

142 of the *Company Guide* to increase the maximum fee per company for listing additional shares to \$22,500 for issues of 1,125,000 shares or more. In addition, the Exchange proposes a maximum fee per company in any one year for listing additional shares of \$45,000. Section 142(a) of the *Company Guide* would also be amended to make clear that section 142 fees apply to Amex securities admitted to unlisted trading privileges (*i.e.*, the relatively few Amex-traded issues grandfathered under section 12 of the Act<sup>7</sup> and not required to execute a listing agreement with the Exchange), comparable to the provision in section 141 of the *Company Guide* for annual fees.

The Exchange proposes to amend section 142(d) of the *Company Guide* ("Substitution Listing") by raising the fee for listing of new substituted shares from \$2,500 to \$5,000, and raising the maximum fee for substituted shares and excess shares from \$20,000 to \$27,500 per quarter, (corresponding to the sum of the proposed \$5,000 increase in maximum fees for listing additional shares under section 142(a) of the *Company Guide* and the \$2,500 fee increase for listing new substituted shares).

The Exchange proposes to increase the service charge under section 144 of the *Company Guide* to \$1,500 for applicants that withdraw their applications or for applications that are not approved. In addition the Exchange proposes to increase the minimum charge if an issuer cancels a listing authorization without issuing such authorized shares from \$1,000 to \$1,500.

Lastly, the Exchange proposes to amend section 341 of the *Company Guide* to increase the one-time charge imposed in connection with acquisition of a listed company by an unlisted company from \$7,500 to \$10,000.

### III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act<sup>8</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>10</sup> which requires, among other things, that the rules of a national securities exchange be designed to provide for the equitable

allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the increase reflects additional costs that the Exchange has represented it incurs for services provided to issuers. As represented by the Exchange, it has incurred significantly increased regulatory and technology costs over the last several years. In addition, the Exchange stated that the proposed fee increases are necessary to adequately fund the Exchange's listed equities business and development of value-added services for Amex-listed companies and to allow it to relieve pressures on other revenue sources that have traditionally underwritten short falls in regulatory related fees.<sup>11</sup>

The Exchange seeks to implement the proposed annual fees set forth in section 141 of the *Company Guide* as of January 1, 2002. The Commission believes that it is reasonable for the Amex to implement these annual fee increases as of January 1, 2002. As noted above, the Exchange stated that it had incurred increased costs over the last several years and has not increased its annual fees for listing since 1993.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change and Amendment Nos. 1 and 2 were noticed for the full 21-day comment period and the Commission received no comments regarding the proposed rule change, as amended. The Commission believes that granting accelerated approval to the proposed rule change will permit the Exchange to implement the new annual fees as of January 1, 2002, and other fees as of the date of this Order, therefore allowing it to adequately fund its listed equities business and issuer services. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act<sup>12</sup> to approve the proposed rule change, as amended, on an accelerated basis.

### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-Amex-2001-

100), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45401; File No. SR-Amex-2002-07]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Amend Amex Rule 393 Relating to Section 31 Transaction Fees

February 6, 2002.

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 February 4, 2002, 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 Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 Amex Rule 393 relating to transaction fees pursuant to section 31 of the Act.<sup>6</sup> The text of the proposed rule change is below. New text is in *italics*; deletions are in *brackets*.

Rule 393. Securities and Exchange Commission Transaction Fee

There shall be paid to the Exchange by each member or member organization in such manner and at such time as the Treasurer of the

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> The Exchange asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>7</sup> 15 U.S.C. 78ee.

<sup>7</sup> 15 U.S.C. 781.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>11</sup> See Amendment No. 1, *supra* note 3.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> *Id.*

Exchange shall direct, the fees specified in section 31 of the Securities Exchange Act of 1934, and rules thereunder, for all [sum of one cent for each \$300 or fraction thereof of the dollar volume of the] sales upon the Exchange of securities specified in section 31 of the Securities Exchange Act of 1934, and rules thereunder [(other than bonds, debentures, and other evidence of indebtedness or any security which the Commission may, by rule, exempt from the imposition of the fee) (whether or not cleared by a registered clearing agency) cleared by such member or member organization]. The monies so paid to the Exchange shall be paid to the Securities and Exchange Commission as the transaction fee imposed upon the Exchange by the provisions of the Securities Exchange Act of 1934.

## 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 its proposal and discussed any comments it received regarding the proposal. 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

Section 31 of the Act<sup>7</sup> has required the remittance of a fee to the Commission of 1/300 of one percent of the aggregate dollar amount of the sale of securities. Excluded from this requirement is the sale of any bonds, debentures, or other evidences of indebtedness and any sale or class of sales of securities that the Commission may, by rule, exempt from the imposition of this fee.

Congress recently passed the "Investor and Capital Markets Relief Act" ("ICMRA"), which amends section 31 of the Act. The ICMRA reduced the fee to \$15 per \$1 million of the aggregate dollar amount of the sale of securities. December 28, 2001 is the effective date for this new rate. The ICMRA provides that the Commission will, twice yearly,

determine the amount of any changes in the fee.

Amex Rule 393, which references the previous fee of one cent for each \$300 of dollar volume, is therefore being amended to conform it to Congress' recent amendment to section 31 of the Act. Thus, members and member organizations are required to pay to the Exchange whatever fees are specified pursuant to Section 31 of the Act and the rules thereunder.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

#### 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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> At any time within 60 days of the filing of the 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 furtherance of the purposes of the Act.

The Amex has requested that the Commission accelerate the operative date. The Commission finds good cause to waive the 5-day pre-filing notice requirement and the 30-day operative waiting period, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the Amex to immediately conform its rule to reflect the recent amendment to section 31 of the Act. For these reasons, the Commission finds good cause to waive both the 5-day pre-filing requirement and the 30-day operative waiting period.<sup>12</sup>

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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-2002-07 and should be submitted by March 5, 2002.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>12</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> 15 U.S.C. 78ee.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).