

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex is proposing to extend for one (1) year until July 31, 2005, the current pilot program establishing Exchange fees for Principal Orders ("P Orders") and Principal Acting as Agent Orders ("P/A Orders") executed through Linkage. The fees in connection with the pilot program are scheduled to expire on July 31, 2004.³ The Exchange represents that these are the same fees charged to specialists and registered option traders ("ROTs") for transactions executed on the Exchange.

As was the case in the original pilot program and subsequent extension, the Exchange believes that the existing fees currently charged to Exchange specialists and ROTs should also apply to executions resulting from Linkage Orders sent to the Exchange.

Based on the experience to date, the Exchange believes that an extension of the pilot program for one (1) year until July 31, 2005 is appropriate.

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b)(4) of the Act⁴ 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. 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. 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. Please include File Number SR-Amex-2004-54 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-2004-54. 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 offices of 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-2004-54 and should be submitted on or before August 26, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,⁵ and, in particular, with the requirements of Section 6(b) of the Act⁶ and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ which requires that the rules of the Exchange provide for the

equitable allocation or reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2005 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁸ for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as Amex and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁹ that the proposed rule change (SR-Amex-2004-54) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

J. Lynn Taylor,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50123; File No. SR-NYSE-2004-40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Its Original Financial Listing Standards Pilot Program

July 29, 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 15, 2004, the New York Stock Exchange, Inc. ("NYSE" 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.

⁸ 15 U.S.C. 78s(b)(2).

⁹ *Id.*

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(10).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49145 (January 29, 2004), 69 FR 5619 (February 5, 2004).

⁴ 15 U.S.C. 78f(b)(4).

⁵ In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

The proposed rule change has been filed by the NYSE as a "non-controversial" rule change pursuant to Rule 19b-4(f)(6) under the Act.³ 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 seeks to extend its original financial listing standards pilot program (the "Pilot Program")⁴ until the earlier of October 31, 2004, or such date as the Commission may approve File Number SR-NYSE-2004-20,⁵ which seeks permanent approval of the Pilot Program. The Pilot Program established revised financial standards applicable to the listing of equity securities on the Exchange. The Pilot Program is currently in effect for a six-month period ending on July 30, 2004.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 29, 2004, the Commission granted accelerated approval of the Pilot Program on a six-month pilot basis through July 30, 2004.⁶ Two comments were received in response to File Number SR-NYSE-2004-43.⁷ The NYSE thereafter filed File Number SR-NYSE-2004-15 on March 16, 2004 for immediate effectiveness,⁸ which suspended portions of the original Pilot Program regarding minimum numerical continued listing set forth in Section 802.01B of the NYSE's Listed Company Manual. In File Number SR-NYSE-2004-15, the Exchange noted its intention to publish the requirements of the original Pilot Program regarding minimum numerical continued listing standards set forth Section 801.01B for public comment on a non-accelerated timeframe. SR-NYSE-2004-15 did not, however, affect the Pilot Program with respect to original listing standards set forth in Sections 101.01C and 103.01B

of the NYSE's Listed Company Manual or the Pilot Program's non-substantive change to the language of Section 801.01C.

On April 4, 2004, the Exchange filed File Number SR-NYSE-2004-20, which seeks permanent approval for the Pilot Program currently in effect with respect to the Exchange's original minimum listing standards, and approval of the continued minimum listing standards as originally proposed in File Number SR-NYSE-2003-43. File Number SR-NYSE-2004-20 was published in the **Federal Register** on July 2, 2004.⁹ The Exchange believes it is appropriate to extend the amended Pilot Program until the earlier of October 31, 2004, or such date as the Commission may approve File Number SR-NYSE-2004-20.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁰ because 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 investors and the public interest.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and 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 date of filing of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² At any time within 60 days of the filing of this 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.

Although Rule 19b-4(f)(6) under the Act¹³ requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the Exchange's request in view of the fact that the proposed rule change seeks to continue the existing Pilot Program. The NYSE has also requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative date will allow the Exchange's Pilot Program to continue without any interruption in service to issuers and investors. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁴

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. 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. Please include File Number SR-NYSE-2004-40 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ *Id.*

¹⁴ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³ 17 CFR 240.19b-4(f)(6).

⁴ See Securities Exchange Act Release No. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (approving File No. SR-NYSE-2004-43).

⁵ See Securities Exchange Act Release No. 49917 (June 25, 2004), 69 FR 40439 (July 2, 2004).

⁶ See Securities Exchange Act Release No. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (approving File No. SR-NYSE-2004-43).

⁷ See Letters to Jonathan G. Katz, Secretary, Commission, from W. Randy Eaddy, Kilpatrick Stockton LLP, dated March 11, 2004, and Kenneth A. Hoogstra, von Briesen & Roper, s.c., dated February 25, 2004.

⁸ See Securities Exchange Act Release No. 49443 (March 18, 2004), 69 FR 13929 (March 24, 2004).

⁹ See Securities Exchange Act Release No. 49917 (June 24, 2004), 69 FR 40439.

¹⁰ 15 U.S.C. 78f(b)(5).

20549–0609. All submissions should refer to File Number SR–NYSE–2004–40. 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 NYSE. 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–NYSE–2004–40 and should be submitted on or before August 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50120; File No. SR–OCC–2004–09]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Eligible Securities for OCC's Stock/Loan Hedge Program

July 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 1, 2004, the Options Clearing Corporation ("OCC") 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 primarily by OCC. 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 purpose of the proposed rule change is to amend the eligibility requirements for securities that may be the subject of stock loan/borrow transactions cleared through OCC's Stock Loan/Hedge Program ("Hedge Program").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 2002 OCC proposed an additional eligibility criterion for equity securities that may be loaned in the Hedge Program. Specifically, OCC proposed that a loaned security be an underlying security for options unless (1) the loan was accepted by OCC prior to the implementation of the new requirement or (2) the security was deliverable upon the exercise of an outstanding option.³ OCC's intention in adding this requirement was to more closely align the Hedge Program with its intended objective of recognizing intermarket hedges between a clearing member's equity and options positions.

OCC, with the Commission's consent, deferred implementing this new standard pending completion of system enhancements by DTC and Loanet which would permit DTC and Loanet to confirm that the securities loaned in a transaction meet OCC's criteria in order to confirm that the transaction was

² The Commission has modified parts of these statements.

³ The existing criteria required that a security loaned in the Hedge Program be an equity security eligible for deposit at DTC and that OCC had not terminated all loans with respect to that security. These requirements are still in effect.

eligible for clearance at OCC.⁴ These system enhancements have been scheduled for implementation in June 2004.

During the deferment period, OCC took the opportunity to reassess its eligibility criteria as approved by the Commission, and OCC determined that the criteria would preclude the lending of shares of certain exchange-traded funds ("ETFs"). There are a number of ETFs that track indexes underlying OCC-issued options but that are not themselves underlying securities for options. These ETFs are often used as hedges against the related index options. Without a change in the eligibility criteria, OCC would have to disqualify such ETFs from being loaned in the Hedge Program. OCC believes that excluding such ETFs would be inconsistent with the purpose of the Hedge Program, which is to give recognition to intermarket hedges between equity and options positions.⁵ Accordingly, OCC is making this technical change to its securities eligibility criteria to permit loans of an ETF that tracks an index underlying an outstanding index option whether or not the ETF itself is an underlying security for options.

OCC believes that the proposed changes to its rules are consistent with the purpose and requirements of Section 17A of the Securities and Exchange Act of 1934, because it is designed to promote the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, remove impediments to the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions, and assure the safeguarding of securities and funds in the custody or control of OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

⁴ Loanet is a service bureau used by broker dealers, including OCC clearing members, involved in stock loan transactions. Clearing members, either on their own or through Loanet, enter into stock loan transactions via DTC systems and through use of a special code designate the stock loan transactions as eligible for clearance at OCC.

⁵ Five such ETFs account for nearly \$673 million in loans outstanding in the Hedge Program as of May 2004.

¹⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).