

change as described in Items I, II, and III 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 increase equity options transaction fees for non-member broker dealer orders.

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 IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspect 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 increase equity options transaction fees for non-member broker-dealer orders. The Amex currently imposes a transaction charge on options trades executed on the Exchange. The charges vary depending on whether the transaction involves an equity or index option and whether the transaction is executed for a specialist or market maker account, a member firm's proprietary account, a non-member broker-dealer, or a customer account. The Amex also imposes a charge for clearance of options trades and an options floor brokerage charge, which also depends upon the type of account for which the trade is executed. In addition, all three types for charges—transaction, options clearance, and options floor brokerage—are subject to caps on the number of options contracts subject to the charges on a given day.³

Recently, the Amex eliminated all options transaction, clearance, and floor brokerage fees for customer equity options orders.⁴ To offset the

elimination of these fees for customer equity options orders, the Exchange raised the equity options transaction fee from \$0.07 to \$0.19 per contract side for member firm proprietary orders and from \$0.08 to \$0.17 per contract side for specialist and market maker orders. Now, to further offset the elimination of options transaction, clearance and brokerage fees for customer equity option orders, the Exchange proposes to increase the equity options transaction fee for non-member broker-dealer orders from \$0.07 to \$0.19 per contract side. This revised fee will also apply to both LEAPS⁵ and FLEX⁶ options. Equity options clearance and floor brokerage fees for non-member-dealers will remain unchanged at \$0.04 and \$0.03 per contract side, respectively.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4)⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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

The Amex does not believe that the proposed rule change 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 Exchange has neither solicited nor received comments on the proposed rule change.

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 Exchange consents, the Commission will:

(A) By order approve such rule change, or

⁵ LEAPS are Long Term Equity Anticipation Securities or options with durations of up to 36 months. See Amex Rule 903C.

⁶ FLEX options are customized options with individually specified terms such as strike price, expiration date, and exercise style. See Amex Rule 900G.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person 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, N.W., Washington, D.C. 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 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 the File No. SR-Amex-00-18 and should be submitted by May 31, 2000.

For the Commission, by the Division on Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42748; International Series Release No. 1222; File No. SR-Amex-98-49]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3, 4, and 5 to the Proposed Rule Change Relating to Listing Additional Series of World Equity Benchmark SharesTM

May 2, 2000.

I. Introduction

On December 23, 1998, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission

⁹ 17 CFR 200.30-3(a)(12).

³ The current caps are set at 2000 contracts for customer trades and 3000 contracts for member firm proprietary, non-member broker-dealer, specialist, and market maker trades.

⁴ See Securities Exchange Act Release No. 42675, (April 13, 2000). 65 FR 21223 (April 20, 2000).

("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list additional series of World Equity Benchmark Shares ("WEBS"). The Exchange submitted Amendment No. 1 to its proposal on February 24, 1999,³ and Amendment No. 2 on April 9, 1999.⁴ The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on April 29, 1999.⁵ No comments were received on the proposal. The Exchange submitted Amendment No. 3 to its proposed rule change on December 15, 1999,⁶ Amendment No. 4 on January 11, 2000,⁷ and Amendment No. 5 on March 20, 2000.⁸ This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 3, 4, and 5.

II. Description of the Proposal

On March 4, 1996, the Commission approved Amex's listing and trading of

Index Fund Shares under Amex Rules 1000A *et seq.*⁹ Index Fund Shares are shares issued by an open-end management investment company that seek to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index.

The first Index Fund Shares approved for listing on the Exchange were seventeen series of WEBS issued by Foreign Fund, Inc. (now WEBS Index Fund, Inc.) ("Fund"), based on the following Morgan Stanley Capital international ("MSCI") indices: Australia, Austria, Belgium, Canada, France, Germany, Hong Kong, Italy, Japan, Malaysia, Mexico (Free), Netherlands, Singapore (Free), Spain, Sweden, Switzerland and the United Kingdom.¹⁰ These WEBS Index Series have been trading on the Amex since March 18, 1996.

The Exchange is proposing to list six additional WEBS Index Series based on the following MSCI indices: MSCI EMU Index,¹¹ MSCI Brazil (Free) Index, MSCI South Korea Index, MSCI South Africa Index, MSCI Taiwan Index, and MSCI United States Index.

Issuances of WEBS by the Fund are made only in Creation Unit size aggregations or multiples thereof. The size of the applicable Creation Unit size aggregation will be set forth in the Fund's prospectus and varies from one WEBS Index Series to another, but is generally substantial (e.g., value in excess of \$450,000 per Creation Unit). The Fund issues and sells WEBS through SEI Investments Distribution Company ("Distributor"),¹² the distributor and principal underwriter, on a continuous basis at the NAV per share next determined after an order to purchase WEBS in Creation Unit size aggregations is received in proper form.¹³ According to the Amex,

following issuance, WEBS are traded on the Exchange like other equity securities by professionals, as well as retail and institutional investors.

Creation Unit size aggregations of WEBS are generally issued in exchange for the "in kind" deposit of a specified portfolio of securities, together with a cash payment representing, in part, the amount of dividends accrued up to the time of issuance. Amex states that such deposits are made primarily by institutional investors, arbitrageurs and the Exchange specialist. Redemption of WEBS is generally made on an in-kind basis, with a portfolio of securities and cash exchanged for WEBS that have been tendered for redemption. Issuances or redemptions could also occur for cash under specified circumstances (e.g., if it is not possible to effect delivery of securities underlying the specific series in a particular foreign country) and at other times in the discretion of the Fund.

Local restrictions on transfers of securities to and between certain types of foreign investors in Korea, Taiwan and Brazil preclude in-kind creations and redemptions of Creation Units of the Korea, Taiwan and Brazil WEBS Index Series. Accordingly, these series have been structured so that Creation Units may be created and redeemed solely for cash until such time (if ever) as the local restrictions are changed in a way that permits such transactions to occur on an in-kind basis.¹⁴ In addition, each of the three series will charge creation and redemption fees intended to offset the cost of brokerage and market impact associated with buying and selling the baskets of stock held by such Series.¹⁵

According to the Amex, an important advantage of "in-kind" redemptions and creations is that the Fund is not exposed to execution risk or execution costs. Amex stated in its proposal that although the Korea, Taiwan and Brazil WEBS Index Series will not benefit from in-kind redemptions and creations, it is expected that the fact that continuous sales and redemptions are available will result in WEBS Index Series trading close to their NAV. Amex further notes that the relevant markets are among the largest and most liquid emerging markets. As of August 31, 1999, the market capitalizations of the Korean, Taiwanese and Brazilian stock markets were approximately BRL 262.7 billion

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Restated 19b-4 Filing marked Amendment No. 1 ("Amendment No. 1").

⁴ See Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 8, 1999 ("Amendment No. 2").

⁵ See Securities Exchange Act Release No. 41322 (April 22, 1999), 64 FR 23138.

⁶ In Amendment No. 3, the Exchange clarified the Fund's policies relating to the weighting of securities and industries in a WEBS index; the need for cash creations and redemptions in Korea, Taiwan, and Brazil; the surveillance procedures; the calculation of the indicative optimized portfolio value; and provided general information regarding the value of a creation unit and the expected NAV of individual shares. See Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Terri Evans, Special Counsel, Division, Commission, dated December 14, 1999 ("Amendment No. 3").

⁷ In Amendment No. 4, the Exchange withdrew the WEBS Index Series based on the following MSCI Indices: Greece, Indonesia (Free), Portugal, Thailand (Free) and Turkey. See Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Terri Evans, Special Counsel, Division, Commission, dated January 6, 2000 ("Amendment No. 4").

⁸ In Amendment No. 5, AMEX explained and clarified that the computation of the Net Asset Value ("NAV") for the Korea, Taiwan and Brazil WEBS Index Series will occur at times different than was reflected in Amendment No. 3. The computation of the NAV for the Korea and Taiwan WEBS Index Series will occur at 8:30 a.m. New York Time. The NAV computation for the Brazil WEBS Index Series will occur at 5:00 p.m. New York Time. In addition, the Exchange clarified that Funds Distributor, Inc. will be replaced by SEI Investments Distribution Company no later than March 28, 2000. See Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Terri Evans, Special Counsel, Division, Commission, dated March 16, 2000 ("Amendment No. 5").

⁹ See Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

¹⁰ "World Equity Benchmark Shares" and "WEBS" are service marks of Morgan Stanley Group, Inc. "MSCI" and "MSCI Indices" are service marks of Morgan Stanley & Co. Incorporated.

¹¹ See Amendment No. 4, *supra* note 7. The MSCI EMU Index is comprised of stocks of companies from countries participating in the EMU. Currently, eleven countries are participating in the EMU: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain. The MSCI EMU is currently comprised of stocks of companies from ten of these EMU countries (e.g., all of the EMU countries except Luxembourg). MSCI has advised that it may, in accordance with its methodology, change the composition of MSCI EMU in the future, such changes could include adding stock(s) of companies from Luxembourg or from any other country that becomes a participant in EMU.

¹² See Amendment No. 5, *supra* note 8.

¹³ See *infra* Section II.B, Criteria for Initial and Continued Listing.

¹⁴ See Amendment No. 3, *supra* note 6.

¹⁵ *Id.* Information regarding such fees will be included in the prospectus and information circular. Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Terri Evans, Special Counsel, Division, Commission, on May 1, 2000.

or \$137 billion; KRW 280,229.5 billion or \$237.4 billion; and TWD 10,393.1 billion or \$326.4 billion, respectively.

Barclays Global Fund Advisors, the Fund's investment advisor ("Advisor"), is of the view that the Fund should ordinarily be able to buy and sell Creation Unit size baskets of stocks promptly after receipt of an order (ordinarily on the business day after receipt of an order). The Fund currently intends to compute the NAV of each of the Korea and Taiwan WEBS Index Series at 8:30 a.m. New York Time, which is only a few hours after the close of each of the Korea and Taiwan markets. Amex notes, as with any open-end fund, a purchase or redemption order in respect of a WEBS Index Series is priced at the NAV of the series that is next determined after receipt of such an order. For example, if an order to purchase one or more Creation Units of Korea WEBS Index Series is entered with the Fund's Distributor at 4:00 p.m. New York Time on Tuesday, the cash amount to be required to be transferred to the Fund would be based on the NAV of the Korea WEBS Index Series as of 8:30 a.m. New York Time on Wednesday (*i.e.*, the next business day). According to the Amex, the Fund believes that timing the calculation of the NAV as of 8:30 a.m. New York Time will significantly lessen the exposure of the Korea and Taiwan WEBS Index Series and their shareholders to the risk of price movements in the local securities markets, because if the Korea or Taiwan WEBS Index Series receives a purchase or redemption order during the trading day in New York (when orders are accepted), that Series will have an opportunity to purchase or dispose of portfolio securities in the local market prior to the determination of the NAV following the close of the local market. Similarly, to ensure that the NAV of the Brazil WEBS Index Series is priced based on the closing prices in the Brazil markets, the Fund currently intends to compute the NAV of each of the Brazil WEBS Index Series at 5:00 p.m. New York Time.¹⁶

The Fund makes available on a daily basis a list of the names and the required number of shares of each of the securities to be deposited in connection with the issuance of a particular WEBS Index Series in Creation Unit size

aggregations, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends.

A WEBS Index Series may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the WEBS Index Series during the applicable period, net of expenses and liabilities for such period.

The NAV for each WEBS Index Series is calculated by the Fund's administrator, PFPC Inc. ("Administrator"). After calculation, such NAVs are available to the public from the Fund's Distributor via a toll free telephone number, and are also available to National Securities Clearing Corporation ("NSCC") participants through data made available from NSCC.

WEBS are registered in book entry form through The Depository Trust Company. Trading in WEBS on the Exchange is effected until 4:00 p.m. (ET) each business day. The minimum trading increment for WEBS is $\frac{1}{16}$ of \$1.00, pursuant to Amex Rule 127, Commentary .02.

A. MSCI Indices

In this proposal, Amex submitted a description of the methodology used to calculate the MSCI Indices, which was prepared by MSCI. The following description, provided by Amex, supplements the description previously submitted to the Commission in connection with the Exchange's initial proposal to list WEBS.

Each MSCI Index on which a WEBS Index Series is based is calculated by MSCI for each trading day in the applicable foreign exchange markets based on official closing prices of the applicable foreign exchange markets. For each trading day, MSCI publicly disseminates each index value for the previous day's close. MSCI Indices are reported periodically in major financial publications worldwide, and are also available through vendors of financial information.¹⁷

There are two broad categories of changes to the MSCI Indices. The first consists of market-driven changes, including mergers, acquisitions, and bankruptcies. These are announced and implemented as they occur. The second category consists of structural changes to reflect the evolution of a market that may occur due to changes industry composition or regulations, among other

reasons. Structural changes to MSCI Indices may occur only on four dates throughout the year: The first business day of March, June, September and December. The changes are announced at least two weeks in advance.

As noted in the WEBS prospectus for the initial seventeen WEBS Index Series (Registration No. 33-97598), the investment objective of each WEBS Index Series is to seek to provide investment results that correspond generally to the price and yield performance of public securities traded in the aggregate in particular markets, as represented by specific MSCI benchmark indices. Each WEBS Index Series utilizes a "passive" or indexing investment approach, which attempts to approximate the investment performance of its benchmark index through quantitative analytical procedures. Each Index Series has the policy to remain as fully invested as practicable in a pool of securities the performance of which will approximate the performance of the benchmark MSCI Index taken in its entirety. MSCI generally seeks to have 60% of the capitalization of a country's stock market reflected in the MSCI Index for such country, although in some cases, other considerations may result in an MSCI Index reflecting less or more than this percentage.

The Fund maintains several policies relating to the weighting of securities in a WEBS Index Series, which serve to prevent excessive weighting by individual securities. For example, in order for the Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the Internal Revenue Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (1) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (2) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or of two or more issuers that are controlled by the Fund (within the meaning of section 851(b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses or related trades or businesses (other than U.S. government

¹⁶ See Amendment No. 5, *supra* note 8. The timing of the calculation of the NAV for Brazil, South Korea, and Taiwan and the potential market impact of the Fund buying or selling securities in those markets will be disclosed in the prospectus and information circular. Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Terri Evans, Special Counsel, Division, Commission, on May 1, 2000.

¹⁷ See also, *infra* Section II.C, Dissemination of Indicative Optimized Portfolio Value.

securities or the securities of other regulated investment companies).¹⁸

The Fund also maintains an industry concentration policy of all WEBS Index Series. With respect to the two most heavily weighted industries or groups of industries in its benchmark MSCI Index, a WEBS Index Series will invest in securities (consistent with its investment objective and other investment policies) so that the weighting of each such industry or group of industries in the WEBS Index Series does not diverge by more than 10% from the respective weighting of such industry or group of industries in its benchmark MSCI Index. An exception to this policy is that if investment in the stock of a single issuer would account for more than 25% of the WEBS Index Series, the WEBS Index Series will invest less than 25% of its net assets in such stock and will reallocate the excess to stock(s) in the same industry or group of industries, and/or stock(s) in another industry or group of industries, in its benchmark MSCI Index. Each WEBS Index Series will evaluate these industry weightings at least weekly, and at the time of evaluation will adjust its portfolio composition to the extent necessary to maintain compliance with the above policy. A WEBS Index series may not concentrate its investments except as discussed above. This policy is a fundamental investment policy and may not be changed without the approval of a majority of a WEBS Index Series shareholders.¹⁹

Through the application of portfolio sampling, each of the WEBS Index Series is expected to contain less than all of the component stocks in its respective benchmark MSCI Index. The following tables set forth the number of stocks contained in the Benchmark MSCI Index, and the initial number of stocks expected to be included in each corresponding WEBS Index Series (data as of December 3, 1999).

County/Region	Number of stocks in benchmark MSCI index	Number of stocks in WEBS index series
Brazil	47	41
South Korea	92	92
South Africa	46	39
Taiwan	76	69
United States	324	155
EMU	317	125

Each WEBS Index Series has a policy to remain as fully invested as practicable in a pool of equity securities.

Each WEBS Index Series will normally invest at least 95% of its total assets in stocks that are represented in its benchmark MSCI Index except, in limited circumstances, to assist in meeting shareholder redemptions of Creation Units. In order to comply with the Internal Revenue Code, and manage corporate actions and index changes in the smaller markets, each of the Brazil (Free), South Korea, South Africa, and Taiwan WEBS Index Series will at all times invest at least 80% of its total assets in such stocks and at least half of the remaining 20% of its total assets in such stocks or in stocks included in the relevant market but not in its benchmark MSCI Index.²⁰

The Exchange believes that these requirements and policies prevent any WEBS Index Series from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in a particular WEBS Index Series could become a surrogate for trading in unregistered securities.²¹

As stated above, a WEBS Index Series does not hold all of the issues that comprise the subject MSCI Index, but attempts to hold a representative sample of the securities in the Index utilizing a technique known as "portfolio sampling." As noted in the WEBS prospectus, it is expected that, over time, the "expected tracking error" of a WEBS Index Series relative to the performance of the relevant MSCI Index will be less than 5%. An expected tracking error of 5% means that there is a 68% probability that the net return on the asset value for the Index Series (including dividends and without reflecting expenses) will be between 95% and 105% of the return of the subject MSCI Index after one year without rebalancing the portfolio composition. While no particular level of tracking error is assured, the Fund's Advisor, monitors the tracking error of each Index Series on an ongoing basis and seeks to minimize tracking error to the maximum extent possible. Semi-annual and annual reports of the Fund disclose tracking error over the previous six-month periods, and in the event that tracking error exceeds 5%, the Fund Board of Directors will consider what action might be appropriate.

B. Criteria for Initial and Continued Listing

WEBS are subject to the criteria for initial and continued listing of Index Fund Shares in Amex Rule 1002A. For each of the six WEBS Index Series, it is

anticipated that a minimum of two Creation Units will be required to be outstanding at the start of trading, with the exception of the United States WEBS Index Series and the EMU Index Series, for which one Creation Unit will be required to be outstanding at commencement of trading. It is anticipated that a Creation Unit will consist of 50,000 WEBS except for the United States WEBS Index Series and EMU WEBS Index Series, for which the anticipated minimums are 500,000 and 200,000 WEBS, respectively. The value of a Creation Unit at the start of trading would in all cases be in excess of \$500,000. It is expected that the NAV of an individual share will initially range from \$10 to \$25.²² The Fund will establish a minimum number of WEBS shares per Creation Unit for each Index Series prior to commencement of trading, which minimum number will be disclosed in the Fund's prospectus. According to the Exchange, the proposed minimum number of WEBS outstanding at the start of trading for each WEBS Index Series is sufficient to provide market liquidity and to further the Fund's objective to seek to provide investment results that correspond generally to the price and yield performance of a specified MSCI Index.

C. Dissemination of Indicative Optimized Portfolio Value

As noted above, MSCI disseminates values for each MSCI Index once each trading day, based on closing prices in the relevant exchange market. In addition, the Fund makes available on a daily basis the names and required number of shares of each of the securities to be deposited in connection with the issuance of WEBS in Creation Unit size aggregations for each WEBS Index Series, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends applicable to such WEBS Index Series. This information is made available by the Fund's Advisor to any NSCC participant requesting such information. In addition, other investors can request such information directly from the Fund's Distributor. The NAV for each WEBS Index Series is calculated daily by the Fund's Administrator.

In order to provide updated information relating to each WEBS

¹⁸ See Amendment No. 3, *supra* note 6.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Terri Evans, Special Counsel, Division, Commission, on January 31, 2000.

Index Series for use by investors, professionals and persons wishing to create or redeem WEBS,²³ the Exchange currently disseminates through the facilities of the Consolidated Tape Association ("CTA") an updated "indicative optimized portfolio value" ("Value") for each of the seventeen WEBS Index Series currently traded as calculated by Bloomberg, L.P. The Exchange will also disseminate a Value for the proposed six new WEBS Index Series over CTA facilities (Network B) as calculated by a securities information provider ("Value calculator"). The Value for the proposed WEBS Index Series will be calculated by Bloomberg, L.P. in the same manner utilized by Bloomberg to calculate the Value for the seventeen WEBS index series that are currently trading.²⁴ The Value is disseminated on a per WEBS basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. (ET). The equity securities values included in the Value are the values of the designated portfolio of equity securities ("Deposit Securities") constituting an optimized representation of the benchmark MSCI foreign index for each WEBS Index Series, which is the same as the portfolio that to be utilized generally in connection with creations and redemptions of WEBS in Creation Unit Size aggregations on that day. The equity securities included in the Value reflect the same market capitalization weighting as the Deposit Securities in the optimized for the particular WEBS Index Series. In addition to the value of the Deposit Securities for each WEBS Index Series, the Value includes a cash component consisting of estimated accrued dividend and other income, less expenses. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home country currency.

The Value does not reflect the value of all securities included in the applicable benchmark MSCI index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund for each WEBS Index Series at a particular point in time. Therefore, Amex has stated that the Value of a per WEBS basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV of the Fund, which is calculated only once a day. While the Value disseminated by the Amex at 9:30 a.m. is generally very

close to the most recently calculated Fund NAV on a per WEBS basis,²⁵ Amex notes that it is possible that the value of the portfolio of securities held by the Fund for a particular WEBS Index Series may diverge from the Deposit Securities Values during any trading day. In such case, the Value will not precisely reflect the value of the Fund portfolio. Following calculation of the NAV by the Fund's Administrator as of 4:00 p.m. (ET),²⁶ the Value on a per WEBS basis can be expected to be the same as the NAV of the Fund on a per WEBS basis.

However, during the trading day, Amex believes the Value can be expected to closely approximate the value per WEBS share of the portfolio of securities for each WEBS Index Series except under unusual circumstances (e.g., in the case of extensive rebalancing of multiple securities in a WEBS Index Series at the same time by the Fund Advisor). According to the Amex, the circumstances that might cause the Value to be based on calculations different from the valuation per WEBS share of the actual portfolio of an Index Series would not be different than circumstances causing any index fund or trust to diverge from the underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding each WEBS Index Series that is not otherwise available to the public and is useful to professionals and investors in connection with WEBS trading on the Exchange or the creation or redemption of WEBS.

For South Korea and Taiwan, there is no overlap in trading hours between the foreign markets and the Amex. Therefore, for each Index Series, the Value calculator will utilize closing prices (in applicable foreign currency prices) in the principal foreign market for securities in the WEBS portfolio, and convert the price to U.S. dollars. This Value will be updated every 15 seconds during Amex trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The Value will also include the applicable estimated cash component for each WEBS Index Series.

²⁵ A slight difference between the Value disseminated at 9:30 a.m. and the most recently calculated Fund NAV can be expected because the Value will include an estimated cash amount consisting principally of any dividend accruals for the Deposit Securities going "ex-dividend" on that day.

²⁶ The NAV for Korea and Taiwan will be calculated at 8:30 a.m. New York Time and 5 p.m. New York Time of Brazil. See Amendment No. 5, *supra* note 8.

For Brazil, South Africa, and countries included in the MSCI EMU Index, which have trading hours overlapping regular Amex trading hours, the Value calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but the Amex is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign market close. The Value will also include the applicable estimated cash component for each Index Series.

For United States WEBS Index Series, the Value calculator will update the Value at least every 15 seconds, and such Value will included the applicable estimated cash component.

D. Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of WEBS Index Series is \$5,000 per WEBS Index Series. In addition, the annual listing fee applicable to WEBS Index Series under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding WEBS in all series, including the seventeen existing series and the additional series proposed herein.

E. Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i-v). The Exchange has designated Index Fund Shares, including WEBS, as eligible for this treatment.²⁷

F. Amex Rule 190

Amex Rule 190, Commentary .04, applies to Index Fund Shares listed on the Exchange, including WEBS. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or

²³ WEBS cannot be redeemed individually but must be redeemed in Creation Unit size aggregations applicable to the specific WEBS Index Series.

²⁴ See Amendment No. 3, *supra* note 6.

²⁷ See Securities Exchange Act Release No. 29063 (April 10, 1991) 56 FR 15652 (April 17, 1991) note 9 (regarding Exchange designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c)).

converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

G. Prospectus Delivery, Purchases, Redemptions, and Suitability

The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, that investors purchasing WEBS are required to receive a Fund prospectus prior to or concurrently with the confirmation of a transaction therein. The prospectus will disclose, among other matters, that the NAV is determined for Brazil, South Korea, and Taiwan at different times than other MSCI WEBS Index Series. Further the prospectus will disclose the possible market impact of the Fund buying or selling securities in Brazil, South Korea, and Taiwan prior to the calculation of the NAV,²⁸ as well as the creation and redemption fees for those WEBS.²⁹

In the Amex's Information Circular, members and member organizations will be informed that procedures for purchases and redemptions of WEBS in Creation Unit Size are described in the Fund prospectus and statement of additional information, and that WEBS are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof. Further, the Information Circular will discuss certain factors that make the Brazil, South Korea, and Taiwan WEBS Series different from the other WEBS Index Series. This includes that the NAV for Brazil, South Korea, and Taiwan is determined at a different time than the other WEBS Index Series; there is a fee for creations and redemptions for WEBS based on Brazil, South Korea, and Taiwan; and there is a potential market impact of the Fund buying and selling in those three markets prior to the calculation of the NAV.³⁰ The Information Circular will also inform members and member organizations of the characteristics of the specific series and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

²⁸ Telephone conversation between Georgia Bullitt, Vice President, Morgan Stanley Dean Witter, and Belinda Blaine, Associate Director, Division, Commission, on March 28, 2000.

²⁹ Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Terri Evans, Special Counsel, Division, Commission, on May 1, 2000.

³⁰ *Id.*

H. Trading Halts and Surveillance

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including WEBS. These factors would include, but are not limited to: (1) The extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.³¹ In addition, trading in WEBS will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Exchange surveillance procedures applicable to trading in the proposed WEBS Index Series are the same as those applicable to WEBS currently trading on the Exchange.³²

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.³³ The Commission believes that the Exchange's proposal to list and trade WEBS will provide investors with a convenient way of participating in the foreign securities markets. The Commission believes that the Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell securities at negotiated prices throughout the business day that replicate the performance of several portfolios of stocks.³⁴ Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.³⁵

³¹ See Amex Rule 918C.

³² See Amendment No. 3, *supra* note 6.

³³ 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁴ The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in WEBS can redeem in Creation Unit size aggregations only.

³⁵ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest.

The estimated cost of an individual WEBS, approximately \$10 to \$25, should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of foreign stocks. Moreover, the Commission believes that WEBS will provide investors with several advantages over standard open-end investment companies specializing in such stocks. In particular, investors will be able to trade WEBS continuously throughout the business day in secondary market transactions at negotiated prices.³⁶ Accordingly, WEBS should allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies not currently available to retain investors; and (3) reduce transaction costs for trading a portfolio of securities.

Although the value of WEBS will be based on the value of the securities and cash held in the Fund, WEBS are not leveraged instruments.³⁷ In essence, WEBS are equity securities that represent an interest in a portfolio of stocks designed to reflect the applicable MSCI Index. Accordingly, it is appropriate to regulate WEBS in a manner similar to other equity securities. Nevertheless, the Commission believes that the unique nature of WEBS raise certain product design, disclosure, trading, and other issues that must be addressed.

A. WEBS Generally

The Commission believes that the proposed WEBS are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the index it is based upon, and, in turn, the performance of

Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

³⁶ Because of potential arbitrage opportunities, the Commission believes that WEBS will not trade at a material discount or premium in relation to their NAV. The mere potential for arbitrage should keep the market price of WEBS comparable to their NAVs; therefore, arbitrage activity likely will not be significant. In addition, the Fund will generally redeem in-kind, thereby enabling the Fund to invest most of its assets in securities comprising the MSCI Indices.

³⁷ In contrast, proposals to list exchange-traded derivative products that contain a built-in leverage feature or component raise additional regulatory issues, including heightened concerns regarding manipulation, market impact, and customer suitability. See e.g., Securities Exchange Act Release No. 36165 (August 29, 1995), 60 FR 46653 (relating to the establishment of uniform listing and trading guidelines for stock index, currency, and currency index warrants).

the specified foreign equities market. WEBS will be deemed equity securities subject to Amex rule governing the trading of equity securities. As such, the Commission finds that adequate rules and procedures exist to govern the trading of WEBS. In this regard, the Commission notes that MSCI imposes specified criteria in the selection of Index components. MSCI generally seeks to have 60% of a market's capitalization reflected in that market's corresponding index. In selecting components for a given Index, MSCI excludes issues that are either small or higher illiquid. Index constituents are selected on the basis of seeking to maximize float and liquidity, reflecting a market's size and industry profiles, and minimizing cross-ownership.

The aim of this component selection process is to make index components highly representative of the over-all economic sector make-up and market capitalization of a given market. At the same time, securities that are illiquid or have a restricted float are avoided. The Commission believes that these criteria should serve to ensure that the underlying securities of these indices are well capitalized and actively traded. The Commission also notes that a WEBS series normally will invest at least 95% of its total assets in such stocks, represented by the benchmark index. Three of the new WEBS, however, are normally only required to invest at least 80% of their total assets in stocks represented in its benchmark MSCI Index, with at least half of the remaining 20% in such stocks or in stocks included in the relevant market but not its benchmark MSCI Index. The Commission believes nevertheless that these procedures provide sufficient investment in the underlying Index. As stated above, each WEBS Index Series has a policy to concentrate its investments in an industry or industries if, and to the extent that, its corresponding MSCI Index concentrates in such industry or industries, except where the stock of a single issuer would account for more than 25% of the WEBS Index Series. While the Commission believes these requirements should help to reduce concerns that the WEBS could become a surrogate for trading in a single or a few unregistered stocks, in the event that a series of WEBS were to become such a surrogate, the Commission would expect the Amex to take action immediately to delist the securities to ensure compliance with the Act.

A WEBS series will not hold all of the securities that comprise the subject MSCI Index, but will attempt to hold a representative selection of such

securities by means of "portfolio sampling."³⁸ Moreover, no WEBS series currently is expected to have fewer than seventeen of the component securities of the corresponding MSCI Index.³⁹ The Commission believes that taken together, the foregoing are adequate to characterize WEBS as bona fide index funds. The Commission would be concerned, however, if the capitalization percentages or minimum number of WEBS component securities were to fall to a level such that the WEBS portfolio no longer would substantially reflect their corresponding WEBS indices.⁴⁰

B. Disclosure

The Commission believes that the Exchange's proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading WEBS.⁴¹ As noted above, all WEBS investors; including secondary market purchasers, will receive a prospectus regarding the product. Because WEBS will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply both to initial investors, and to all investors purchasing such securities in secondary market transaction on the Amex. The prospectus will address the special characteristics of a particular WEBS Index Series, including a statement regarding their redeemability and method of creation. As noted above, certain features make three of the WEBS Series operate different from the other WEBS Index Series. Accordingly, the prospectus will disclose that the NAV for Brazil, South Korea, and Taiwan is determined at different times than other MSCI WEBS Index Series. Further, the prospectus will disclose the possible market impact of the Fund buying or selling securities in Brazil, South Korea,

and Taiwan and the creation and redemption fees, intended to offset the brokerage fees and market impact associate with buying and selling securities held by the Fund, that will be charged for those three indices.

The Commission also notes that upon the initial listing of any class of WEBS, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note Exchange members' responsibilities under Exchange Rule 411 ("know your customer rule") regarding transactions in WEBS. Exchange Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.⁴² The circular also will address members' responsibility to deliver a prospectus to all investors as well as highlight the characteristics of purchases in WEBS, including that they only are redeemable in Creation Unit size aggregations. In addition, the Information Circular will disclose that the NAV for Brazil, South Korea, and Taiwan is determined at different times than other MSCI WEBS Index Series. Further, the Information Circular will disclose the possible market impact of the Fund buying or selling securities in Brazil, South Korea, and Taiwan and the creation and redemption fees that will be charged for those three indices.

C. Dissemination of WEBS Portfolio Information

The Commission believes that the Values the Exchange proposes to have disseminated for the six WEBS series will provide investors with timely and useful information concerning the value of WEBS or a per WEBS basis. The Exchange represents that the information will be disseminated through the facilities of the CTA and will reflect currently available information concerning the value of the assets comprising the Deposit Securities. This information will be disseminated every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m., New York Time. In addition, since it is expected that the Value will closely track the applicable WEBS series, the Commission believes that the Values will provide investors with adequate information to determine the intra-day value of a given WEBS series. The Commission expects that the Amex will monitor the disseminated Value, and if the Amex were to determine that the Value does not closely track applicable WEBS series, it

³⁸ See *supra* Country/Region Table in Section II.A, MSCI Indices.

³⁹ Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Exchange, and Terri Evans, Special Counsel, Division, Commission, on February 17, 2000.

⁴⁰ Among other issues that may arise under the federal securities laws, such an occurrence could raise the issue of whether WEBS trading would remain consistent with Amex listing standards for Index Fund Shares, as well as the surrogate trading issue noted above.

⁴¹ The Exchange states that it may, in the future, seek to obtain an exemption from the prospectus delivery requirement, either with respect to WEBS or other Index Fund Shares listed on the Exchange. In the event it obtains such an exemption, the Exchange will discuss with Commission staff the appropriate level of the disclosure that should be required with respect to the Index Fund Shares being listed, and will file any necessary rule change to provide for such disclosure.

⁴² Amex Rule 411.

would arrange to disseminate an adequate alternative value.

D. Specialists

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuers as appropriate to facilitate the maintenance of a fair and orderly market in that security. As noted in the original WEBS order, which also permitted specialist purchases and redemptions, the Commission believes that such market activities should enhance liquidity in such securities and facilitate a specialist's market-making responsibilities. In addition, because the specialist only will be able to purchase and redeem Units on the same terms and conditions as any other investor at NAV in accordance with the terms of the Fund prospectus and statement of additional information, the Commission believes that concerns regarding potential abuse are minimized. The Exchange's existing surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Exchange's rule proposal does not address any other requirements or obligations under the federal securities laws that may be applicable.

E. Surveillance

The Commission notes that surveillance of the new WEBS product is the same as the original WEBS products. The Commission believes that the surveillance procedures developed by the Amex for WEBS are adequate to address concerns associated with the listing and trading of such securities, including any concerns associated with purchasing and redeeming Creation Units.

When a broker dealer, such as Morgan Stanley Dean Witter ("MSDW"), or a broker dealer's affiliate, such as MSCI, is involved in the development and maintenance of a stock index upon which a product such as WEBS is based, the broker-dealer and its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that MSCI has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the WEBS Index Series. The Commission believes that the information barrier procedures put in place by MSCI address the

unauthorized transfer and misuse of material, non-public information.

F. Stop and Stop Limit Orders

The Commission believes that the Amex's proposal to designate the additional WEBS Index Series as eligible for election by quotation with the prior approval of a Floor Official is consistent with the Act. Amex Rule 154, Commentary.04(c) generally provides that stop and stop limit orders to buy or sell a security or index of securities may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Rule 154, Commentary.04(c)(1-v). Rule 154, Commentary.04(c)(v) states that election by quotation only is available for such derivative securities as are designated by the Exchange as eligible for such treatment. The Exchange's proposal would so designate WEBS.

As previously noted by the Commission, allowing stop and stop limit orders in WEBS to be elected by quotation, a rule typically used in the options context, is appropriate because, as a result of their derivative nature, WEBS are in effect equity securities that have a pricing and trading relationship to the underlying securities similar to the relationship between options and their underlying securities.⁴³

G. Scope of the Commission's Order

The Commission is approving in general the Exchange's proposed listing standards for the six new WEBS described herein. Other similarly structured products, including WEBS based on MSCI Indices not described herein, would require review by the Commission pursuant to Section 19(b) of the Act⁴⁴ prior to being traded on the Exchange.

H. Accelerated Approval of Amendment Nos. 3, 4 and 5

The Commission finds good cause for approving Amendment Nos. 3, 4 and 5 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 merely clarifies certain aspects of the proposed rule change, such as the Fund's policy with respect to the weighting of securities in a WEBS Index Series; cash creations and redemptions for Korea, Taiwan and Brazil WEBS Index Series; surveillance procedures; and the value of individual shares. Amendment No. 4 merely withdraws WEBS Index Series based on five

⁴³ See generally Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (approving Amex proposal relating to stop and stop limit orders in certain equity securities).

⁴⁴ 15 U.S.C. 78s(b)

different countries. And finally, Amendment No. 5 clarifies the timing of when the NAV for Brazil South Korea, and Taiwan is calculated. The Commission notes that all of the countries upon which the Exchange is proposing to trade new WEBS were disclosed during comment period and no comments were received.

The Commission believes that Amendment No. 3 strengthens the Exchange's proposal, because it provides greater information to investors regarding the weighting of securities in a WEBS Index Series. In addition, Amendment No. 3 assures investors that the Exchange's surveillance procedures for its current WEBS Index Series will apply to the six new WEBS Index Series. Further, the use of cash in lieu of "in-kind" creations and redemptions is consistent with Amex Rule 1000A. The Commission also believes that it is appropriate for the Exchange to withdraw five of the WEBS Index Series in Amendment No. 4. The Commission notes that Amendment No. 5 merely changes the timing of the NAV calculation for the Korea, Taiwan, and Brazil WEBS Index Series. As noted above, the Fund believes that the timing of the calculation of the NAV until the next day will significantly lessen exposure of the Korea and Taiwan WEBS Index Series and their shareholders to the risk of price movements in the local market. In addition, the timing of the NAV calculation of the Brazil WEBS Index Series should help to ensure that it is based on the Brazilian markets' closing prices. While there may be a market impact as a result of this change, this is disclosed in the prospectus given to all investors trading in WEBS and the Information Circular. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,⁴⁵ to improve Amendment Nos. 3, 4, and 5 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3, 4, and 5, including whether Amendment Nos. 3, 4, and 5 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed

⁴⁵ 15 U.S.C. 78f(b)(5) and 78s(b).

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 in Washington, D.C. 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-98-49 and should be submitted by May 31, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁶ that the proposed rule change (SR-Amex-98-49), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-11611 Filed 5-9-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42751; File No. SR-NASD-99-76]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Amendments to the Code of Procedure and Other Provisions

May 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on December 28, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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 NASD Regulation. On April 17, 2000, NASD Regulation amended its proposal.³ 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

NASD Regulation is proposing amendments to the NASD Code of Procedure and other provisions of the NASD Rules, that include: (1) Clarifying the Department of Market Regulation's role in disciplinary proceedings; (2) requiring members to designate, as the custodian of the record of the Form BDW, persons who are associated with the firm at the time the forms are filed; (3) clarifying the authority of hearing officers and making some limited changes to that authority; (4) clarifying the scope of the Association's document production requirements; (5) providing for hearing panel review of staff determinations to impose limitations on member firm's business activities because of financial and/or operational difficulties; (6) providing for changes to the process for appeals of disciplinary actions, statutory disqualification proceedings, and certain other accelerated proceedings; (7) providing for a streamlined process to impose bars or expulsions for the failure to provide information to the Association; and (8) providing for a process by which the Association can more expeditiously cancel memberships of firms that fail to meet the Association's eligibility and qualification standards. The text of the proposed rule change is available at the Office of the Secretary, the NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

Division of Market Regulation, Commission, dated April 17, 2000 ("Amendment No. 1"). Amendment No. 1 made substantive changes to the proposed rule language, including the deletion of certain provisions in the 9300 Series, Review of Disciplinary Proceeding by National Adjudicatory Council and NASD Board; Application for Commission Review.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD Code of Procedure (the "Code"), implemented on August 7, 1997, provides detailed requirements governing NASD Regulation's process for:

(1) Authorizing, litigating, and issuing disciplinary decisions;

(2) Providing for appeals of those decisions;

(3) Taking certain actions through categories of accelerated proceedings; and

(4) Determining requests for relief from statutory disqualifications.

Since August 7, 1997, the Association staff has had significant experience under the Code, and has noted certain areas that need to be clarified or changed. The Association is proposing a series of clarifying and substantive amendments to the Code and other provisions as described below.

Custodian of the Record. Firms often list persons not associated with the firms as custodians of records on the SEC Form BDW, and then the Association may have difficulty obtaining records when firms no longer conduct business. The Association is proposing to establish NASD Rule 3121 that would require members to designate, as the custodians of the record on the Form BDW, persons who are associated with the firms at the time the forms are filed.

Eligibility of Panel Members. In certain circumstances, the National Adjudicatory Council (NAC) or the Review Subcommittee of the NAC (Review Subcommittee) may appoint panels to conduct hearings. Under NASD Rule 1015, only one panel member can be from the NAC, unless a panel member is also a former NASD Regulation Director or NASD Governor. The Association believes that this unnecessarily limits the pool of potential panelists. The Association believes that members of the NAC possess specialized expertise that may not be fully utilized under the current rule language. Accordingly, the Association is proposing to eliminate this restriction.

Market Regulation's Role in Disciplinary Process. Both the Department of Market Regulation and the Department of Enforcement represent NASD Regulation in formal disciplinary matters under the Code. However, the disciplinary rules only refer to the Department of Enforcement as the representative of the Association

⁴⁶ 15 U.S.C. 78s(b)(2).

⁴⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director,