

review no less frequently than annually the continuing appropriateness of each Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand of payment under the provisions of the Interfund Lending Agreement, CSIM will promptly refer the loan for arbitration to an independent arbitrator selected by the Boards of the Funds involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.<sup>4</sup> The arbitrator will resolve any problems promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and other information presented to the Boards in connection with the review required by conditions 13 and 14.

17. CSIM will prepare and submit to the Boards for review, an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, CSIM will report on the operations of the credit facility at each Board's quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates CSIM's assertions that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and filed pursuant to Item 77Q3 of Form N-SAR. In particular, the report

shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the Application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Boards; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N-SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

Applicants also agree that condition number 12 to the Order will be modified to read as follows:

No Underlying Fund will acquire securities of any other investment company in excess of the limits set forth in Section 12(d)(1)(A) of the 1940 Act, except to the extent that the Underlying Fund has obtained exemptive relief from the Commission permitting it to (a) purchase shares of an affiliated money market fund for short-term cash management purposes; or (b) engage in interfund borrowing and lending transactions.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-600 Filed 1-9-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45235; File No. SR-Amex-2001-100]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Initial and Annual Listing Fees, Fees for Listing Additional Shares and the One-Time Charge for Listing Shares Issued in Connection With Acquisition of a Listed Company by an Unlisted Company

January 4, 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 December 10, 2001, 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 Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on December 26, 2001.<sup>3</sup> The Exchange filed Amendment No. 2 to the proposed rule change on December 26, 2001.<sup>4</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 Exchange proposes to amend Sections 140, 141, 142, 144 and 341 of the Amex *Company Guide* relating to the Exchange issuer initial listing fee,

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

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

<sup>3</sup> See letter from Michael J. Ryan, Executive Vice President and General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 13, 2001 ("Amendment No. 1"). In Amendment No. 1, the Amex requested that Commission grant accelerated approval to the proposed rule change.

<sup>4</sup> See letter from Michael J. Ryan, Executive Vice President and General Counsel, Amex, to Marc McKayle, Special Counsel, Division, Commission, dated December 20, 2001 ("Amendment No. 2"). In Amendment No. 2, the Amex stated that it seeks to implement the revised Annual Fee schedule under Section 141 as of January 1, 2002 and the revisions to Sections 140, 142, 144 and 341 upon Commission approval. In addition, the Amex made a minor correction to the proposed rule change, clarified that it will not reimburse part of the annual fee paid under Section 141 to issuers whose securities are removed from listing and registration for the portion of the year remaining after the date of removal, and added additional reasons for amending the Refund of Listing Fees under Section 144.

<sup>4</sup> If the dispute involves Funds with separate Boards, the Trustees of each Fund will select an independent arbitrator that is satisfactory to each Fund.

annual fee, the fee for listing additional shares.

The text of the proposed rule change appears below. New text is in *italics*; deleted text is in [brackets].

#### Sec. 140. Original Listing Fees

##### STOCK ISSUES

Less than 5,000,000 shares .....	\$30,000
5,000,000 to 10,000,000 shares ...	40,000
10,000,001 to 15,000,000 shares ..	50,000
In excess of 15,000,000 shares .....	60,000

##### ISSUES LISTED UNDER § 106 (CURRENCY AND INDEX WARRANTS) AND § 107 (OTHER SECURITIES)

Less than 1,000,000 shares .....	\$5,000
1,000,000 to 2,000,000 shares .....	10,000
2,000,001 to 3,000,000 shares .....	15,000
3,000,001 to 4,000,000 shares .....	17,500
4,000,001 to 5,000,000 shares .....	20,000
5,000,001 to 6,000,000 shares .....	22,500
6,000,001 to 7,000,000 shares .....	25,000
7,000,001 to 8,000,000 shares .....	27,500
8,000,001 to 9,000,000 shares .....	30,000
9,000,001 to 10,000,000 shares ....	32,500
10,000,001 to 15,000,000 shares ..	37,500
In excess of 15,000,000 shares .....	45,000

In addition to the above per-share fee, there is one-time *application processing fee* [charge] of \$5,000 for companies that do not have a stock or warrant issue listed on the Exchange. (The one-time [charge] *application processing fee* of \$5,000 does not apply to any company which previously paid the one-time [charge] *fee* in connection with the listing of a debt issue.)

In the case of non-U.S. companies listed on foreign stock exchanges, the fee, including the one-time charge, will be 50% of the rates set forth above, with a maximum fee of \$[25,000] 32,500. Where the original listing of more than one class of stock is included in the same application, the fee is based on the aggregate number of shares of all such classes.

Warrants—The original (as well as the annual and additional) listing fees for warrant issues are the same as those for stock issues.

Bonds—\$100 per \$1 million principal amount (or fraction thereof) with a minimum fee of \$5,000 and a maximum fee of \$10,000. In the case of an issuer listing more than one outstanding publicly traded debt security, the fee will be based on the aggregate principal amount of all of such issues provided they are included within a single application.

In addition, there is one-time *application processing fee* [charge] of \$5,000 for companies that do not have

an issue of securities listed on the Exchange.

*Index Fund Shares and Trust Issued Receipts—The original listing fee for Index Fund Shares listed under Rule 1000A and Trust Issued Receipts listed under Rule 1200 is \$5,000 for each series, with no application processing fee.*

Special Shareholders Rights Plans—Upon the shareholder rights becoming exercisable and tradable separately.

- An original fee will be charged based on the number of shareholder rights then outstanding and on additional issuance of rights;
- Shareholder rights will be subject to the Exchange's continuing annual fee schedule.

#### Sec. 141. Annual Fees

##### STOCK ISSUES AND ISSUES LISTED UNDER § 106 AND § 197 AND RULE 1200 (TRUST ISSUED RECEIPTS)

Shares outstanding	Fee
5,000,000 shares or less (minimum) .....	\$15,000
5,000,001 to 10,000,000 shares ....	17,500
10,000,001 to 25,000,000 shares ..	20,000
25,000,001 to 50,000,000 shares ..	22,500
In excess of 50,000,000 shares (maximum) .....	30,000

##### ISSUED LISTED UNDER RULE 1000A (INDEX FUND SHARES)

Shares outstanding	Fee
1,000,000 shares or less shares (minimum) .....	\$6,500
1,000,001 to 2,000,000 shares .....	7,000
2,000,001 to 3,000,000 shares .....	7,500
3,000,001 to 4,000,000 shares .....	8,000
4,000,001 to 5,000,000 shares .....	8,500
5,000,001 to 6,000,000 shares .....	9,000
6,000,001 to 7,000,000 shares .....	9,500
7,000,001 to 8,000,000 shares .....	10,000
8,000,001 to 9,000,000 shares .....	10,500
9,000,001 to 10,000,000 shares ....	11,000
10,000,001 to 11,000,000 shares ..	11,500
11,000,001 to 12,000,000 shares ..	12,000
12,000,001 to 13,000,000 shares ..	12,500
13,000,001 to 14,000,000 <sup>5</sup> shares	13,000
14,000,001 to 15,000,000 shares ..	13,500
15,000,001 to 16,000,000 shares ..	14,000
In excess of 16,000,000 shares (maximum) .....	14,500

<sup>5</sup>The Commission notes that in the Exchange's initial proposal, it stated "13,000,001 to 14,000,001." In fact, the Exchange intended to state "13,000,000 to 14,000,000" shares. The Commission has made this technical change in anticipation of the Exchange filing an amendment with the Commission that makes this correction. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Christopher Solgan, Law Clerk, Division, Commission, on January 3, 2002.

The annual fee is payable in January of each year and is based on the total number of all classes of shares (excluding treasury shares) and warrants according to information available on Exchange records as of December 31 of the preceding year. (The above fee schedule also applies to companies whose securities are admitted to unlisted trading privileges.)

In the calendar year in which a company first lists, the annual fee will be prorated to reflect only that portion of the year during which the security has been admitted to dealings and will be payable within 30 days of the date the company receives the invoice, based on the total number of outstanding shares of all classes of stock at the time of original listing.

*The annual fee for issues listed under Rule 1000A (Index Fund Shares) and Rule 1200 (Trust Issued Receipts) is based upon the number of shares of a series of Index Fund Shares or Trust Issued Receipts outstanding at the end of each calendar year. For multiple series of Index Fund Shares issued by an open-end management investment company, or for multiple series of Trust Issued Receipts, the annual listing fee is based on the aggregate number of shares in all series outstanding at the end of each calendar year.*

Bond Issues—There is an annual fee of \$3,500 for listed bonds and debentures of companies whose equity securities are not listed on the Exchange. The annual fee is payable in January of each year. In the year in which a company lists, the fee will be prorated to reflect only that portion of the year during which the security was admitted to dealings and will be payable in December.

**Note:** In all cases, if after payment on full of the annual fee for any year, all of the issuer's securities are removed from listing and registration, the Exchange will *not* reimburse that part of the annual fee applicable to the portion of the year remaining after the date of suspension from dealings.

#### Sec. 142. Additional Listing Fees

(a) Previously Listed Equity Issues—Listing of additional shares subsequent to original listing—2¢ per share subject to a minimum fee of \$2,000 (100,000 shares or less) and a maximum fee of [\$17,500 (875,000 shares or more)] \$22,500 (1,125,000 shares or more) per application.

*The annual maximum fee per company for listing additional shares shall be \$45,000. (The above fees for listing of additional shares also apply to companies whose securities are admitted to unlisted trading privileges.)*

(b) Previously Listed Debt Issues—Listing of additional bonds subsequent to original listing—\$150 per \$1 million principal amount (or fraction thereof) with a minimum fee of \$1,000 and a maximum fee of \$12,000.

(c) Different Class—The schedule for original listing (§ 140) is applicable to the listing of securities of an issue, class or series not previously listed.

(d) Substitution Listing—In cases where, after original listing, a change is effected by charter amendment or otherwise, under which shares listed upon the Exchange are reclassified or changed into or exchanged for another security, either with or without a change in par value, the fee for the listing of such number of “new” substituted shares (to the extent not in excess of the amount previously listed) is [\$2,500] \$5,000. The full additional listing fee is charged (see paragraph (a) above) for all shares included in the application in excess of the amount previously listed. The maximum fee for the aggregate of all such “new” substituted shares and excess shares is [\$20,000] \$27,500. In the case of an application for the substitution listing of bonds or warrants upon their assumption by a new obligor or issuer, the listing fee will be \$500.

(e) Reincorporation, Merger or Consolidation—If a listed company reincorporates, or merges with or consolidates into one or more corporations, the substitution listing fee (paragraph (d) above) may be applicable. (See also § 341 for the appropriate fee to be paid in connection with the acquisition of a listed company by an unlisted company.)

#### Sec. 144. Refunds of Listing Fees

(a) Applications Withdrawn or Not Approved—If a listing application is not approved by the Exchange or is withdrawn by the applicant, a service charge of [\$1,000] \$1,500 is deducted by the Exchange from the [listing] application processing fee previously paid by the applicant, and the balance is refunded to it.

(b) Credits After Approval—No cash refund of a listing fee is made where an application has been finally approved by the Exchange. If additional unissued shares are authorized for addition to the list “upon official notice of issuance” and all of such shares are not issued for the purpose specified in the application, a credit is allowed. The credit may be applied in full or partial payment of fees payable for future listing applications of the same company. The amount of the credit is the difference between the fee paid for the listing of such authorized shares and the fee which would have applied had the application been

initially submitted for the number of shares, which were actually issued and added to the list under the same listing authorization. If a company cancels all listing authorization pursuant to any single application (see section 350), without the issuance of any such shares, the Exchange makes a minimum charge of [\$1,000] \$1,500.

#### Sec. 341. Acquisition of a Listed Company by an Unlisted Company

The policy set forth below relates to any plan of acquisition, merger or consolidation, the net effect of which is that a listed company is acquired by an unlisted company even though the listed company is the nominal survivor. In applying this policy, consideration will be given to all relevant factors, including the proportionate amount of the securities of the resulting company to be issued to each of the combining companies, changes in ownership or management of the listed company, whether the unlisted company is larger than the listed company, and the nature of the businesses being combined. In evaluating the listing eligibility of the surviving company, the Exchange will apply its original listing guidelines. See section 713(b).

The Exchange recommends that any proposed plan of the above nature, including particularly any plan under which shareholders of the listed company would own less than 50% of the shares or voting power of the resulting company, be submitted for an informal opinion before its promulgation.

In addition to the applicable per share fee for additional listings, there is a one-time charge of [\$7,500] \$10,000 for such listings.

#### 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 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 Exchange 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, Proposed Rule Change

##### (1) Purpose

The Exchange proposes to amend Sections 140, 141, 142, 144 and 341 of the Amex *Company Guide* to modify initial and annual listing fees, fees for listing additional shares and the one-time charge for listing shares issued in connection with acquisition of a listed company by an unlisted company, as discussed below. The Exchange believes these fees changes are necessary to adequately fund the Exchange listed equities business and development of value-added services for Amex listed issuers.

##### a. Original Listing Fees (Section 140)

Currently, original listing fees range from \$5,000 to \$45,000 depending on the number of shares to be listed. The Exchange proposes to increase the original listing fees for stock issues, excluding securities listed under Sections 106 (Currency and Index Warrants) and 107 (Other Securities) of the *Company Guide*, and to reduce the number of tiers from twelve to four tiers as follows:

Less than 5,000,000 shares .....	\$30,000
5,000,000 to 10,000,000 shares .....	40,000
10,000,001 to 15,000,000 shares ...	50,000
In excess of 15,000,000 shares .....	60,000

The Exchange states that in order to continue to foster listing of structured equity derivative securities (e.g., MITTs, SUNs, Equity Linked Notes), the listing fee for issues listed under Section 106 (Currency and Index Warrants) and section 107 (Other Securities) will remain unchanged from the current original listing fee schedule.

Currently, according to the Exchange, issuers also pay a one time-charge of \$5,000 if they do not already have a stock or warrant issue listed on the Exchange. The one time \$5,000 fee would be designated as an application processing fee, reflecting its true nature and purpose. For non-U.S. companies, the original listing fee would continue to be 50% of the above rates, with a maximum of \$32,500 (including a \$2,500 processing fee).

The original listing fee for Index Fund Shares (e.g., iShares, VIPERs) listed under Rule 1000A and Trust Issued Receipts (e.g., HOLDRs) listed under Rule 1200 is \$5000 for each series, with no application processing fee.

##### b. Annual Fees (Section 141)

According to the Exchange, annual fees under Section 141 currently range from \$6,500 to \$14,500. The Exchange

proposes to increase annual fees for stock issues and for issues listed under sections 106 and 107 as described below, with the number of tiers reduced from 17 to 5:

5,000,000 shares or less (minimum) .....	\$15,000
5,000,001 to 10,000,000 shares .....	17,500
10,000,001 to 25,000,000 shares ...	20,000
25,000,001 to 50,000,000 shares ...	22,500
In excess of 50,000,000 shares maximum .....	30,000

The Exchange states that Index Fund Shares would continue to be subject to current annual fee schedule. In addition, the Exchange proposes to codify an existing procedure in section 141 to provide that the annual fee for Index Fund Shares and Trust Issued Receipts is based on the number of shares of a series outstanding at year-end, with multiple series aggregated for purposes of the fee calculation.<sup>6</sup>

If an issuer's securities are removed from Exchange listing, the Exchange currently reimburses the issuer for part of any previously paid annual fee applicable to the portion of the year remaining after the date of suspension from dealings. The Exchange proposes that it would no longer make such reimbursement.

#### c. Additional Listing Fees (Section 142)

According to the Exchange, the fee for listing additional shares is 2 cents per share subject to a minimum of \$2,000 (for 100,000 shares or less) and a maximum of \$17,500 (for 875,000 shares or more) per application. The minimum fee would continue to be \$2,000 for issues of up to 100,000 shares. For issues over 100,000 shares, the Exchange proposes to increase the maximum fee per company 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.

The Exchange states that section 142(a) 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 for annual fees.

The Exchange proposes to amend section 142(d) ("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) and the \$2,500 fee increase for listing new substituted shares).

#### d. Refund of Listing Fees (Section 144)

Currently, under section 144, if an applicant withdraws its application or the application is not approved, the Exchange deducts a \$1,000 service charge and refunds \$4,000 from the application processing fee to the applicant. The Exchange proposes to increase this service charge to \$1,500. 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. As with the other proposed fee changes in this filing, the Exchange states that it is increasing these charges to better reflect increased Exchange costs associated with reviewing and processing such applications.

#### e. Acquisition of a Listed Company by an Unlisted Company (Section 341)

The Exchange proposes to amend section 341 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.

#### (2) Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,<sup>8</sup> in general and furthers the objectives of section 6(b)(4) of the Act,<sup>9</sup> in particular, because it is 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.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2001-100 and should be submitted by January 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

[FR Doc. 02-632 Filed 1-9-02; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>6</sup> Portfolio Depository Receipts (*i.e.*, SPDRs, MidCap SPDRs, DIAMONDS, Nasdaq 100 Index Tracking Stock) are not subject to annual or additional listing fees.

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

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 17 CFR 200.30-3(a)(12).