

change.<sup>5</sup> The Commission published the amended proposal for comment in the **Federal Register** on March 28, 2003.<sup>6</sup> The Commission received no comments on the proposal. On May 8, 2003, Amex submitted Amendment No. 4 to the proposal.<sup>7</sup> This order approves the proposal rule change, as amended by Amendments No. 1, 2, 3, and 4. The Commission also solicits comment from interested persons on Amendment No. 4.

Three Amex fees would apply to Linkage trades other than satisfaction orders: a per transaction per contract side fee of \$.26; a \$.05 options floor brokerage fee; and a \$.05 options comparison fee. Each of these Linkage-related fees would be implemented as a one-year pilot, expiring on January 31, 2004.

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<sup>8</sup> and, in particular, the requirements of Section 6 of the Act.<sup>9</sup> The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>10</sup> which requires that the rules of an exchange provide equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes the one-year pilot will give the Exchange and the Commission the opportunity to evaluate whether these fees are appropriate.

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>11</sup> to approve Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the notice that was published in the **Federal Register**<sup>12</sup> indicated that the Linkage fees were subject to a one-

year pilot and Amendment No. 4 merely specifies the expiration date. Therefore, Amex's proposal for the one-year pilot program to expire on January 31, 2004 was subject to notice and comment. Accordingly, the Commission believes good cause exists, pursuant to Sections 6(b)(5) and 19(b) of the Act<sup>13</sup> to accelerate approval of Amendment No. 4 to the proposed rule change.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, including whether it 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-2003-14 and should be submitted by June 9, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Amex-2003-14), as amended, is approved on a pilot basis until January 31, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47820; File No. SR-NASD-00-12]

### Self-Regulatory Organization; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Concerning Amendments to Rules Governing Member Communications With the Public

May 9, 2003.

#### I. Introduction

On June 9, 2000, the National Association of Securities Dealers, Inc. ("NASD") and through its subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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> filed a proposed rule change to amend NASD Rule 2210 and the Interpretive Materials thereunder, promulgate new NASD Rule 2211, and renumber existing NASD Rule 2211.<sup>3</sup> On August 8, 2001, NASD Regulation filed Amendment No. 1 to the proposed rule change. On December 12, 2001, NASD Regulation filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 31, 2001.<sup>4</sup> The Commission received ten comment letters on the proposed rule change.<sup>5</sup>

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

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

<sup>3</sup> The NASD originally submitted the proposed rule change to the Commission on March 21, 2000, however, because the submission did not comply with the requirements of Exchange Act Rule 19b-4, the Commission does not consider the proposed rule change filed on the date. Rather, the Commission considers the proposed rule change to be filed on June 9, 2000, the date on which the deficiencies were corrected.

<sup>4</sup> See Securities Exchange Act Release No. 45181 (December 20, 2001), 66 FR 67586.

<sup>5</sup> See letters from Amy B.R. Lancellota, Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated February 13, 2002 ("ICI Letter"); Christopher R. Franke, Chairman, Self-Regulatory and Supervisory Practices Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated February 14, 2002 ("SIA Letter"); James R. Anderson, Vice President and Chief Compliance Officer, AIM Distributors, Inc. to Jonathan G. Katz, Secretary, Commission, dated February 13, 2002 ("AIM Letter"); James Anderson, Vice President and Chief Compliance Officer, Fund Management Company, to Jonathan G. Katz, Secretary, Commission, dated February 13, 2002 ("FMC Letter"); Michel de Konkoly Thege, Vice President and Associate General Counsel, The Bond Market Association, to Jonathan G. Katz, Secretary, Commission, dated February 15, 2002 ("BMA Letter"); Brandon Becker, Wilmer, Cutler &

<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").

<sup>6</sup> See Securities Exchange Act Release No. 47562 (March 21, 2003), 68 FR 15250.

<sup>7</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division, Commission, dated May 8, 2003 ("Amendment No. 4"). In Amendment No. 4, Amex proposes to amend its fee schedule to clarify that the one-year pilot program for Linkage fees expires on January 31, 2004.

<sup>8</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> See *supra* note 6.

<sup>13</sup> 13 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> CFR 200.30-3(a)(12).