

Rules 3200T, 3300T, 3400T, 3500T and 3600T).

The PCAOB adopted the proposed technical amendments to its interim standards rules on December 17, 2003, and submitted them for Commission approval on December 23, 2003. Pursuant to the requirements of section 107(b) of the Act and Section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), the Commission published the proposed amendments for public comment on March 18, 2004.

III. Discussion

The Commission received no public comments relating to the PCAOB's proposed technical amendments to its interim standards rules. Section 103 of the Act directs the PCAOB to establish auditing and related professional practice standards. Section 103 also authorized the PCAOB to adopt initial or transitional standards, subject to the approval of the Commission. Pursuant to this authority, the Board adopted five interim standards rules as its initial, transitional auditing and related professional practice standards. These interim standards rules facilitate the Board's exercise of its standards-setting authority under the Act and assist in fulfilling the Board's standards-setting obligations under the Act. The proposed technical amendments are intended to revise these interim standards rules to clarify that a registered public accounting firm, and its associated persons, should comply with the Board's interim standards rules "to the extent not superseded or amended by the Board."

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed technical amendments to the Board's interim standards rules are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to section 107 of the Act and section 19(b)(2) of the Exchange Act, that the proposed rule amendments (File No. PCAOB-2003-11) be and hereby are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49621; File No. SR-Amex-2004-19]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Contingent Principal Protection Notes Linked to the Performance of the Dow Jones Global Titans Index

April 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 15, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 23, 2004, Amex filed an amendment to the proposal.³ The proposal was amended again on April 23, 2004.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to list and trade principal protected notes, linked to the performance of the Dow Jones Global Titans 50 Index ("Global Titans Index").

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, as amended. 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

Under section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.⁵ The Amex proposes to list for trading under section 107A of the Company Guide notes linked to the performance of the Global Titans Index that provide for principal protection ("Principal Protected Notes" or "Notes").⁶ Citigroup will issue the Notes under the name "Principal Protected Equity Linked Notes." The Global Titans Index is determined, calculated and maintained solely by Dow Jones.⁷ The Notes will provide for a participation in the positive performance of the Global Titans Index during their term while also reducing the risk exposure to the principal investment amount.

The Principal Protected Notes will conform to the initial listing guidelines under section 107A⁸ and continued

⁵ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

⁶ Citigroup Global Markets Holdings, Inc. ("Citigroup") and Dow Jones & Co. ("Dow Jones") have entered into a non-exclusive license agreement providing for the use of the Global Titans Index by Citigroup and certain affiliates and subsidiaries in connection with certain securities including these Notes. Dow Jones is not responsible and will not participate in the issuance and creation of the Notes.

⁷ The Global Titans Index is a price-weighted index that consists of fifty (50) common stocks. The Index seeks to provide an effective representation of the world's largest global companies. The companies included in the Index are selected for their market capitalization, assets, book value, sales/revenue and net profits. On an annual basis, Dow Jones selects the world's largest stocks by market capitalization to create the Global Titans universe of potential companies. After determining this list, Dow Jones then uses a model, described below, to create the Index based on the factors noted above. The Index was launched on August 11, 1999 with a value of 250.96.

⁸ The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) market value of at least \$4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer has assets in excess of \$100 million, stockholder's equity of at least \$10 million, and pre-tax income of at least \$750,000 in the last fiscal year or in two of the three

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240. 19b-4.

³ See letter from Eric Van Allen, Assistant General Counsel, Amex, to Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated April 23, 2004 ("Amendment No. 1"). In Amendment No. 1, Amex filed a 19b-4 that replaced and superseded the original filing in its entirety.

⁴ See letter from Eric Van Allen, Assistant General Counsel, Amex, to Florence E. Harmon, Senior Special Counsel, Division, Commission, dated April 23, 2004 ("Amendment No. 2"). In Amendment No. 2, Amex added a discussion regarding the methodology used by Dow Jones for selecting stocks for the Dow Jones Global Titans Index.

listing guidelines under sections 1001–1003⁹ of the Company Guide. The Notes are senior non-convertible debt securities of Citigroup. The Notes will have a term of no more than ten (10) years. Citigroup will issue the Notes in denominations of whole units (a “Unit”), with each Unit representing a single Note. The original public offering price will be \$10 per Unit.

The Notes will bear interest at a rate of up to one percent per annum, which will be paid in cash semi-annually. At maturity, a Holder will receive, for each \$10 principal amount of Notes held, a payment equal to the sum of \$10 and an interest distribution amount. The interest distribution amount will be based on the monthly returns of the Global Titans Index, with each such monthly return subject to a periodic appreciation cap. Specifically, the interest distribution amount will be calculated based on the monthly return of the Dow Jones Global Titans 50 Index during the term of the Notes and will not be less than zero. If the index return (defined below) is less than or equal to an interest received percentage,¹⁰ the interest distribution amount will equal zero. If the index return is greater than the interest received percentage, the interest distribution amount will equal the product of:

$$\$10 * (\text{Index Return} - \text{Index Received Percentage})$$

The index return will equal the compounded value of the periodic capped return for each reset period,¹¹ computed in the following manner:

prior fiscal years. In the case of an issuer that is unable to satisfy the earning criteria stated in section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (2) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

⁹ The Exchange's continued listing guidelines are set forth in sections 1001 through 1003 of part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than \$400,000.

¹⁰ The interest received percentage will equal the sum of the interest payable on the Notes over their term, expressed as a percentage of the principal amount of the Notes.

¹¹ The reset period will be the period between any two consecutive reset dates. Reset dates will occur each month on a predetermined day.

[Product of (1.00 + the periodic capped return) for each reset period] – 1.00

The periodic capped return for any reset period (including the reset period ending at maturity) will equal the following fraction:

$$\frac{\text{Ending Value} - \text{Starting Value}}{\text{Starting Value}}$$

provided that the periodic capped return for any reset period will not in any circumstances be greater than a predetermined percentage.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the Global Titans Index. The Notes are designed for investors who want an interest payment that participates or gains exposure to the world's largest corporations while limiting their investment risk and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of the streetTRACKS Dow Jones Global Titans Index Fund at the Exchange.¹² In addition, options are listed and traded on the Global Titans Index Fund.

The Global Titans Index is composed of 50 common stocks, which are chosen by Dow Jones. The stock must, in their opinion of Dow Jones, meet all four of the following criteria to qualify as a candidate for the Index: (1) It must be a well established company with a solid financial situation and a broad client base; (2) it must be well known to global investors for either its long history of success or its widely used products or services; (3) it must be a market leader in its industry with either a dominant position or a competitive advantage; and (4) it must be among the largest of blue-chip companies in the global arena. In constructing the Global Titans Index, a multi-factor methodology is adopted.¹³ First, the 3,000 stocks of the Dow Jones Global Indexes are used as the Initial Pool with a view towards ensuring that all candidates are investable, liquid and representative of the global markets. Market capitalization is then used as the first screen to create the Final Pool by selecting the top 100 companies. Dow Jones' rationale for this step is that

¹² See Securities Exchange Act Release No. 43338 (September 25, 2000), 65 FR 59235 (October 4, 2000) (approving the listing and trading of the streetTRACKS Dow Jones Global Titans Index Fund).

¹³ Information relating to the Global Titans Index methodology is based on materials prepared by Dow Jones.

market value is a universal measurement across industries and also that its use is most appropriate for an index built for investment purposes. Every company in the final pool of 100 must derive some revenue from outside its home country. This screen is instituted to ensure that all stocks in the Index are truly global companies. The next step in Index construction is to combine the Final Pool components' market capitalization rankings with their rankings according to four other indicators of size and leadership. These four indicators, two from the balance sheet and two from the income statement, are assets, book value, sales/revenue, and net profit. The combined rankings of these four fundamental factors determine the fundamental rank of each company. The fundamental rank and the market capitalization rank are used equally as the basis for selecting the Index components.

The Index methodology described in the preceding paragraph is subject to an annual review. A three-month window—March through June—is used for stock evaluation. The steps described above are repeated to build the Final Pool and to calculate the final rankings with respect to the four fundamental measures and weighted average market value. Any non-components that fall into the top 25 of the new final rankings are added to the Index, automatically replacing the lowest ranked components. A 20% buffer zone is applied, meaning that any component stocks ranked higher than 20% above the Index's target number of stocks are retained, while those ranked lower than 20% above the target number are replaced by the top ranked non-component stocks.

For purposes of calculation of the Index value, securities for which the primary market is outside of the U.S. are valued based on the last sale price on the primary market. During periods when the primary market is closed, these securities are valued based on the last sale price of the corresponding American Depositary Receipts (“ADR”), if any.

The Fund will invest in foreign securities, including non-U.S. dollar-denominated securities traded outside of the United States and dollar-denominated securities of foreign issuers traded in the United States. Foreign securities also include investments such as ADRs which are U.S. dollar-denominated receipts representing shares of foreign-based corporations. ADRs are issued by U.S. banks or trust companies, and entitle the holder to all dividends and capital

gains that are paid out on the underlying foreign shares.

As of March 1, 2004, the Index included 29 U.S. companies, 16 Western European companies 4 Swiss Companies and 1 Japanese company, representing approximately 67%, 25%, 6% and 2% of the Index weight, respectively (See Exhibit A for a list of the component stocks of the Index). Twenty-five (25) Index components, representing approximately 55% of the Index weight, are listed on the New York Stock Exchange ("NYSE") and four (4) Index components representing approximately 12% of the Index weight are traded on Nasdaq. Of the 21 non-U.S. companies in the Index, 15 companies or approximately 26% of the Index weight have ADRs listed and traded on the NYSE while three (3) companies or approximately 4% of the Index weight have ADR's traded OTC. Two (2) companies or approximately 2% of the Index weight are dual listed on the NYSE while one (1) company or approximately 2% of the Index weight is traded OTC (See Exhibit A). As of March 1, 2004, the average size of a component company included in the Index was \$125.2 billion, with the largest and smallest amounting to \$329.3 billion and \$45.6 billion, respectively.

Because the Notes are issued in \$10 denominations, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.¹⁴ Second, the Notes will be subject to the equity margin rules of the Exchange.¹⁵ Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing

that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Citigroup will deliver a prospectus in connection with the initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6 of the Act¹⁶ in general and furthers the objectives of section 6(b)(5)¹⁷ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change, as amended, will result in 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 did not receive any written comments on the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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. Please include SR-Amex-2004-19 on the subject line.

Paper comments:

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(5).

- 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 SR-Amex-2004-19. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office 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 SR-Amex-2004-19 and should be submitted on or before May 24, 2004.

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

After careful consideration, 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, with the requirements of section 6(b)(5) of the Act.¹⁸ The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.¹⁹ Accordingly, the Commission finds that the listing and trading of the Notes based on the Global Titans Index is consistent with the Act

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See, e.g., Securities Exchange Act Release Nos. 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500); and 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protection Notes).

¹⁴ Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

¹⁵ See Amex Rule 462 and section 107B of the Company Guide.

and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.²⁰

As described more fully above, at maturity, the holder of the Note will receive 100% of the principal investment amount. The interest distribution amount that the holder receives, however, will depend on the monthly returns of the Global Titans Index, with each such monthly return subject of a periodic appreciation cap. While the interest distribution amount will not be less than zero, the investor may not receive any interest if the index return is less than or equal to an interest received percentage.

The Amex requests that the Commission approve the proposal, on an accelerated basis to accommodate the timetable of listing the Notes. The Commission notes that it has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the streetTRACKS Dow Jones Global Titans Index Fund.²¹ The Commission has also previously approved the listing of securities with a structure substantially the same as that of the Notes.²²

The Commission notes that the Notes are principal protected instruments. The Notes are debt instruments, the price of which will be derived from and based upon the value of the Global Titans Index. The Notes have a minimum principal amount that will be repaid at maturity. The interest distribution amount is derivatively based on the monthly returns of the Global Titans Index. Because the final rate of interest return of the Notes is derivatively priced, based on the performance of the 50 common stocks underlying the Global Titans Index, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes that the Amex's proposal adequately addresses the concerns raised by this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular,

by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes.

Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Citigroup will deliver a prospectus in connection with the initial sales of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing equities, which have been deemed adequate under the Act.

In approving the product, the Commission recognizes that the Global Titan Index is a price-weighted index comprised of 50 common stocks chosen by Dow Jones. In constructing the Global Titans Index, a multi-factor methodology is adopted. First, the 3,000 stocks of the Dow Jones Global Indexes are used as the Initial Pool with a view towards ensuring that all candidates are investable, liquid and representative of the global markets. Market capitalization is then used as the first screen to create the Final Pool by selecting the top 100 companies. The next step in Index construction is to combine the Final Pool components' market capitalization rankings with their rankings according to four other indicators of size and leadership. The combined rankings of these four fundamental factors determine the fundamental rank of each company. The fundamental rank and the market capitalization rank are used equally as the basis for selecting the Index components. The Index methodology described above is subject to an annual review. As of March 1, 2004, the average size of a component company included in the Index was \$125.2 billion, with the largest and smallest amounting to \$329.3 billion and \$45.6 billion, respectively.

Given the compositions of the stocks underlying the Global Titans Index, the Commission believes that the listing and trading of the Notes that are linked to the Global Titans Index, should not unduly impact the market for the underlying securities comprising the Global Titans Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Global Titans Index are well-capitalized, highly liquid stocks. Moreover, the majority of the issuers of the underlying securities comprising the Global Titans Index are subject to

reporting requirements under the Act, and nearly all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Only a small percentage of the components of the Global Titans Index trade on the Pink Sheets; however, it is determinative that these ADRs or the stock are Nestle, SA, Royal Bank of Scotland Group Plc,²³ Roche Holding AG, and HBOS Plc. While last sale reporting is not available for these securities and they are not subject to the reporting requirements of the Act, the Commission notes that they only comprise 5.4% of the weight of the Index, have substantial financial information that is current and accessible, and have significant market capitalizations that range from \$98.57 billion to \$50.47 billion. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, Citigroup. To some extent this credit risk is minimized by the Exchange's listing standards in section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least \$4 million.²⁴ In any event, financial information regarding Citigroup, in addition to the information on the 50 common stocks comprising the Global Titans Index, will be publicly available.²⁵

The Commission also has a systemic concern, however, that a broker-dealer such as Citigroup, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,²⁶ the Commission believes that

²³ On April 26, 2004, Royal Bank of Scotland Group Plc filed Form 20-F to become registered under section 12 of the Act. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on April 26, 2004.

²⁴ See Company Guide section 107A.

²⁵ The SEC notes that the 50 component stocks that comprise the Global Titans Index are reporting companies under the Act, and the Notes will be registered under section 12 of the Act.

²⁶ See, e.g., Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR-NASD-2001-73); 44483 (June 27, 2001), 66 FR 35677 (July 6,

²⁰ In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²¹ See *supra* note 12.

²² See *supra* note 19.

this concern is minimal given the size of the Notes issuance in relation to the net worth of Citigroup.

Finally, the Commission notes that the value of the Global Titans Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Global Titans Index at least once every fifteen seconds throughout the trading day is important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of similar Notes and other hybrid securities based on the Index.²⁷ Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,²⁸ to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁹ that the proposed rule change, as amended, (SR-Amex-2004-19) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49613; File No. SR-Amex-2004-22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Allocation and Performance Evaluation Procedures for Securities Admitted to Dealings on an Unlisted Basis

April 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 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, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Amex as a "non-controversial" rule change pursuant to Rule 19b-4(f)(6) under the Act.³ 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

Amex seeks a one year extension of its allocations and performance evaluation procedures for securities admitted to dealings on an unlisted trading privileges ("UTP") basis to permit these programs to remain in effect while the Commission considers permanent approval of these procedures. The text of the proposed rule change is available at Amex 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, 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 parts of such statements.

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

1. Purpose

The Exchange proposes to extend its specialist allocation and performance evaluation rules for securities admitted to dealings on a UTP basis while the Commission considers permanent approval of these rules. The Commission approved on a pilot basis, through two independent approval orders, the Exchange's specialist allocation procedures and performance evaluation procedures with respect to securities admitted to trading pursuant to UTP ("Pilots").⁴ These procedures are set forth in Amex Rule 28, "Allocation of Securities Admitted to Dealings on an Unlisted Trading Privileges ("UTP") Basis," which details the Exchange's specialist allocation rules for UTP trading and Amex Rule 29, "Market Quality Committee," which details the Exchange's specialist performance evaluation rules for UTP trading. The proposed rule change does not alter the operation of either of the Pilots in any way.⁵

The proposed rule change contains a detailed description of the Pilots. That description has not been included in this notice because it is duplicative of the descriptions contained in the original approval orders for the Pilots.⁶ This filing extends the effective dates of both Amex Rule 28 and Amex Rule 29 for one year until April 6, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁷ in general, and furthers the objectives of section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the

⁴ See Securities Exchange Act Release Nos. 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002) (File No. SR-Amex 2001-107); and 46750 (October 30, 2002), 67 FR 67880 (November 7, 2002) (File No. SR-Amex 2002-19). On October 3, 2003, Amex filed a proposed rule change for immediate effectiveness that extended both Pilots until April 5, 2004. See Securities Exchange Act Release No. 48657 (October 17, 2003), 68 FR 61025 (October 24, 2003).

⁵ The instant proposal's description of the frequency by which the Exchange may "routinely evaluate" UTP specialist performance relative to both market quality and market share criteria, however, varies from the original proposal. Telephone conversation between Bill Floyd-Jones, Associate General Counsel, Amex, and Frank N. Genco, Special Counsel, Division of Market Regulation, Commission (April 22, 2004).

⁶ *Id.*

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR-Amex-2001-40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

²⁷ See *supra* note 18.

²⁸ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR.200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).