

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549-0004.

#### Extension

Rule 32a-4; OMB Control No. 3235-0530; SEC File No. 270-473.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information under the Investment Company Act of 1940 ("Act") summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget for approval.

Rule 32a-4 [17 CFR 270.32a-4] is entitled "Independent Audit Committees." The rule exempts a registered management investment company or registered face-amount certificate company ("fund") from the requirements of section 32(a)(2) of the Investment Company Act that shareholders ratify or reject the selection of the fund's independent public accountant if the fund has an audit committee composed wholly of independent directors.

Instead of relying on rule 32a-4, a fund could seek ratification or rejection by shareholders of the selection of its independent public accountant at each annual meeting. Under the rule, a fund is exempt from having to seek shareholder approval of its independent public accountant, if (i) the fund's board of directors establishes an audit committee composed solely of independent directors with responsibility for overseeing the fund's accounting and auditing processes,<sup>1</sup> (ii) the fund's board of directors adopts an audit committee charter setting forth the committee's structure, duties, powers and methods of operation, or sets out similar provisions in the fund's charter or bylaws,<sup>2</sup> and (iii) the fund maintains a copy of such an audit committee charter permanently in an easily accessible place.<sup>3</sup>

As conditions of relying on rule 32a-4, a fund's board of directors must adopt an audit committee charter and must preserve that charter, and any modifications to the charter, permanently in an easily accessible

place. The information collection requirement in rule 32a-4 enables the Commission to monitor the duties and responsibilities of an independent audit committee formed by a fund relying on the rule. Commission staff estimates that there are approximately 3,700 management investment companies and face-amount certificate companies that could rely on the rule. We believe that approximately 9.7 percent (360) of those funds have taken advantage of the exemption since adoption of the rule, and approximately 2.7% (100) of the funds that have not already done so choose to rely on the rule each year. For each of those funds choosing for the first time to rely on the rule, we estimate that the adoption of the audit committee charter requires, on average, 1 hour of directors' time, 2.5 hours of professional time and 1 hour of support staff time, for a total one-time burden of burden of 4.5 hours, and an estimated total one-time cost of \$555.40, resulting in an annual aggregate time burden of 450 hours and an annual aggregate cost of \$55,540.<sup>4</sup>

In addition to the hour burden described above, rule 32a-4 imposes certain costs on those funds that choose to rely on the exemption. These costs are minimal and are justified by the relief provided by the exemption. We estimate that each of the approximately 360 funds currently relying on the rule is required to spend approximately .5 hours annually to comply with the requirement that it preserve permanently its audit committee charters, for an additional annual hour burden of 180 hours, and an additional annual cost for all funds of \$12,439.20.<sup>5</sup>

The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.<sup>6</sup>

<sup>4</sup> To calculate this cost, the Commission staff used an average hourly wage rate of \$300 per hour for directors, an average hourly wage rate of \$96.16 per hour for professionals, and an average hourly wage rate of \$15 per hour for support staff ((100 × 1 × \$300/hour) + (100 × 2.5 × \$96.16/hour) + (100 × 1 × \$15/hour) = \$94,000). See Securities Industry Association, Report on Management & Professional Earnings in the Securities Industry 2001 (Oct. 2001).

<sup>5</sup> In calculating this annual cost, the Commission staff estimated that one-third of the annual hour burden (60 hours) would be incurred by support staff with an average hourly wage rate of \$15 per hour, and two-thirds of the annual burden (120 hours) would be incurred by professionals with an average hourly wage rate of \$96.16 per hour ((60 × \$15/hour) + (120 × \$96.16/hour) = \$12,439.20).

<sup>6</sup> These estimates are based on telephone interviews between Commission staff and fund representatives.

The collections of information required by rule 32a-4 are necessary to obtain the benefits of the rule. The Commission is seeking OMB approval, because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 20, 2002.

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

[FR Doc. 02-22085 Filed 8-28-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 46409]

**Securities Exchange Act of 1934; In the Matter of Petition for Review by Knight Trading Group, Inc. of Division of Market Regulation Approval by Delegated Authority of File No. SR-Amex-2001-106; Order Denying Petition for Review**

August 23, 2002.

Pursuant to Rule 431(b)(2) of the Rules of Practice,<sup>1</sup> it is *ordered* that the petition<sup>2</sup> of Knight Trading Group, Inc. ("Knight") for review of the Division of Market Regulation's ("Division") approval by delegated authority of SR-Amex-2001-106<sup>3</sup> is hereby denied and

<sup>1</sup> 17 CFR 201.431(b)(2).

<sup>2</sup> Letter to Jonathan G. Katz, Secretary, Commission, from John J.D. McFerrin-Clancy, Schlam Stone & Dolan, dated August 15, 2002 ("Knight Petition").

<sup>3</sup> Securities Exchange Act Release No. 46205 (August 2, 2002), 67 FR 51609 (August 8, 2002).

<sup>1</sup> Rule 32a-4(a).

<sup>2</sup> Rule 32a-4(b).

<sup>3</sup> Rule 32a-4(c).

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.*

[FR Doc. 02-22205 Filed 8-27-02; 12:23 am]

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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).