

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50511; File No. SR-Amex-2004-83)

October 8, 2004

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Revisions to Amex Rules 1000 and 1000A

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 October 7, 2004, 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 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 and to approve the proposal, on an accelerated basis.

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

The Amex proposes to amend Amex Rule 1000, Commentary .03 and Amex Rule 1000A, Commentary .02.

Proposed new language is italicized; proposed deletions are in [brackets].

**Rule 1000**

**Portfolio Depositary Receipts**

(a) – (b) No change

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

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

**... Commentary**

**.01 - .02** No change

**.03** The Exchange may approve a series of Portfolio Depositary Receipts for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) No change

(b) Index Methodology and Calculation. (i) The index underlying a series of Portfolio Depositary Receipts will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer, and (iii) The current index value will be disseminated every 15 seconds over the consolidated tape [Consolidated Tape Association's Network B].

(c) – (h) No change

**.04 - .08** No change

**Rule 1000A**

**Index Fund Shares**

(a) – (b) No change

**... Commentary**

**.01** No change

**.02** The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) No change

(b) Index Methodology and Calculation. (i) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer, and (iii) The current index value will be disseminated every 15 seconds over the consolidated tape [Consolidated Tape Association's Network B].

(c) – (i) No change

**.03 - .09** 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 Exchange 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 1000, Commentary .02 and Amex Rule 1000A, Commentary .03 provide generic listing standards for Portfolio Depositary Receipts ("PDRs") and Index Fund Shares ("IFSs"), respectively, to permit listing and trading of these securities pursuant to Rule 19b-4(e) under the Act.<sup>3</sup> Specifically, Amex Rule 1000, Commentary .03(b), and Amex Rule 1000A, Commentary .02(b) provide that the current index value for the index underlying a series of PDRs (in the case of Amex Rule 1000) and IFSs (in the case of Amex Rule 1000A) will be disseminated every 15 seconds over the Consolidated Tape Association's Network B. The Exchange proposes to change this requirement to provide that the underlying index values will be disseminated every 15 seconds over the consolidated tape. This proposed rule change is substantially similar to the generic listing standard relating to index value dissemination that is in place at the New York Stock Exchange ("NYSE"), which requires that underlying index values for Investment Company Units be disseminated over the "consolidated tape."<sup>4</sup> The Amex believes that the proposed rule

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<sup>3</sup> 17 CFR 240.19b-4(e). Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

<sup>4</sup> The NYSE's Rule 703.16 (B)(3) states in part: "If a series of Investment Company Units is listed for trading on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act, the current value of the underlying index must be disseminated every 15 seconds during trading hours over the consolidated tape." See Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR-NYSE-00-46). "Investment Company Units" is defined in NYSE Rule 703.16 to comprise the same securities that are covered by Amex Rule 1000 (PDRs) and Amex Rule 1000A (IFSs). Specifically, NYSE Rule 703.16 defines an "Investment Company Unit" as "a security that represents an interest in a registered investment company ("Investment Company") that could be organized as a unit investment trust, an open-end management investment company, or a similar entity." Amex Rule 1000 defines a PDR as (among other things) a security "that is based on a unit investment trust" and Amex Rule 1000A defines an IFS as a security "that is issued by an open-end management investment company." Telephone discussion between

change will provide additional flexibility in structuring IFSs or PDRs listed or traded pursuant to unlisted trading privileges under Rule 19b-4(e) by permitting the dissemination of underlying index values over any of the networks associated with the Consolidated Tape Association.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and with Section 6(b)(5) in particular,<sup>6</sup> in that it is designed 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.

### 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 not necessary or appropriate in furtherance of the purposes of the Act.

### 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, as amended, is consistent with the Act.

Comments may be submitted by any of the following methods:

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Marija Willen, Associate General Counsel, Amex, and Natasha Cowen, Attorney, Division of Market Regulation ("Division"), Commission, on October 7, 2004.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-83 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal offices of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-83 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.

The Commission notes that the proposed rule change is similar to another proposed rule change that previously has been subject of a full comment period pursuant to Section 19b of the Act.<sup>9</sup> The Commission does not believe that proposed rule change raises any new regulatory issues.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register.

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<sup>7</sup> In approving this proposal, the Commission has considered its impact of efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b). See Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR-NYSE-00-46).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-Amex-2004-83), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>11</sup> Id.

<sup>12</sup> 17 CFR 200.30-3(a)(12).