

will make a separate finding, reflected in the Board's minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, shareholders will be furnished all information about the new Subadviser that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Subadviser. Each Fund will meet this condition by providing shareholders, within 90 days of the hiring of a Subadviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (a) set the Fund's overall investment strategies; (b) evaluate, select, and recommend Subadviser(s) to manage all or a part of the Fund's assets; (c) monitor and evaluate the performance of Subadviser(s); (d) ensure that Subadvisers comply with each Subadvised Fund's investment objectives, restrictions, and policies by, among other things, implementing procedures reasonably designed to ensure compliance; and (e) allocate and, when appropriate, reallocate a Fund's assets among its Subadvisers when a Fund has more than one Subadviser.

8. No trustee or officer of the Trust or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such trustee, director or officer) any interest in a Subadviser except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [66 FR 1524, January 11, 2002]

Status: Closed meeting.

Place: 450 Fifth Street, NW., Washington, DC.

Date and Time of Previously Announced Meeting: Tuesday, January 15, 2002 at 10:00 a.m.

Change in the Meeting: Time Change.

The closed meeting scheduled for Tuesday, January 15, 2002 at 10:00 a.m. has been changed to Tuesday, January 15, 2002 at 9:00 a.m.

Dated: January 11, 2002.

Jonathan G. Katz,

Secretary,

[FR Doc. 02-1094 Filed 1-11-02; 11:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45252; File No. SR-Amex-2001-26]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to an Increase in the Exchange Regulatory Fee

January 8, 2002.

On May 7, 2001, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Amex Equity Fee Schedule to increase the regulatory fee from .00005 x Total Value to .000075 x Total Value for certain orders in Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts (collectively, the "Products") entered electronically into the Amex Order File from off the Floor ("System Orders") by a member or member organization trading as an agent for the account of a non-member competing market maker.

The proposed rule change was published for comment in the **Federal Register** on June 18, 2001.³ The Commission received no comments on the proposal. On December 12, 2001, the Amex filed an amendment to the

proposed rule change.⁴ In Amendment No. 1, the Amex made a technical amendment to the proposed rule change by further clarifying its purpose for increasing the Exchange's regulatory fee that does not need to be published for comment. In Amendment No. 1, the Exchange states that the regulatory fee increase has been put in place to ensure that the Amex has the appropriate resources to provide the regulatory, operational, and business development function necessary to meet the increasing demands of a complex and competitive marketplace.⁵

The Commission notes that the proposed rule change allows for disparate treatment of competing market makers in that it increases the regulatory fee for System Orders in the Products by a member or member organization trading as an agent for the account of a non-member.⁶ However, the Commission notes that under the Amex's current fee schedule, orders in the Products by a member or member organization trading as an agent for the account of a non-member were not entitled to the same treatment as other orders in the fee schedule in that they were not exempt from the regulatory fee. This proposed rule change does not alter this result. Furthermore, the Commission believes that the Intermarket Trading System ("ITS") will continue to provide an alternative means by which non-member competing market makers can access the Amex. ITS provides an avenue for non-member competing market makers to interact with trading interests on the Amex, fee-free.

For these reasons, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the requirements of the Act and the rules and regulations thereunder

⁴ See letter from Michael J. Ryan, Jr., Executive Vice President & General Counsel, Amex, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 11, 2001 ("Amendment No. 1").

⁵ Specifically, the Amex states that the Exchange continues to make heavy investments in: technologies to support the efficient trading of Exchange Traded Funds ("ETFs") and HOLDERS on the Exchange; product development to bring new products to market; and the regulation of the EFT and HOLDERS markets. The Exchange believes that non-member competing market makers receive the most benefit from trading ETFs and HOLDERS on the Amex, with associated Amex technological enhancements and regulatory structure. The Exchange believes that the fee increase will support the infrastructure relied upon by the broader marketplace including competitive exchanges and market participants. *Id.*

⁶ The Commission does not intend this proposal to establish a precedent to permit a primary market to make distinctions in the treatment of orders on its Floor as a means to discriminate unfairly against its competitors.

¹ 15 U.S.C. 78s (b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 44410 (June 12, 2001), 66 FR 32852.

applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with section 6(b)(4) of the Act⁸ in that it provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using its facilities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act⁹, that the proposed rule change (File No. SR-Amex-2001-26) and Amendment No. 1 be, and it hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-943 Filed 1-14-02; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45253; File No. SR-Amex-2001-92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Simplify the Manner in Which a Contrary Exercise Advice Is Submitted and To Extend by One Hour the Time for Members To Submit Customer's Contrary Exercise Advices

January 8, 2002.

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 October 29, 2001, 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 Items have been prepared by the Exchange. The Amex amended its proposal on December 17, 2001.³ The Commission is

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Amex proposes to amend Amex Rule 980 to: (i) Simplify the manner in which a Contrary Exercise Advice is submitted to the Exchange; and (ii) to extend by one hour the cut-off time by which members must submit to the Exchange Contrary Exercise Advice notices for customer accounts.

The text of the proposed rule change is available at the Amex and 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The OCC, the issuer of all Amex traded options contracts, has an established procedure for options holders wishing to exercise in-the-money options before they expire. Known as Ex-by-Ex, the procedure provides for the automatic exercise at expiration of any equity options contract that is $\frac{3}{4}$ of a point or more in-the-money for customer accounts or $\frac{1}{4}$ point or more in-the-money for any other accounts. All options holders who wish to have their options contracts exercised in accordance with the Ex-by-Ex procedure need to take no further action; those contracts that are in-the-money by the appropriate amount will be automatically exercised. Options holders who do not wish to have their

options automatically exercised, or do wish options to be exercised that do not fit within the parameters of the Ex-by-Ex procedure, must file with the Exchange a Contrary Exercise Advice pursuant to Exchange Rule 980, and instruct OCC of their contrary intention. Members and member organizations satisfy the filing requirement by manually submitting a Contrary Exercise Advice Form or by electronically submitting the Advice Form through OCC's Clearing Management and Control System (C/MACS). Exchange Rule 980 is designed to deter individuals from taking improper advantage of late-breaking news by requiring evidence of an option holder's intention to exercise or not exercise expiring equity options via the submission of a Contrary Exercise Advice.

On occasion, OCC has had to suspend use of its Ex-by-Ex procedure, such as when trading in the underlying stock has been halted, or if there is no accurate price available to be used in the determination of the closing price. When this occurs and there is no automatic exercise, all options contract holders must send exercise instructions to OCC if they wish to exercise, regardless of whether the option is in or out-of-the-money. When OCC suspends its Ex-by-Ex procedure for an option class, Exchange Rule 980 currently requires the submission of a Contrary Exercise Advice. Thus, when OCC has waived the Ex-by-Ex procedure, option holders must determine what price would have been used, even though the only available price might be a stale last sale price (a price OCC did not feel comfortable using). They then must determine whether a Contrary Exercise Advice needs to be submitted to the Exchange, evidencing the option holder's intention to exercise or not exercise.

The Amex has long viewed this process as cumbersome and confusing to options holders. Therefore, the Amex now proposes to amend Exchange Rule 980 to eliminate the requirement that a Contrary Exercise Advice be submitted if the holder does not want to exercise the option when OCC has waived its Ex-by-Ex procedure for that options class. As a result, when Ex-by-Ex has been waived, submission of instructions to exercise is only required when the options holder wants to exercise the option contract. The Amex clarifies that the applicable underlying security price in such instances will be as described in OCC Rule 805(1), which is normally the

⁷ 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).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer L. Colihan, Special Counsel, Division of Market Regulation, Commission, dated December 14, 2001 ("Amendment No. 1"). In Amendment No. 1, the Amex clarified its purpose to modify the Exchange's Contrary Exercise Advice procedure set forth in proposed paragraph (g) of Amex Rule 980.

In addition, the Amex revised proposed paragraph (d) of Amex Rule 980 to clarify that in cases where the Exercise-by-Exception or "Ex-by-Ex" procedure has been waived and members and member organizations submit an affirmative Exercise Notice to the Options Clearing Corporation ("OCC") to exercise the options, the applicable underlying security price in such instances will be as described in OCC Rule 805(1), which is normally the last sale price in the primary market for the underlying security.