

it is further ordered that the automatic stay of delegated action pursuant to Rule 431(e) of the Rules of Practice<sup>4</sup> is hereby lifted.

In considering whether to accept or reject the Knight Petition, Rule 411(b)(2) of the Rules of Practice<sup>5</sup> requires that the Commission determine whether:

(i) A prejudicial error was committed by the Division in the conduct of the proceeding; or

(ii) The Division's decision embodies: (A) a finding or conclusion of material fact that is clearly erroneous; or

(B) a conclusion of law that is erroneous; or

(C) an exercise of discretion or decision of law or policy that is important and that the Commission should review.

The Knight Petition does not allege that any prejudicial error was committed by the Division in the conduct of the proceedings, and the Commission finds that no such prejudicial error occurred. Moreover, the Commission finds that the Division's decision does not embody a finding of material fact that is clearly erroneous or a conclusion of law that is erroneous.

In so finding, the Commission notes that it previously has approved of securities being traded pursuant to unlisted trading privileges ("UTP") and such approval applies generally to floor based exchanges without automatic execution of orders that engage in UTP trading.<sup>6</sup> As the Knight Petition makes clear, Knight's principal dispute is not with the Division's approval by

delegated authority of the American Stock Exchange LLC's ("Amex") proposed trading rules setting auction market structure. Rather, Knight seeks review of the Commission granting permission to auction markets without automatic execution of orders to trade securities pursuant to UTP generally.<sup>7</sup>

In other words, Knight does not challenge the Amex's proposed rules that are the subject of the Division's approval order, but rather objects to the manner in which Amex's market will interact with other markets also trading Nasdaq securities pursuant to UTP. Such concerns are not properly cognizable in the context of the rule filing process for the Amex's trading rules. Rather, the proper venue for Knight's arguments was the notice and approval process for the 12th Amendment to OTC/UTP Plan,<sup>8</sup> in which amendment the extension of UTP to the Amex was approved under section 12(f) of the Securities Exchange Act of 1934.<sup>9</sup> The time for such arguments has lapsed.

To the extent that Knight does object to the Amex trading rules that were the subject of the Division's order, their objection is that Amex does not provide for automatic executions. As the Division correctly points out in its order, the standards applicable to the Amex proposal do not require that Amex provide automatic execution. We specifically so find and conclude ourselves. The Division considered all comments on the proposed Amex rules including Knight's, addressed them, and correctly applied the applicable standard.

Finally, because these rules—unlike the grant of UTP—do not raise any important issues, the Commission also finds that the Division's decision does not embody an exercise of discretion or a decision of law or policy that is important and that the Commission should review.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>7</sup> Markets engaged in the trading of securities pursuant to UTP are parties to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("OTC/UTP Plan").

<sup>8</sup> See Securities Exchange Act Release Nos. 44822 (September 20, 2001), 66 FR 50226 (October 2, 2001) (12th Amendment Notice); 45081 (November 19, 2001); 66 FR 59273 (November 27, 2001) (12th Amendment Approval).

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

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [67 FR 54506, August 22, 2002].

**STATUS:** Open meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Tuesday, August 27, 2002 at 10 a.m.

**CHANGE IN THE MEETING:** Deletion of Item.

The following item will not be considered at the open meeting scheduled for Tuesday, August 27, 2002:

The Commission will consider whether to issue a notice of an application from The Mexico Fund, Inc. (the "Fund") seeking certain exemptions from the Investment Company Act of 1940.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: August 27, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-46400; File No. SR-Amex-2002-66]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Waiver of Transaction Fees for Exchange-Traded Funds

August 22, 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 August 6, 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 Amex has designated this proposal as one establishing or changing a due, fee, or

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

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

<sup>4</sup> 17 CFR 201.431(e).

<sup>5</sup> 17 CFR 201.411(b)(2).

<sup>6</sup> See Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995); 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997), 62 FR 36586 (July 8, 1997); 39505 (December 31, 1997), 63 FR 1515 (January 9, 1998); 40151 (July 1, 1998), 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001); 44552 (July 13, 2001), 66 FR 37712 (July 19, 2001); 44694 (August 14, 2001), 66 FR 43598 (August 20, 2001); 44804 (September 17, 2001), 66 FR 48299 (September 19, 2001); 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001).