

scheduled gas main construction and maintenance to the KeySpan System. Except for the general liability and workers' compensation insurance provided to the principal contractor under OCIP, KIC does not intend to extend or provide to any non-affiliated company any insurance services, unless otherwise expressly authorized by the Commission. Currently, KIC assumes the risk of the more predictable loss layer from the commercial insurers for automobile and general liability losses and for workers' compensation. Commercial insurance continues to be purchased for "unpredictable" losses above the predictable loss layers for automobile and general liability and for workers' compensation from various commercial insurance companies. To the extent that KIC procures insurance at a lower cost than could be obtained through traditional insurers, the savings in the premiums flow through ratably to the KeySpan System companies through the operation of the allocation methodology used to establish premiums.

Applicants propose that KIC offer property, boiler and machinery, and "all risk" insurance services to the KeySpan System. KeySpan currently insures these property-related risks through the traditional, commercial insurance market. It has various deductibles ranging from \$100,000 on common structures to \$2,500,000 on the KeySpan System's power generation units. It purchases limits up to \$2 billion from the commercial insurance market. Due to the state of the commercial insurance market, KeySpan has not been able to obtain coverage below the minimum \$100,000 deductible. KeySpan says that this has created a burden for some of the smaller KeySpan System companies that do not want to expose themselves to such a large self-insured retention.

KIC could be utilized, Applicants state, to provide property-related coverage with smaller self-insured retentions to those KeySpan System companies that do not have such a large capacity for risk. KIC would allocate premiums based on the property values at KeySpan System company locations down to a level of a \$10,000 deductible. This added service would not increase costs to the KeySpan System because such costs are currently, and would continue to be, paid through operating expenses, Applicants state. There would be no additional staffing requirements for KeySpan System companies. To the extent that KIC can provide insurance at a lower cost than that which could be obtained through traditional insurers, the savings will continue to flow through ratably to the KeySpan System

companies through the allocation methodology used to establish premiums.

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

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 03-30700 Filed 12-10-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48872; File No. SR-Amex-2003-100]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Broker Voting on Stock Option and Equity Compensation Plans

December 3, 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 November 19, 2003, 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 and II below, which Items have been prepared by the Exchange. On November 21, 2003, the Amex filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal and Amendment No. 1 on an accelerated basis.

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

The Exchange proposes to amend Amex Rule 577 and section 723 of the Amex *Company Guide* to provide that a member organization holding a customer's securities in "street" name will not be permitted to give a proxy to vote such shares without instructions from the customer when the matter to be

voted upon authorizes the implementation of or material amendment to a stock option or equity compensation plan.

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deleted language is [bracketed].

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American Stock Exchange Constitution and Rules

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Rule 577. Giving Proxies by Member Organization

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* * * Commentary

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.11 When member organization may not vote without customer instructions.—In the list of meetings of stockholders, after proxy material has been reviewed by the Exchange, each meeting will be designated by an appropriate symbol to indicate either (a) that members may vote a proxy without instructions of beneficial owners, (b) that members may not vote specific matters on the proxy, or (c) that members may not vote the entire proxy.

Generally speaking, a member organization may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

(1) through (8)—No change.

(9) involves waiver or modification of preemptive rights [(except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12))];

(10) and (11)—No change.

(12) [authorizes issuance of stock, or options to purchase stock, to directors, officers, or employees in an amount which exceeds 5% of the total amount of the class outstanding] *authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by Section 711 of the Exchange's Company Guide);*

(13) through (18)—No change.

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American Stock Exchange Company Guide

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 20, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made technical corrections to the proposed rule change to correct typographical errors in the proposed rule text and an incorrect footnote citation in the proposal.

Section 723. Giving Proxies By Member Organization (See Exchange Rule 577)

* * * * *

.11 When member organization may not vote without customer instructions.—In the list of meetings of stockholders, after proxy material has been reviewed by the Exchange, each meeting will be designated by an appropriate symbol to indicate either (a) that members may vote a proxy without instructions of beneficial owners, (b) that members may not vote specific matters on the proxy, or (c) that members may not vote the entire proxy.

Generally speaking, a member organization may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

(1) through (8)—No change.

(9) involves waiver or modification of preemptive rights [(except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12)]];

(10) and (11)—No change.

(12) [authorizes issuance of stock, or options to purchase stock, to directors, officers, or employees in an amount which exceeds 5% of the total amount of the class outstanding] *authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by Section 711 of the Exchange's Company Guide);*

(13) through (18)—No change.

* * * * *

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 III 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

According to the Amex, the Amex and the New York Stock Exchange, Inc. ("NYSE") have historically had virtually identical rules with respect to the circumstances under which a broker holding a customer's securities in "street name" may give a proxy to vote such shares on a particular issuer proposal without the beneficial owner's instructions. Amex Rule 577 and section 723 of the Amex *Company Guide* provide that the Exchange will review issuer proxy materials and designate with respect to each proposal whether Amex member organizations holding customer shares may vote without instructions from the beneficial owner (*i.e.*, the proposal is "routine") or may only vote with instructions (*i.e.*, the proposal is "non-routine").

On June 30, 2003, the Commission jointly approved NYSE and National Association of Securities Dealers, Inc. ("NASD")/The Nasdaq Stock Market, Inc. ("Nasdaq") proposals that required companies to obtain shareholder approval of all equity compensation plans, subject to limited exceptions, and approved rules in the NYSE proposal that classified such plans as "non-routine" for broker voting purposes.⁴ On

⁴ The Commission notes that NASD rules do not allow broker voting on any matters. See Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (order approving File Nos. SR-NYSE-2002-46 and SR-NASD-2002-140) ("NYSE and Nasdaq proposals"). See also Securities Exchange Act Release No. 48627 (October 14, 2003), 68 FR 60426 (October 22, 2003) (notice of filing and order granting accelerated approval to File No. SR-NASD-2003-130, incorporating amendments to the NASD's recently approved shareholder approval rules for equity compensation plans applicable to Nasdaq quoted securities). The Commission also published a correction to the notice of File No. SR-NASD-2003-130. See Securities Exchange Act Release No. 48627A (October 22, 2003), 68 FR 61532 (October 28, 2003). The **Federal Register** subsequently published another correction. See Securities Exchange Act Release No. 48627A, 68 FR 62161 (October 31, 2003). Most recently, on October 31, 2003, the Commission simultaneously approved similar proposals regarding shareholder approval of equity compensation plans, including a preclusion on broker voting on such plans, for the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Pacific Exchange Inc., the Philadelphia Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., and the Cincinnati Stock Exchange on an accelerated basis. See Securities Exchange Act Release Nos. 48733 (October 31, 2003), 68 FR 63143 (November 7, 2003); 48734 (October 31, 2003), 68 FR 63159 (November 7, 2003); 48735 (October 31, 2003), 68 FR 63173 (November 7, 2003); 48736 (October 31, 2003), 68 FR 63180 (November 7, 2003); 48737 (October 31, 2003), 68 FR 63150 (November 7, 2003); and 48738 (October 31, 2003), 68 FR 63166 (November 7, 2003) (collectively, "the Regional Exchange proposals").

October 9, 2003, the Commission approved a comparable Amex proposal with respect to shareholder approval of stock option and equity compensation plans.⁵ That proposal, however, did not address the proxy voting issue being addressed in this instant filing.

The Amex represents that the prior NYSE rules had provided, and that the current Amex rules do provide, that stock option plans are "routine" if all proposals included in the proxy to be voted on do not authorize the issuance of in excess of 5% of the total amount of the shares outstanding to directors, officers or employees. In order to provide greater consistency between marketplaces, the Amex proposes to amend Amex Rule 577 and section 723 of the Amex *Company Guide* to classify stock option and equity compensation plans as "non-routine" for broker voting purposes, thereby requiring instructions from the beneficial owner before a broker can give a proxy on matters related to the implementation of or material amendment to an equity compensation plan. The Amex further proposes that this proposed change become effective as of January 31, 2004.⁶

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)(5)⁸ in particular in that 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 Exchange does not believe that the proposed rule change will impose any burden on competition.

⁵ See Securities Exchange Act Release No. 48610 (October 9, 2003), 68 FR 59650 (October 16, 2003) (order approving File No. SR-Amex-2003-42).

⁶ The Amex has represented that it will notify its members of the effective date of the proposed rule change on the Amex's website. Telephone conversation between Claudia Crowley, Vice President, Listing Qualifications, Amex, and Sapna C. Patel, Special Counsel, Division of Market Regulation, Commission, on November 20, 2003.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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. 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-Amex-2003-100. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hard copy or by e-mail, but not by both methods. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2003-100 and should be submitted by January 2, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the Amex's proposal is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.⁹ Specifically, the Commission finds that approval of the Amex's proposal is consistent with section 6(b)(5) of the Act¹⁰ in that it is designed to, among

other things, facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

When it approved Amex's proposal relating to shareholder approval of equity compensation plans,¹¹ the Commission had urged the Amex to adopt a rule similar to the NYSE's rules prohibiting members and member organizations from giving a proxy to vote without explicit instructions from beneficial owners when the matter to be voted on authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan.¹²

The Commission believes that the Amex's amended provision precluding broker voting on equity compensation plans is consistent with the Act. The Commission notes that equity compensation plans have become an important issue for shareholders. Because of the potential for dilution from such issuances, shareholders should be making the determination rather than brokers on their behalf. The Commission further notes that, generally under Amex rules, only matters that are considered routine are allowed to be voted on by a broker on behalf of a beneficial owner. Because of the recent significance and concern about equity compensation plans, the Commission believes that it is appropriate for the Amex to decide that shareholder approval of equity compensation plans is not a routine matter and must be voted on by the beneficial owner. As noted above, NASD rules do not provide for broker voting on any matters, and NYSE rules prohibit broker voting on equity compensation plans.¹³ Most recently, the Commission approved similar broker voting prohibitions for all of the regional exchanges.¹⁴ Therefore, the Exchange's proposed provision would be consistent with NASD and NYSE rules regarding broker voting on equity compensation plans, as well as with the rules of the regional exchanges. In its approval of the NYSE and Nasdaq proposals, the Commission had

considered the impact on smaller issuers, such as those listed on Nasdaq and the Amex, in response to the comments received on this issue.¹⁵ The Commission believes that the benefit of ensuring that the votes reflect the views of beneficial shareholders on equity compensation plans outweighs the potential difficulties in obtaining the vote.

The Commission notes that the Amex has implemented a transition period that would make the proposed new preclusion on broker voting on equity compensation plans effective as of January 31, 2004. The Commission further notes that this transition period is consistent with the transition periods recently approved for the regional exchanges and should ensure that the Amex's broker voting prohibition is in place for the upcoming proxy season and will be implemented by the same time as the other marketplaces.

V. Accelerated Approval of the Amex's Proposal and Amendment No. 1

The Commission finds good cause for approving the Amex's proposal and Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Amex's proposal is similar to rules that it has recently approved for the NYSE and the regional exchanges on this issue, and is consistent with current NASD rules.¹⁶ The Commission believes that it has already considered and addressed issues that may be raised by the Amex's proposal when it approved the NYSE and Nasdaq proposals.¹⁷ The Commission believes that accelerated approval of the Amex's proposal will allow for immediate harmonization of, and consistency in, the broker voting requirements on equity compensation plans among all of the exchanges and the NASD/Nasdaq. The Commission further believes that making the Amex's rule change effective as of January 31, 2004, is consistent with the transition periods that the Commission has recently approved for the regional exchanges, and will allow the Amex's new broker voting prohibition to be in place for this upcoming proxy season. Further, accelerated approval should allow sufficient time for Amex members to make any necessary adjustments to implement the change by the transition date. Finally, accelerated approval of the Amex proposal will immediately

⁹ 15 U.S.C. 78f(b). In approving the Amex's proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See *supra* note 5.

¹² See NYSE Rule 452 and section 402.08 of the NYSE's *Listed Company Manual*.

¹³ See NASD Rule 2260 and *supra* note 12.

¹⁴ See the Regional Exchange proposals, *supra* note 4.

¹⁵ See also *supra* notes 4, 12, and 13.

¹⁶ See *supra* note 4. See also section 303A(8) of the NYSE's *Listed Company Manual*; NASD Rule 4350(i) and IM-4350-5. See also *supra* notes 12 and 13.

¹⁷ See *supra* note 4.

impose the same regulatory standards on Amex members as those imposed on members of other exchanges and the NASD/Nasdaq. Based on the above, the Commission finds good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act¹⁸ to approve the Amex's proposal and Amendment No. 1 on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-Amex-2003-100) and Amendment No. 1 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-30663 Filed 12-10-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48886; File No. SR-Amex-2003-103]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Issuer Fees

December 5, 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 November 25, 2003, 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 Amex. 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 proposes to amend Sections 140, 141, 142 and 144 of the *Amex Company Guide* to designate as non-refundable the current one-time \$5,000 application processing fee, to establish a late charge of \$2,500 payable by issuers whose annual listing fees are more than 60 days past due, and to increase fees for listing additional

shares. The Exchange proposes to further amend Sections 141 and 142 of the *Amex Company Guide* to clarify that annual listing fees and additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

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. 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

Sections 140 through 146 of the *Amex Company Guide* describe the Exchange's listing fees. In this proposed rule change, the Exchange proposes to amend Sections 140, 141, 142 and 144 to: (i) Designate as non-refundable the current one-time \$5,000 application processing fee, (ii) establish a late charge of \$2,500 payable by issuers whose annual listing fees are more than 60 days past due, and (iii) increase fees for listing additional shares. The Exchange believes these fee changes are necessary to adequately fund the Exchange's listed equities business and to develop value-added services for Amex listed issuers. In addition, the Exchange proposes to further amend Sections 141 and 142 to clarify that annual listing fees and additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

(i) *Section 140 (Original Listing Fees) and Section 144 (Refunds of Listing Fees)*. The Exchange collects original listing fees for new equity, warrant and debt issues in accordance with Section 140 of the *Amex Company Guide*. In addition to original listing fees, a one-time \$5,000 application processing fee is assessed companies that do not have a stock, warrant or debt issue already listed on the Exchange.³ Pursuant to

paragraphs (a) and (b) of Section 144, the Exchange refunds \$3,500 of the application processing fee if the applicant: (i) Withdraws its application, (ii) fails to gain listing approval, or (iii) cancels a listing authorization without issuing the authorized securities. The Exchange proposes to amend Sections 140 and 144 to designate the full amount of the \$5,000 application processing fee as non-refundable.

(ii) *Section 141 (Annual Fees)*. The Exchange collects annual listing fees in accordance with Section 141 of the *Amex Company Guide*. Currently, no penalties are assessed issuers that do not pay such fees in a timely manner. To encourage timely payment, the Exchange proposes to amend Section 141 to establish a late charge of \$2,500 payable by issuers that fail to remit annual listing fees within 60 days of the billing date.⁴ The Exchange proposes to delete the requirement that annual fees that are prorated are payable within thirty days of the date the company receives the invoice. In addition, the Exchange also proposes to delete the requirement that annual fees that are prorated for bond issues are payable in December of year in which they are listed. According to the Exchange, these deletions would result in these fees being payable within sixty days of the invoice date, after which time the proposed late fee would apply.⁵ Finally, the Exchange proposes to amend Section 141 to clarify that annual listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges as specified in Commentary .01 of Section 950 of the *Amex Company Guide*.

(iii) *Section 142 (Additional Listing Fees)*. In accordance with paragraph (a) of Section 142 of the *Amex Company Guide*, the current fee for listing additional shares is 2 cents per share, subject to a minimum fee of \$2,000 (for 100,000 shares or less) and a maximum fee of \$22,500 (for 1,125,000 shares or more) per application. The annual maximum fee per company for listing additional shares is currently \$45,000. The Exchange proposes to amend paragraph (a) of Section 142 to: (i) Increase the maximum fee per application from \$22,500 to \$45,000

Amex Company Guide are assessed an original listing fee of \$5,000 for each series or fund, but not an application processing fee.

⁴ The proposed \$2,500 late fee will not apply to Trust Issued Receipts, Index Fund Shares, or debt issues.

⁵ Telephone conversation between Eric Van Allen, Assistant General Counsel, Amex and Kelly M. Riley, Senior Special Counsel, Division of Market Regulation, Commission, on December 5, 2003.

¹⁸ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Index Fund Shares listed under Rule 1000A, Trust Issued Receipts listed under Rule 1200 and Closed-End Funds listed under Section 101 of the