''Release'').[1] The Release states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c). Section 6(c) provides that the Commission may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) permits the Commission to require companies exempted from the registration requirements of the Act to comply with certain specified provisions of the Act as though the company were a registered investment company.

5. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants assert, among other things, that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to investors in Units. In addition, applicants assert that the requested exemption is both necessary and appropriate in the public interest.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8010–01–P**

[1] Investment Company Act Release No. 8465 (Aug. 9, 1974).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48577; File No. SR–Amex–2003–80]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Pilot Program for Marketing Fee Procedures

September 30, 2003.

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 September 24, 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 the Exchange has prepared. 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 adopt Commentary .11 to Amex Rule 958 specifying the procedures by which specialists and registered options traders (''ROTs'') may determine whether to continue to participate in the marketing fee program recently established by the Exchange. The Exchange proposes to institute these procedures on a six-month pilot basis. The text of the proposed rule change is below. Proposed new language is *italicized.*

* * * * *

Rule 958. Options Transactions of Registered Traders

(a) through (h) No Change

Commentary

.01 through .10 No Change

*.11 Marketing Fee Program Voting Procedures. The following procedures specify how a specialist and Registered Trader determine whether to participate or not to participate in the Exchange's marketing fee program. These procedures will expire six (6) months from the date of effectiveness unless extended, or adopted on a permanent basis.*

*(a) Eligible Voters*

*(i) Eligible Registered Traders. For option classes traded by an individual specialist, Registered Traders to be eligible to participate in the vote must have transacted at least 80% of their contracts and transactions in each of the three immediately preceding calendar months in one or more option classes traded by that specialist. For cases when one specialist trades a single option class or multiple specialists trade a single option class, Registered Traders to be eligible to participate in the vote must have transacted at least 80% of their contracts and transactions in each of the three immediately preceding calendar months in that option class. Registered Traders are required to continue to trade the particular option class at the time of the vote. Eligible Registered Traders and the specialist shall each have one vote.*

*(b) Requesting a Vote. After the marketing fee initially has been in effect for three consecutive calendar months with respect to the option classes of an individual specialist, any eligible Registered Trader and specialist can request that a vote be held to determine whether or not the Registered Trader and specialist should continue to participate in the marketing fee program by submitting a written request to that effect to the Secretary of the Exchange. The Exchange shall post a notice of the time and date of any vote to be taken at least 10 calendar days prior to the time of the vote. The Marketing Fee Program Committee shall determine all other administrative procedures pertaining to the vote.*

*(c) Participation in the Marketing Fee Program. The Registered Traders and specialist shall be deemed to have indicated that they desire to participate in the Exchange's marketing fee program if a majority of those eligible Registered Traders participate in the vote and if a majority of the total votes cast are in favor of participating in the marketing fee program. Conversely, the eligible Registered Traders and the specialist shall be deemed to have indicated that they do not desire to participate in the Exchange's marketing fee program if a majority of those eligible Registered Traders participate in the vote and if a majority of the total votes cast are against participating in the marketing fee program.*

*(i) Frequency of Vote. Once eligible Registered Traders and the specialist vote to participate in the marketing fee program, subsequent votes to determine whether to continue participation may be held only once every three calendar months. Once eligible Registered Traders and the specialist vote not to participate in the marketing fee program, subsequent votes to determine whether to participate in the marketing*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*fee program may be held only once every thirty days.*

*(ii) Tie Votes. If a vote conducted in accordance with this Commentary results in a tie, the status quo for the specialist and Registered Traders of the particular option class shall remain in effect. Accordingly, if the specialist and Registered Traders currently participate in the marketing fee program and a tie vote occurs, the marketing fee program will remain in effect for that specialist and Registered Traders. If the specialist and Registered Traders do not participate in the marketing fee at the time the tie vote occurs, the marketing fee will not be implemented for the specialist and Registered Traders at that time.*

* * * * *

**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 had 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

In July 2000, the Amex imposed a marketing fee of $0.40 per contract on the transactions of specialists and Registered Options Traders (''ROTs'') in individual equity options. The Exchange collected the fees and distributed the funds to the specialists, who then used the funds to pay broker-dealers for orders they directed to the Amex. In August 2001, the Exchange suspended the collection of the fee. In June 2003, the Amex re-instated an equity option marketing fee on those specialist and ROT transactions resulting from orders from customers of payment accepting firms with whom the specialist has negotiated a payment for order flow arrangement.[3]

In conjunction with the re-instatement of the marketing fee program, the Amex now proposes to adopt Commentary .11 to Amex Rule 958 for the purpose of establishing procedures for specialists and ROTs to determine whether to continue participation in the Exchange's marketing fee program. The Amex proposes to institute their procedures on a six-month pilot basis. In connection with the adoption of the procedures included in new Commentary .11 to Amex Rule 958, the Amex would establish a Marketing Fee Program Committee (''Committee'') to determine and administer the procedures for conducting the required vote. The Committee would be comprised of the Amex's Vice Chairman, two options specialists designated by the Chairman of the Specialists' Association and two ROTs designated by the Chairman of the Options Market Maker Association.

The proposed new Commentary .11 to Amex Rule 958 would identify which ROTs are eligible to vote for particular option classes. In connection with a required vote, the specialist and each eligible ROT would be entitled to one vote. Any decision to discontinue participation in the Amex's marketing fee program would be on a specialist-by-specialist basis, unless more than one specialist trades a single option class, in which case, the determination would be made on an option-class basis.[4] ROTs may choose to trade one or all of the option classes traded by a specialist.

The proposed voting procedures provide that a ROT would be eligible to vote on continued participation in the marketing fee program with respect to the option classes traded by an individual specialist provided that the ROT has at least 80% of its registered trader activity in each of the three immediately preceding calendar months (measured in terms of both contract volume and transactions) in one or more of the options traded by that specialist.[5] When one specialist trades a single option class or multiple specialists trade a single option class, ROTs would need to have at least 80% of their registered trader activity in each of the three immediately preceding calendar months (measured in terms of both contract volume and transactions) in that option class to be eligible to vote on whether to continue with the marketing fee program. In addition, the ROT would need to continue to trade the option class or classes at the time of the vote. The Exchange believes that these requirements assure that only those ROTs who have concentrated their activity in one or more option classes traded by a specialist over the last three months would be eligible to participate in the vote.

*Process to Request a Vote.* After the program has been in effect for the initial three calendar month period, the specialist or any eligible ROT could request that a vote be held by submitting a written request to the Secretary of the Exchange. The Amex would provide at least 10 calendar days' posted notice to the specialist and other ROTs of the time and date of the vote. The Exchange would verify that the member requesting a vote is an eligible ROT and would keep the identity of such individual confidential.

*Specialist and ROTs Participating in the Marketing Fee Program.* The specialist and ROTs could cease to participate in the marketing fee program after the initial three-month period has expired. In order to opt out of the marketing fee program, the following actions must occur: (i) The question must be presented for a vote of the specialist[6] and eligible ROTs; (ii) a majority of the eligible ROTs must participate in the vote; and (iii) a majority of the votes cast must be in favor of not continuing to participate in the marketing fee program. In the event that the vote is tied, the marketing fee program would remain in effect in those option classes for the next three consecutive months.

*Specialist and ROTs Not Participating in the Marketing Fee Program.* The proposed voting procedure set forth in Commentary .11 provides that twenty days after the specialist and eligible ROTs vote to discontinue participation in the marketing fee program, the specialist and any eligible ROT may request that another vote be held to determine whether the trading crowd should again participate in the marketing fee program.[7] In this case, if a majority of the votes cast are in favor of again participating in the marketing fee program, the program would be in effect in those option classes for the next three consecutive months. In the event that the vote is tied, the specialist and ROTs would be deemed to have indicated that they do not wish to

[3] *See* Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (SR–Amex–2003–50).

[4] The Amex notes that most specialists trade two or more option classes, some specialists trade only one active option class, and some actively traded option classes have two or more specialists.

[5] The Amex notes that this 80% trading activity requirement pertains to the trading activity of an individual ROT, and not to the aggregate trading activities of any group of ROTs. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Ian K. Patel, Attorney, Division of Market Regulation, Commission, on September 26, 2003.

[6] The specialist may (but is not required to) participate in the vote.

[7] The Exchange notes that actual votes may only be held once every thirty days. Because there is a ten-calendar day notice period prior to a vote, however, the specialist and any eligible ROT may request a vote twenty days after the preceding vote.

participate in the marketing fee program.

If a payment-accepting firm were to materially change its execution status or a specialist transfers its options classes to a separate organization, any eligible ROT could request that a vote be held pursuant to procedures set forth above to determine whether those option classes should continue to participate in the marketing fee program.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act [8] in general and furthers the objectives of section 6(b)(5) of the Act [9] in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

*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*

The Amex neither solicited nor received written comments with respect to the proposed rule change.

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

The foregoing rule change has become immediately effective pursuant to section 19(b)(3)(A)(iii)[10] of the Act and Rule 19b-4(f)(6)[11] under the Act because it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Amex has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

The Exchange has requested that the Commission waive the usual pre-operative waiting period, so that it may immediately begin implementing the proposed procedures in connection with the marketing fee program. The Exchange notes that acceleration of the operative date of the proposed rule is appropriate, given that substantially similar procedures have been adopted by the Chicago Board Options Exchange, Inc. (''CBOE'') and approved by the Commission.[12]

The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date of the proposal.[13] The Commission notes that it has approved a substantially similar proposal filed by the CBOE. For this reason, the Commission designates that the proposal become operative immediately. At any time within sixty days after the filing of the proposed rule change, the Commission may summarily abrogate this 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 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 number SR-Amex-2003–80 and should be submitted by October 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010–01–P**

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. Section 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* Securities Exchange Act Release No. 47957 (May 30, 2003), 68 FR 35035 (June 11, 2003) (SR–CBOE–2003–20).

[13] For purposes of accelerating the operative date of the proposed rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48581; File No. SR–NASD–2003–111]**

## Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, and 5 Thereto by the National Association of Securities Dealers, Inc., Relating to Charges for ViewSuite Services Set Forth in NASD Rule 7010(q)

October 1, 2003.

On July 17, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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-6 thereunder,[2] a proposed rule change to institute a pilot program for a one-year period to simplify the structure of the fees assessed for the ViewSuite products under NASD Rule 7010(q), by combining the current DepthView, PowerView, and TotalView products into one single entitlement package. On August 11, 2003, Nasdaq filed Amendment No. 1 that entirely replaced the original rule filing.[3]

The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on August 21, 2003.[4] The Commission received no comments on the proposal. On September 22, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.[5] On September 24, 2003, Nasdaq filed Amendment No.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–6.

[3] *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 8, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 48358 (August 15, 2003), 68 FR 50566 (August 21, 2003).

[5] *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 17, 2003 (''Amendment No. 2''). In Amendment No. 2, Nasdaq stated that it was changing the starting date of the proposed pilot to October 1, 2003. This is a technical amendment and is not subject to notice and comment.