

be in accordance with each Investing Fund's respective investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund that may rely on the order may invest only in Money Market Funds within the same Fund Group as the Investing Fund.

6. So long as its shares are held by an Investing Fund no Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the Securities Lending Arrangements, a majority of the Board, including a majority of the Disinterested Directors, will approve the Fund's participation in the Securities Lending Arrangements. Such Disinterested Directors also will evaluate the Securities Lending Arrangements and their results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of the Fund.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48027; File No. PCAOB-2003-01]

### Public Company Accounting Oversight Board; Notice of Filing of Proposed Bylaws and Amendment No. 1 Thereto

June 13, 2003.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act" or "Act"),<sup>1</sup> notice is hereby given that on March 3, 2003, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") the proposed rule as described in Items I, II, and III below, which items have been prepared by the Board. On April 30, 2003, the PCAOB filed Amendment No. 1 to the proposed rule. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

#### I. Board's Statement of the Terms of Substance of the Proposed Rule

On January 9, 2003, the Board adopted its bylaws. On April 25, 2003, the Board adopted an amendment to Article VI of the bylaws to specify the powers of the Chair. In general, the bylaws implement Title I of the Sarbanes-Oxley Act by establishing a principal office in Washington, DC, and by establishing the composition of a Governing Board, and the powers and duties of the Governing Board and officers. The bylaws are intended by the Board to be effective as of their initial adoption by a unanimous vote of the Board members. The Board is therefore proposing that the Commission approve the bylaws effective as of January 9, 2003.

#### II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

##### A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

The Sarbanes-Oxley Act established the Board as a nonprofit corporation, subject to and with all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, to oversee the audits of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors.

The Board's bylaws implement Title I of the Sarbanes-Oxley Act by establishing a principal office in Washington, DC, and by establishing the composition of a Governing Board, and the powers and duties of the Governing Board and officers. Among the provisions of the bylaws are rules for establishing a quorum and providing that an act approved by majority vote of the members of the Governing Board present at a meeting of the Board at which a quorum is present shall be an act of the Board. The bylaws also

provide for including a recused Board member in the count for quorum purposes only in exigent circumstances, in which the Board is required to act within a limited period of time or in which the public interest or the protection of investors otherwise prevents the deferral of action until a quorum of non-recused members is available.

The Board's bylaws also provide that the Governing Board shall hold at least one public meeting each month, on the first Tuesday of the month (the "Regular Public Meeting") or at such other time as the Chair shall determine. The bylaws require the Board to adopt a written Open Meeting Policy defining the circumstances under which meetings of the Board will be open to the public and to include in that Open Meeting Policy procedures to ensure that the public is informed, at least five calendar days in advance, of the time, location, and general topics scheduled for discussion at each Regular Public Meeting. The bylaws also permit the Governing Board to hold additional meetings ("Special Meetings"), which may be public or non-public (in accordance with the Open Meeting Policy), as it deems necessary or appropriate to further the purposes of the Sarbanes-Oxley Act. The bylaws require that the Open Meeting Policy set forth procedures for providing the public with reasonable notice of public Special Meetings, and they permit the Governing Board to meet by telephone, provided that, in the case of a public meeting, at least one Board member is present at the location specified in the meeting notice.

The bylaws provide that the Chair shall also be the President and Chief Executive Officer of the Corporation and that the other Governing Board members shall also be Vice Presidents of the Corporation. Section 6.2 of the bylaws provides that the other officers of the Corporation shall include a Secretary, Treasurer, General Counsel, Chief Auditor, Chief Administrative Officer, Director of Inspections and Registration, Director of Investigations and Enforcement, and such other officers as the Governing Board may establish in accordance with such rules of the Board as may be adopted for establishing officers.

Section 6.3 of the bylaws provides that the Chief Executive Officer is responsible for, and has authority over, the management and administration of the Corporation, including: (i) Responsibility and authority for the appointment, dismissal, and supervision of personnel (other than Board members and personnel

<sup>1</sup> 15 U.S.C. 7217(b).

employed regularly and full-time within the immediate offices of the Board members); (ii) the distribution of business among such personnel and among organizational units of the Corporation; (iii) the use and expenditure of funds (including the procurement of goods and services); and (iv) the development (for Board review) of strategic policy initiatives.

The bylaws also provide that in carrying out any of the responsibilities under the provisions of section 6.3 of the bylaws, the Chief Executive Officer shall be governed by the general policies of the Governing Board and by such rules and decisions as the Governing Board may lawfully make. The bylaws also provide that the appointment by the Chief Executive Officer of the officers of the Corporation designated in and established under section 6.2 shall be subject to the approval of, and made in consultation with, the Governing Board. The bylaws also provide that the dismissal of the officers of the Corporation designated in and established under section 6.2 shall be made in consultation with the Governing Board, except that when the Board determines that the dismissal arises out of a conflict regarding the general policies of the Governing Board, it is also subject to the approval of the Governing Board.

The bylaws also provide that each Board member has the responsibility and authority for the appointment, dismissal, and supervision of personnel employed regularly and full-time within the immediate office of the Board member. The Board member's responsibility and authority for these persons would be subject to the Governing Board's overall personnel policies.

The bylaws also provide that the Chief Executive Officer has the responsibility and authority to develop, and present to the Board for approval, an annual budget as well as mid-year adjustments, if any. The bylaws further provide that there is reserved to the Governing Board its responsibility and authority with respect to determining the distribution of funds according to major programs and purposes, including those related to salary schedules and other conditions of employment.

The bylaws also provide that no contract entered into by or on behalf of the Corporation shall personally obligate any employee, officer, or Governing Board member, including the employee, officer or Governing Board member authorizing or executing such a contract. Further, unless otherwise prohibited by law, the bylaws provide for the Corporation to indemnify

employees, officers, and Governing Board members, and any former employees, officers, or Governing Board members, against any and all expenses and liabilities actually and necessarily incurred by him or her, or imposed on him or her, in connection with any claim, action, suit, or proceeding (whether actual or threatened, civil, criminal, administrative, or investigative, including appeals), to which he or she may be or is made a party by reason of being or having been an employee, officer, or Board member, except that there shall be no indemnification in relation to matters as to which the Board finds that the employee, officer, or Board member acted in bad faith or engaged in willful misconduct in the performance of a duty to the Corporation. Amounts paid in indemnification of expenses and liabilities may include, but shall not be limited to, counsel and other related fees, costs and disbursements, and judgments, fines and penalties against, and amounts paid in settlement by, such employee, officer, or Board member. The bylaws further permit the Corporation to advance expenses to, or where appropriate to itself, at its expense, undertake the defense of any employee, officer, or Board member, so long as the employee, officer, or Board member undertakes to repay or reimburse such expense if it should be ultimately determined that he or she is not entitled to indemnification under the bylaws.

The bylaws also permit the Governing Board to purchase insurance on behalf of any employee, officer, or Governing Board member against any liability which may be asserted against or incurred by him or her which arises out of such person's status as an employee, officer, or Board member, whether or not the Corporation would have the power to indemnify such person against that liability under law.

The bylaws permit the Governing Board to adopt such rules of the Corporation as it deems necessary or appropriate to discharge its responsibilities under the Sarbanes-Oxley Act. The bylaws also prohibit any capital expenditure or investment without the approval of the Board, except as expressly delegated by the Governing Board. Finally, the bylaws require the Governing Board to retain an accounting firm to annually audit the Corporation's financial records, which firm shall not perform any other services, except tax services, for the Corporation.

In the event that the Commission approves the Board's bylaws, the Board seeks that they be approved so as to be

retroactively effective as of January 9, 2003.

#### *B. Board's Statement on Burden on Competition*

The proposed rule does not impose any burden on competition.

#### *C. Board's Statement on Comments on the Proposed Rule Received From Members, Participants or Others*

The Board has not solicited, and does not intend to solicit, comments on this proposed rule. The Board has not received any unsolicited written comments.

### **III. Date of Effectiveness of the Proposed Rule 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 Board consents the Commission will:

(a) by order approve such proposed rule; or

(b) institute proceedings to determine whether the proposed rule should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the requirements of Title I of the Sarbanes-Oxley Act and the Exchange 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 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All submissions should refer to File No. SR-PCAOB-2003-01 and should be submitted by July 9, 2003.

By the Commission.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48023; File No. SR-Amex-2003-53]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Maximum Bid/Offer Differentials for Option Contracts

June 12, 2003.

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 June 2, 2003, the American Stock Exchange LLC (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Exchange Rule 958 to set the maximum bid/offer differential for option contracts at \$0.40 where the prevailing bid is at or above \$2 but does not exceed \$5, and \$0.80 where the prevailing bid is more than \$10 but does not exceed \$20. The text of the proposed rule change is set forth below. [Bracketing] indicates text to be deleted, and *italics* indicates text to be added.

\* \* \* \* \*

#### Options Transactions of Registered Traders

##### Rule 958

(a)-(b) No change

(c) With respect to each class of options as to which he is assigned by the Exchange, a Registered Trader, whenever he enters the trading crowd in other than a floor brokerage capacity, or is called upon by a Floor Official or a Floor Broker acting in an agency capacity, is required to make competitive bids and offers as reasonably necessary to contribute to

the maintenance of a fair and orderly market and shall engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists a lack of price continuity, a temporary disparity between the supply of and demand for option contracts of a particular series, or a temporary distortion of the price relationships between option contracts of the same class. Without limiting the foregoing, a Registered Trader is expected to perform the following activities in the course of maintaining a fair and orderly market:

(i) If the underlying security is a stock or Exchange-Traded Fund Share, bidding and offering so as to create differences of no more than \$0.25 between the bid and the offer for each option contract for which the prevailing bid is less than \$2, no more than [ \$0.37 ] \$0.40 where the prevailing bid is \$2 but does not exceed \$5, no more than \$0.50 where the prevailing bid is more than \$5 but does not exceed \$10, no more than [ \$0.75 ] \$0.80 where the prevailing bid is more than \$10 but does not exceed \$20, and no more than \$1 where the last prevailing bid is more than \$20. In the event the bid/ask differential in the underlying security is greater than the bid/ask differential set forth herein, the permissible price differential for any in-the-money option series may be identical to those in the underlying security market.

#### 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

Pursuant to the industry-wide conversion of the pricing of securities from fractions to decimals, the Exchange converted all stocks and options pricing in its rules to decimals. Among the rules affected was Exchange Rule 958, which sets forth the obligations of registered

options traders and options specialists.<sup>3</sup> Subparagraph (c)(i) of Rule 958 requires registered options traders and options specialists, in the course of maintaining a fair and orderly market, to adhere to maximum bid/offer differentials specified in the rule.<sup>4</sup> In connection with this conversion from fractions to decimals, the Exchange converted (i) the maximum bid/offer differential of 3/8 of \$1 to \$0.37 where the prevailing bid is at or above \$2 but does not exceed \$5; and (ii) the maximum bid/offer differential of 3/4 of \$1 to \$0.75 where the prevailing bid is more than \$10 but does not exceed \$20.

The requirements of related Exchange Rule 952, however, created anomalies in the maximum bid/offer differentials as stated in Rule 958. Amex Rule 952, which sets forth the minimum price variation ("MPV") for option contracts, requires a MPV of \$0.05 where an option contract trades less than \$3.00 and a MPV of \$0.10 where an option contract trades at or above \$3. Consequently, option contracts trading at or above \$2 but less than \$3 are restricted to a maximum bid/offer differential of \$0.35, not \$0.37, because the MPV at those prices is \$0.05, and option contracts trading at or above \$3 but not exceeding \$5 are restricted to a maximum bid/offer differential of \$0.30, not \$0.37, because the MPV at those prices is \$0.10. Similarly, option contracts where the prevailing bid is more than \$10 but does not exceed \$20 are allowed a maximum bid/offer differential of \$0.75 under Amex Rule 958, but since the MPV is \$0.10 at those prices, registered options traders and options specialists are required to quote with a maximum differential of \$0.70.

Because maximum bid/offer differentials were reduced from levels permitted before the conversion from fractions to decimals, the Exchange now proposes to amend Amex Rule 958 to increase the maximum bid/offer differential (i) from \$0.37 to \$0.40 where the prevailing bid is at or above \$2 but does not exceed \$5; and (ii) from \$0.75 to \$0.80 where the prevailing bid is more than \$10 but does not exceed \$20. These changes will conform Amex Rule 958 to the Exchange's current practice of allowing registered options traders and options specialists to quote bids and offers with maximum bid/offer

<sup>3</sup> Exchange Rule 950(n) requires options specialists to adhere to the maximum bid/offer differentials set forth in Amex Rule 958(c).

<sup>4</sup> The maximum bid/offer differential varies depending upon the prevailing bid for the option contract.

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

<sup>2</sup> 17 CFR 240 19b-4.