

reduce Exchange subsidies of such services.⁵ Implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange submits that the proposed license fee will provide the Exchange with additional revenue and allow the Exchange to recoup its costs associated with the trading of NDX and MNX options. Furthermore, the Amex believes that this fee will help to allocate to those specialists and ROTs transacting in NDX and MNX options a fair share of the related costs of offering such options. Accordingly, the Exchange believes that the proposed fee is reasonable.

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act,⁶ in general, and Section 6(b)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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 by the Exchange with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2) thereunder,⁹ in that it establishes or changes a due, fee, or

other charge imposed by the Exchange. At any time within 60 days of the filing of such 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 the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2005-025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2005-025. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-025 and

should be submitted on or before March 25, 2005.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-877 Filed 3-3-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51250; File No. SR-Amex-2005-021]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amending Section 507 of the Amex Company Guide To Conform the Definition of a "Large" Dividend to the Threshold Specified in Section 521 of the Company Guide

February 24, 2005.

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 February 11, 2005, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 seeks to revise Section 507 of the Company Guide to conform the definition of a "large" dividend to the threshold specified in Section 521 of the Company Guide.

The text of the proposed rule change is available on the Amex's Web site <http://www.amex.com>, at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

⁵ See Securities Exchange Act Release Nos. 51070 (January 21, 2005), 70 FR 4900 (January 31, 2005) (relating to options transaction fees in connection with the Standard & Poor's Depository Receipts); 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002) (order approving a rule change relating to a retroactive increase in floor, membership, and options trading fees, including licensing fees); and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) (relating to fees imposed on members and member organizations, including member fees, floor fees, booth rental fees, and membership registration fees).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(A)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 521 of the Company Guide specifies the procedures applicable to special ex-dividend rulings by the Exchange, and subsection (b) specifically relates to large or valuable dividends, dividends "not in kind" (e.g., paid in the stock of another issuer) and split-ups effected as stock distributions. Under any of these circumstances Section 521 provides that the "ex-dividend" or "ex-distribution" date will be postponed until the dividend has been paid. Ordinarily, when an issuer declares a dividend, the Exchange quotes the stock "ex-dividend" beginning on the second business day preceding the record date for payment of the dividend, which has the effect that the buyer of the security is not entitled to the dividend. This is because the transaction will clear after the record date for payment and the buyer will thus not be the holder of record on the record date. Once a security is quoted "ex-dividend," certain open orders, and the resulting market and collateral value of the security, are reduced in accordance with Amex Rule 132.⁵

However, in the case of large or valuable dividends, as well as dividends "not in kind" and split-ups effected as stock distributions, Section 521 of the Company Guide provides for special procedures such that the "ex" date will be postponed until the dividend or distribution has been made, and neither open orders, nor the market and collateral value of the security, are reduced. Instead, the security in question trades with a "due bill" attached meaning that the seller is obligated to pay the dividend or

distribution to the purchaser. The reason for this difference is that otherwise the price of orders for the security, and its collateral value, would be significantly reduced by the value of the dividend or distribution, which could require shareholders to provide additional collateral. Section 521 specifies that usually a dividend of 20% or more is considered a "large" dividend for purposes of these special procedures.

Section 507 of the Company Guide specifies that if a company chooses to compute the cash payment on the dividend declaration date or if the "ex" date is postponed pursuant to Section 521 for a large dividend, then the applicable last sale price must be adjusted for the value of the dividend. However, Section 507 is inconsistent with Section 521 and incorrectly specifies a 25% dividend as constituting a "large" dividend.

Accordingly, the Amex is proposing to amend Section 507 of the Amex Company Guide to conform to Section 521 of the Company Guide.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act⁷ in general and furthers the objectives of Section 6(b)(1)⁸ in particular, in that it is designed to enforce compliance by Exchange members and persons associated with its members with the rules of the Exchange.

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

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not:

⁶ Specifically, the proposed rule change would amend the text of Section 507 by replacing the phrase "large stock dividends of 25% or more" with the phrase "large stock dividends of usually 20% or more" and similarly replacing the phrase "large stock dividends (25% or more)" with the phrase "large stock dividends (usually 20% or more)". See Exhibit 5 of the proposed rule change.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

(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 effective⁹ pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

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 asked that the Commission waive the 30-day operative delay specified in 19b-4(f)(6)(iii) under the Act.¹² The Commission believes such waiver is consistent with the protection of investors and the public interest, in that it will allow for the expeditious and accurate publication of the Exchange's rules. The Commission has therefore determined to waive the 30-day delay, rendering the proposal operative immediately.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2005-021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2005-021. This file

⁹ The Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ Telephone conversation between Laura Clare, Assistant General Counsel, the Amex, and Natasha Cowen, Attorney, Division of Market Regulation, Commission, on February 18, 2005.

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section. Copies of such filing also will be available for inspection and copying at the principal offices of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-021 and should be submitted on or before March 25, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51275; File No. SR-Amex-2005-002]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Member Firm Guarantee

February 28, 2005.

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 January 4, 2005, 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 and II

below, which Items have been prepared by the Exchange. On February 15, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change, as amended.

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

The Exchange proposes to amend Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE to change the current member firm guarantee for equity and index options traded on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com>), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the current participation or member firm guarantee for equity and index options traded on the Exchange. The member firm guarantee provides that a floor broker is entitled to a participation guarantee of 20% if the order is traded at the best bid or offer ("BBO") or 40% if the order is traded at a price that improves the market, *i.e.*, at a price between the BBO ("20/40 Rule"). Amex is proposing to amend Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE to revise the current 20/40 Rule so that floor brokers

receive 40% of an order (after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled) if such order trades at a price that matches or improves the market.

In April 2003,⁴ the Exchange received permanent approval of the pilot program relating to the member firm guarantee initially approved by the Commission on June 2, 2000.⁵ Commentary .02(d) to Amex Rules 950(d) and 950(d)—ANTE permits facilitation cross transactions in equity options and sets forth the member firm guarantee percentages.⁶ The member firm guarantee was subsequently extended to index options in September 2004.⁷ In this proposed rule change, the Exchange also proposes that the member firm guarantee in ANTE extend to index options.

Amex Rules 950(d) and 950(d)—ANTE provide, under certain conditions, the ability to cross a specified percentage of the customer order on behalf of a member firm before specialists and/or registered options traders in the crowd can participate in the transaction, *i.e.*, the member firm guarantee. The provision generally applies to orders of 400 contracts or more; however, the Exchange is permitted to establish smaller eligible order sizes, on a class-by-class basis, provided that size is not for fewer than 50 contracts.

The amount of the guaranteed participation percentage depends upon a comparison of the original market quoted by the trading crowd in response to a request from the floor broker and the price at which the order is traded. If the order is traded at the best bid or offer provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 20% of the order. If the order is traded at a price that improves the market provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 40% of the order. In addition, the facilitating member firm may only participate in the executed contracts

⁴ See Securities Exchange Act Release No. 47643 (April 7, 2003), 68 FR 17970 (April 14, 2003) (approving File No. SR-Amex-2000-49).

⁵ See Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000) (approving File No. SR-Amex-99-36).

⁶ Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

⁷ See Securities Exchange Act Release No. 50326 (September 7, 2004), 69 FR 55479 (September 14, 2004) (approving File No. SR-Amex-2004-51).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated February 15, 2005 ("Amendment No. 1"). In Amendment No. 1, the Exchange made clarifications and technical corrections to the proposal and proposed rule text, which have been incorporated into this notice and order.