹³ The Exchange now proposes to make this fee change retroactive to the date of imposition of the fee, which was on December 1, 2001.¹⁴ The Exchange believes that due to the paperwork involved in obtaining a reimbursement of these trading fees it would be easier on its membership if the revision could coincide with the imposition of the fee. In addition, given that the Exchange has increased a number of fees to its membership in recent months, it believes that the implementation of any type of reduction in fees should be put in place as soon as possible.

(2) Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act¹⁵ in general and furthers the objectives of section 6(b)(4)¹⁶ in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and 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.

⁶ The options fees were increased as follows: (1) The Options Transaction Fee per contract side was increased from \$0.17 to \$0.26 for equity options and from \$0.12 to \$0.21 for index options; (2) the options comparison fee was increased from \$0.04 to \$0.05 per contract side; and (3) the floor brokerage fee per contract side was increased from \$0.03 to \$0.05.

⁷ See Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001) (notice of filing and immediate effectiveness of File No. SR-Amex-2001-101).

⁸ See Securities Exchange Act Release No. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002) (order approving File No. SR-Amex-2001-102). The Exchange represents that it intended to eliminate the fee cap as of October 1, 2001. However, due to a delay in the reprogramming of the changes for the Exchange's Finance Division, the fee cap elimination did not go into effect until December 1, 2001.

⁹ See Exchange Rule 959 for a description of an accommodation trade.

¹⁰ A "conversion" is a strategy in which a long put and a short call with the same strike price and expiration date are combined with long underlying stock to lock in a nearly riskless profit. A "reversal" is a strategy in which a short put and long call with the same strike price and expiration date are combined with short stock to lock in a nearly riskless profit.

¹¹ A "dividend spread" is any trade done within a defined time frame in which a dividend arbitrage can be achieved between any two (2) deep-in-the-money options.

¹² A "box spread" is a spread strategy that involves a long call and short put at one strike price as well as a short call and long put at another strike price. This is a synthetic long stock position at one strike price and a synthetic short stock position at another strike price.

¹³ See Securities Exchange Act Release No. 45783 (April 18, 2002). The proposal became effective on April 16, 2002.

¹⁴ This proposal to revise the recently adopted options trading fees was originally submitted on January 14, 2002 (File No. SR-Amex-2002-04). The Commission rejected the filing, stating that it was unable to accept filing pursuant to Section 19(b)(3)(A) because of the Exchange's request to apply the fee reduction retroactively.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

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, as amended, 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-2002-12 and should be submitted by May 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45794; File No. SR-Amex-00-60]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Use of Handheld Terminals by Floor Brokers and Registered Options Traders and to the Exchange's Audit Trail Rules

April 22, 2002.

I. Introduction

On December 11, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal relating to the use of handheld terminals ("HHTs") by the Exchange's floor brokers and registered options traders ("ROTs") and to the Exchange's audit trail rules. On May 15, 2001, Amex submitted Amendment No. 1 to the proposal,³ and on July 27, 2001, Amex submitted Amendment No. 2 to the proposal.⁴ The Commission published the proposed rule change, as amended, in the **Federal Register** on August 8, 2001.⁵ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

A. Mandatory Use of HHTs by Brokers and ROTs and Codification of Handheld Terminal Policy

In the mid-1990s, the Exchange's ROTs began to make extensive use of proprietary HHTs that were linked to their home offices by wireless data

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2001 ("Amendment No. 1"). In Amendment No. 1, Amex revised the proposal to clarify that its new Hand Held Terminal Policy would apply to both wired as well as wireless terminals, and to make technical corrections to the proposed rule text.

⁴ See letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 26, 2001 ("Amendment No. 2"). In Amendment No. 2, Amex revised and resubmitted its statement of the purpose of, and the statutory basis for, the proposed rule change. However, Amex did not make any revisions to the proposed rule text.

⁵ See Securities Exchange Act Release No. 44647 (August 8, 2001), 66 FR 41632.

transmission technologies. Amex has stated that the rapid proliferation of these devices raised concerns with broadcast interference, systems disruption, antenna location, exhaustion of system capacity, and appropriate regulatory oversight of data communications. As a result of these considerations and in light of similar developments on other exchanges, Amex built a Wireless Data Communications Infrastructure ("Infrastructure") and adopted a Wireless Communications Policy to regulate the use of these devices.⁶

Since the inception of the Wireless Communications Policy, Amex has allowed members to develop their own HHT applications, subject to review by the Exchange to ensure compliance with its rules and compatibility with its systems. Amex also required members to use the Infrastructure (*i.e.*, Amex antennas, base stations, network, *etc.*) to transmit communications to and from HHTs and to conform their proprietary technologies, at their cost, to the requirements of the Infrastructure.

Amex introduced a Booth Automated Routing System ("BARS") in late 2000. BARS is an order routing system with no order execution capabilities. Brokers can program different algorithms for each Amex security into BARS to cause certain orders to be routed to the specialist for execution or "booking," and others to be routed to the broker's booth on the Amex floor. Booth clerks also can enter orders into BARS that are telephoned to the floor (*i.e.*, orders that are not systematized when they arrive on the Exchange). In August 2001, Amex enhanced the functionality of BARS by introducing a wireless retail application system ("BARS/HHT") that provides communications between member firm booth personnel and floor brokers with HHTs using the Infrastructure. As of April 1, 2002, all Amex floor brokers had BARS terminals in their booths. Currently, there are approximately 50 floor brokers representing 12 firms with assigned HHTs. This is approximately 40 percent of the total number of HHTs that Amex ultimately will assign. As a member firm is added to BARS, Amex would provide that firm with the appropriate number of HHTs to utilize the new system.⁷ Amex has proposed to require

⁶ See Securities Exchange Act Release Nos. 37728 (September 26, 1996), 61 FR 51476 (October 2, 1996) (approving Amex's original Wireless Communications Policy); and 40019 (May 21, 1998), 63 FR 29272 (May 28, 1998) (amending Amex's Wireless Communications Policy).

⁷ Users of these systems are subject to an Exchange fee. See *Securities Exchange Act Release*

Continued

¹⁷ 17 CFR 200.30-3(a)(12).