

implementation of Phase II of the Linkage.

At any time within sixty (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.

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. 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 No. SR-Amex-2003-64 and should be submitted by July 18, 2003.

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. 34-48074; File No. SR-Amex-2003-41]

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 Listing Fees for Closed-End Funds

June 23, 2003.

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 May 2, 2003, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the Amex has prepared. On June 10, 2003, the Amex filed Amendment No. 1 to the proposed rule change.³ On June 16, 2003, the Amex filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Amex proposes to amend Sections 140 and 141 of the Amex *Company Guide* to set forth original listing and annual fees applicable to closed-end funds.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Amex Company Guide

Section 140, Original Listing Fees

Stock Issues

(No change to schedule.)

Issues Listed Under § 106 (Currency and Index Warrants) and § 107 (Other Securities)

(No change to schedule.)

Warrants

(No change.)

Bonds

(No change.)

Index Fund Shares [and], Trust Issued Receipts *and Closed-End Funds*—The original listing fee for Index Fund

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, which replaced the original filing in its entirety, the Amex amended Section 146 of the Amex *Company Guide* to eliminate a reference to the multiple listing of closed-end funds by a single sponsor as an example of a situation where the Amex could reduce or waive listing fees when it deems that such action is appropriate to achieve an equitable result. See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 9, 2003.

⁴ In Amendment No. 2, the Amex amended Section 141 of the Amex *Company Guide* to clarify that the Amex will base its annual fee for closed-end funds on the number of shares outstanding at the end of the calendar year. See letter from Michael Cavalier, Associate General Counsel, Amex to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 13, 2003.

Shares listed under Rule 1000A, [and] Trust Issued Receipts listed under Rule 1200 *and Closed-End Funds listed under Section 101 of the Company Guide* is \$5,000 for each series *or Fund*, with no application processing fee.

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Section 141, Annual Fees

Stock Issues; [and] Issues Listed Under § 106 and 107 and Rule 1200 (Trust Issued Receipts); *and Closed-End Funds*.

(No change to schedule.)

Issues Listed Under Rule 1000A (Index Fund Shares)

(No change to schedule.)

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.

The annual fee for a Closed-End Fund listed under Section 101 of the Company Guide is based upon the number of shares outstanding of such Fund at the end of each calendar year. For multiple Closed-End Funds of the same sponsor, the annual listing fee is based on the aggregate number of shares outstanding of all such Funds at the end of each calendar year.

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Section 146, Adjustment to Fees

The Exchange, in its discretion, may reduce or waive the listing fees imposed pursuant to the above provisions under certain circumstances where deemed

¹⁴ 17 CFR 200.30-3(a)(12).

appropriate to achieve an equitable result, such as [the multiple listing of closed-end funds by a single sponsor,] spin-offs of enterprises to existing shareholders of a listed company or other similar situations.

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, as amended, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to amend Section 140 (Original Listing Fees) and Section 141 (Annual Fees) of the Amex *Company Guide* to specify the initial and annual fees applicable to closed-end funds, which are listed under Section 101 of the *Company Guide*.

The Amex proposes that the initial listing fee for closed-end funds under Section 140 of the Amex *Company Guide* will be the same as for Index Fund Shares and Trust Issued Receipts (\$5,000 for each fund without the application processing fee of \$5,000 that is applied to certain issuers).

The Amex proposes to amend Section 141 of the Amex *Company Guide* so that the annual fee for closed-end funds would range from \$15,000 to \$30,000 based on the number of shares outstanding, and would be the same as the annual fee applicable to stock issues, Trust Issued Receipts, and issues listed under Sections 106 (Index and Currency Warrants) and 107 (Other Securities) of the *Company Guide*.

As with annual fees applicable to Index Fund Shares and Trust Issued Receipts, the Amex believes it is appropriate, for the purpose of calculating the annual fee, to aggregate the number of shares outstanding for all closed-end funds of the same fund sponsor listed on the Amex as of calendar year end.

The Amex is also proposing to amend Section 146 of the *Company Guide*, which includes multiple listing of closed-end funds by a single sponsor as

an example of a situation where the Amex, in its discretion, may reduce or waive listing fees under certain circumstances where deemed appropriate to achieve an equitable result. The proposed amendment to Section 141 of the Amex *Company Guide* would render unnecessary the reference to multiple closed-end funds in Section 146 of the Amex *Company Guide*. Accordingly, the Amex proposes to delete the reference.

2. Statutory Basis

The Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,⁵ in general, and further the objectives of Section 6(b)(5),⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Amex 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

The Amex neither solicited nor received written comments on the proposed rule change, as amended.

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 Amex consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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. 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 Amex. All submissions should refer to File No. SR-Amex-2003-41 and should be submitted by July 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48065; File No. SR-NASD-2003-100]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Performance Leveraged Upside Securities Based on the Value of the Nasdaq-100 Index

June 19, 2003.

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 June 19, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.