

impose the same regulatory standards on Amex members as those imposed on members of other exchanges and the NASD/Nasdaq. Based on the above, the Commission finds good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act<sup>18</sup> to approve the Amex's proposal and Amendment No. 1 on an accelerated basis.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-Amex-2003-100) and Amendment No. 1 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48886; File No. SR-Amex-2003-103]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Issuer Fees

December 5, 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 November 25, 2003, 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. 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 Amex proposes to amend Sections 140, 141, 142 and 144 of the *Amex Company Guide* to designate as non-refundable the current one-time \$5,000 application processing fee, to establish a late charge of \$2,500 payable by issuers whose annual listing fees are more than 60 days past due, and to increase fees for listing additional

shares. The Exchange proposes to further amend Sections 141 and 142 of the *Amex Company Guide* to clarify that annual listing fees and additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

#### 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. 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Sections 140 through 146 of the *Amex Company Guide* describe the Exchange's listing fees. In this proposed rule change, the Exchange proposes to amend Sections 140, 141, 142 and 144 to: (i) Designate as non-refundable the current one-time \$5,000 application processing fee, (ii) establish a late charge of \$2,500 payable by issuers whose annual listing fees are more than 60 days past due, and (iii) increase fees for listing additional shares. The Exchange believes these fee changes are necessary to adequately fund the Exchange's listed equities business and to develop value-added services for Amex listed issuers. In addition, the Exchange proposes to further amend Sections 141 and 142 to clarify that annual listing fees and additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

(i) *Section 140 (Original Listing Fees) and Section 144 (Refunds of Listing Fees)*. The Exchange collects original listing fees for new equity, warrant and debt issues in accordance with Section 140 of the *Amex Company Guide*. In addition to original listing fees, a one-time \$5,000 application processing fee is assessed companies that do not have a stock, warrant or debt issue already listed on the Exchange.<sup>3</sup> Pursuant to

paragraphs (a) and (b) of Section 144, the Exchange refunds \$3,500 of the application processing fee if the applicant: (i) Withdraws its application, (ii) fails to gain listing approval, or (iii) cancels a listing authorization without issuing the authorized securities. The Exchange proposes to amend Sections 140 and 144 to designate the full amount of the \$5,000 application processing fee as non-refundable.

(ii) *Section 141 (Annual Fees)*. The Exchange collects annual listing fees in accordance with Section 141 of the *Amex Company Guide*. Currently, no penalties are assessed issuers that do not pay such fees in a timely manner. To encourage timely payment, the Exchange proposes to amend Section 141 to establish a late charge of \$2,500 payable by issuers that fail to remit annual listing fees within 60 days of the billing date.<sup>4</sup> The Exchange proposes to delete the requirement that annual fees that are prorated are payable within thirty days of the date the company receives the invoice. In addition, the Exchange also proposes to delete the requirement that annual fees that are prorated for bond issues are payable in December of year in which they are listed. According to the Exchange, these deletions would result in these fees being payable within sixty days of the invoice date, after which time the proposed late fee would apply.<sup>5</sup> Finally, the Exchange proposes to amend Section 141 to clarify that annual listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges as specified in Commentary .01 of Section 950 of the *Amex Company Guide*.

(iii) *Section 142 (Additional Listing Fees)*. In accordance with paragraph (a) of Section 142 of the *Amex Company Guide*, the current fee for listing additional shares is 2 cents per share, subject to a minimum fee of \$2,000 (for 100,000 shares or less) and a maximum fee of \$22,500 (for 1,125,000 shares or more) per application. The annual maximum fee per company for listing additional shares is currently \$45,000. The Exchange proposes to amend paragraph (a) of Section 142 to: (i) Increase the maximum fee per application from \$22,500 to \$45,000

*Amex Company Guide* are assessed an original listing fee of \$5,000 for each series or fund, but not an application processing fee.

<sup>4</sup> The proposed \$2,500 late fee will not apply to Trust Issued Receipts, Index Fund Shares, or debt issues.

<sup>5</sup> Telephone conversation between Eric Van Allen, Assistant General Counsel, Amex and Kelly M. Riley, Senior Special Counsel, Division of Market Regulation, Commission, on December 5, 2003.

<sup>18</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</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> Index Fund Shares listed under Rule 1000A, Trust Issued Receipts listed under Rule 1200 and Closed-End Funds listed under Section 101 of the