

will attend the closed meeting. 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. 552(b)(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 meeting.

The subject matter of the open meeting scheduled for Tuesday, February 4, 2003, will be the following:

1. The Commission will consider whether to adopt Regulation Analyst Certification, a new rule that would require analysts to provide certifications regarding the views they express in research reports and public appearances and to provide disclosures regarding any compensation they may have received related to those views and recommendations.

2. The Commission will consider whether to adopt amendments to rule 17f-4 under the Investment Company Act of 1940, the rule that governs investment companies' use of securities depositories. The amendments are designed to update and simplify the rule in response to changes in business practices and commercial law that have occurred since the rule was adopted in 1978. The amendments eliminate unnecessary restrictions in the rule, to reduce compliance burdens on funds and fund boards, without jeopardizing investor protections.

3. The Commission will consider a recommendation to propose for public comment new rule 38a-1 under the Investment Company Act of 1940, new rule 206(4)-7 under the Investment Advisers Act, and amendments to rule 204-2 under the Investment Advisers Act. The recommended proposals would require each investment company and investment adviser registered with the Commission to (i) adopt and implement policies and procedures reasonably designed to prevent violation of the federal securities laws, (ii) review those policies and procedures annually for their adequacy and the effectiveness of their implementation, and (iii) appoint a chief compliance officer to be responsible for administering the policies and procedures. The Commission also will consider a recommendation to seek comment on other ways to involve the private sector in fostering compliance by investment companies and investment advisers with the federal securities laws.

The subject matter of the closed meeting scheduled for Wednesday, February 5, 2003, will be:

- Formal orders of investigation;
- Institution and settlement of administrative proceedings of an enforcement nature;
- Institution and settlement of injunctive actions;
- Adjudicatory matters;
- Opinions.

The subject matter of the open meeting scheduled Thursday, February 6, 2003, will be the following:

1. The Commission will consider whether to adopt amendments to the definition of terms used in the exception from the definition of dealer for banks under section 3(a)(5) of the Securities Exchange Act of 1934. The Commission will consider whether to adopt amendments to the related exemptions for banks, savings associations, and savings banks as well as adopt a new exemption concerning securities lending. These proposals relate to the implementation of the specific exceptions for banks from the definitions of "broker" and "dealer" that were amended by the Gramm-Leach-Bliley Act.

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: January 28, 2003.

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47216; File No. SR-Amex-2002-114]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Addition of a Fee for the Automatic Execution of Broker-Dealer Options Orders

January 17, 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 December 23, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On January 14, 2003, Amex filed Amendment No. 1 to its proposal with the Commission.<sup>3</sup> The Commission is publishing this notice as amended to

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

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

<sup>3</sup> See letter from Jeffery P. Burns, Assistant General Counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 13, 2003. In Amendment No. 1, the Amex made technical corrections to the proposed rule change.

solicit comments on the proposed rule change from interested persons.<sup>4</sup>

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

The Amex proposes to modify its options fee schedule adding a fee for the automatic execution of broker-dealer orders. The text of the proposed rule change is available at the Office of the Secretary, Amex, 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 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. The 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

On June 24, 2002, the Exchange filed with the SEC a proposal to permit broker-dealer orders to be executed through Auto-Ex (the "BD Auto-Ex Proposal").<sup>5</sup> The Commission approved the BD Auto-Ex Proposal on September 10, 2002.<sup>6</sup> The Amex is now proposing

<sup>4</sup> On September 20, 2002, the Exchange submitted a proposed rule change (SR-Amex-2002-75) to adopt a broker-dealer Auto-Ex fee. The Commission returned the filing for failure to comply with the requirements of Section 19(b) of the Act and Form 19b-4, thereunder. See letter from Kelly Riley, Senior Special Counsel, Division, Commission to Jeffery P. Burns, Assistant General Counsel, Amex, dated October 16, 2002. The Exchange submitted a new Form 19b-4 (SR-Amex-2002-93) to comply with the filing requirements of Section 19(b) of the Act and Form 19b-4 on November 8, 2002. Because the proposed fee in SR-Amex-2002-93 did not accurately reflect the intention of the Exchange, Amex has withdrawn the filing. The instant proposal (SR-Amex-2002-114) corrects the prior inaccuracies.

<sup>5</sup> See Securities Exchange Act Release No. 46479 (September 10, 2002), 67 FR 58654 (September 17, 2002) (SR-Amex-2002-57).

<sup>6</sup> See Securities Exchange Act Release No. 46479 (September 10, 2002), 67 FR 58654 (September 17, 2002) (SR-Amex-2002-57). The Commission has also approved similar proposals by other options exchanges to permit the execution of broker-dealer orders through automatic execution systems that previously were limited to public customer orders. Securities Exchange Act Release Nos. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001) (SR-PCX-2000-05) and 45967 (May 20,

to add new Section VII entitled "Broker-Dealer Auto-Ex Fee" to the Options Fee Schedule for the purpose of adopting a \$0.50 transaction fee per contract side for all broker-dealer orders<sup>7</sup> executed via the Exchange's automatic execution system ("Auto-Ex").<sup>8</sup> Broker-dealer orders executed through Auto-Ex would also be subject to the Exchange's existing options comparison fee and options floor brokerage fee. For firms and broker-dealers, the comparison fee and floor brokerage fee is \$0.04 and \$0.03 per contract side, respectively, while for specialists and market makers these charges per contract side are each \$0.05.

The Exchange represents that broker-dealer orders subject to the proposed fee, include without limitation, firm orders, specialist orders, market maker orders and orders for the account of registered broker-dealers. The Amex notes that it will only charge this fee to member firms through the customary monthly billing that occurs shortly after the close of each trading month. The Amex represents that non-members will not be subject to this proposed fee. Accordingly, the Amex will assess this fee solely against firms executing orders for the accounts of broker-dealers.

Broker-dealers who want to access the Exchange's markets without paying this additional fee may continue to send their orders to a floor broker for manual execution. However, broker-dealer orders that are automatically executed through Auto-Ex are not subject to fees otherwise imposed by an Amex floor broker in connection with a manual execution. The Amex believes that the benefits of automatic execution outweigh the potential burden of paying the proposed fee.

The Exchange submits that the proposed fee will provide additional revenue and recoup the costs associated with permitting the automatic execution of broker-dealer orders. In addition, the Amex submits that this fee will help to allocate to broker-dealer orders a fair share of the related costs of operating Auto-Ex and related Exchange systems. The Exchange further asserts that

permitting the Auto-Ex system to accept and execute broker-dealer orders requires design modification, programming and testing. Accordingly, the Exchange believes that the proposed fee is reasonable.

## 2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and with Section 6(b)(4)<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

### 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 rule change establishes or changes a due, fee, or other charge and, therefore, has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2) thereunder.<sup>12</sup> At any time within 60 days of the filing of such 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 the 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 No. SR-Amex-2002-114 and should be submitted by February 21, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 03-2291 Filed 1-30-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47229; File No. SR-Amex-00-30]

### Self-Regulatory Organizations; Notice of Filing of Amendments to Proposed Rule Change by the American Stock Exchange LLC Relating to the Allocation of and Participation in Options Trades

January 22, 2003.

On May 30, 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the allocation of and participation in options trades on the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 28, 2000.<sup>3</sup> On August 25, 2000, August 30, 2001, February 19, 2002, April 22, 2002, September 16, 2002, and December 20, 2002, respectively, the Amex filed Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change.<sup>4</sup>

<sup>13</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.

<sup>3</sup> See Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

<sup>4</sup> See letters from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 24, 2000 (Amendment No. 1) and August 29, 2001 (Amendment No. 2); and from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated February 15, 2002 (Amendment No. 3), April 22, 2002 (Amendment

2002), 67 FR 37888 (May 30, 2002) (SR-CBOE-2002-22) (CBOE six-month pilot program permitting broker-dealer orders for QQ options to be Executed on RAES); and 46113 (June 25, 2002), 67 FR 44486 (SR-CBOE-2002-35) (July 2, 2002) (extending CBOE pilot to all index products).

<sup>7</sup> A broker-dealer order is an order for the account of a registered broker-dealer.

<sup>8</sup> The Commission has approved the adoption of broker-dealer automatic execution fees for other options exchanges. See Securities Exchange Act Release Nos. 45662 (March 27, 2001), 67 FR 16786 (April 8, 2002) (SR-PCX-2002-10); 46212 (July 16, 2002), 67 FR 48235 (July 23, 2002) (SR-Phlx-2002-36); and 46455 (September 3, 2002), 67 FR 57468 (September 10, 2002) (SR-CBOE-2002-42).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).