

the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act<sup>8</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.

In 1986, the Commission approved Amex Rule 193 and NYSE Rule 98, which allow an approved person of a specialist organization to be exempt from a number of exchange restrictions, provided there are exchange-approved informational firewalls between that person and the affiliated specialist.<sup>9</sup> In 1993, the Commission approved an additional exemption under NYSE Rule 98 which allows an approved person of a specialist organization to serve as an officer or director of an issuer in whose securities the specialist is registered, provided the firewall requirement is met.<sup>10</sup> Amex now proposes to adopt the same exemption for which the NYSE received approval in 1993.

In its 1993 approval order, the Commission stated that the exemption which allows an approved person to serve as a director or officer is "appropriate \* \* \* so as not to place insurmountable restrictions on full-service member organizations."<sup>11</sup> The Commission continues to believe that such an exemption is appropriate and consistent with the requirements of the Act. The informational firewalls, which must be approved by the Exchange, are a reasonable means of ensuring that approved persons do not misuse their informational advantage and, thus, help protect investors and the public interest.<sup>12</sup>

<sup>7</sup> In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>9</sup> See Securities Exchange Act Release No. 23768 (November 3, 1986), 51 FR 41183 (November 13, 1986).

<sup>10</sup> See Securities Exchange Act Release No. 33080 (October 20, 1993), 58 FR 57654 (October 26, 1993).

<sup>11</sup> 58 FR at 57655.

<sup>12</sup> Amex has provided the Commission with a letter describing the means by which it would surveil these informational firewalls. See Letter from Bill Floyd-Jones, Assistant General Counsel, Amex, to Alton Harvey, Office Head, Office of Market Watch, Commission, dated January 14, 2002. The Commission's Office of Compliance Inspections and Examinations intends to review these surveillance procedures during its next inspection of Amex.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-Amex-2001-08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-18491 Filed 7-22-02; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46218; File No. SR-Amex-2002-46]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Amex Listing Agreement

July 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 29, 2002, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to amend the Amex Listing Agreement for issuers listing under Sections 106 (*Currency and Index Warrants*) and section 107 (*Other Securities*) of the Amex Company Guide; and Rules 1000 (*Portfolio Depositary Receipts*), 1000A (*Index Fund Shares*) and 1200 (*Rules of General Application*; Trust Issued Receipts) to provide that the issuer cannot implead, cross-claim against, or sue the Exchange and its affiliates as a result of third party claims against the issuer. The text of the proposed rule change follows. Proposed new language is in italics; proposed deletions are in brackets.

#### Listing Agreement

\_\_\_\_\_ (the "Company"), in consideration of the listing of its

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

securities, hereby agrees, with the American Stock Exchange LLC (the "Exchange") that:

\* \* \* \* \*

(4) In order to publicize the Company's listing on the Exchange, the Company authorizes the Exchange to use the Company's corporate logos, Web site address (URS): \_\_\_\_\_, trade names, and trade/service marks in order to convey quotation information, transactional reporting information, and other information regarding the Company in connection with the Exchange. In order to ensure the accuracy of the information, the Company agrees to provide the Exchange with the Company's current corporate logos, Web site address, trade names, and trade/service marks and with any subsequent changes. Questions regarding logo usage should be directed to \_\_\_\_\_ at ( ) \_\_\_\_\_.

The Company indemnifies the Exchange and holds it harmless from any third party rights and/or claims arising out of use of the Exchange or any affiliate ("Corporations") of the Company's corporate logos, Web site address, trade names, trade/service marks, and/or trading symbol used by the Company.

*In the event that any claim of any kind is brought by a third party against the Company arising out of the listing and/or trading on the Exchange of the listed securities, the Company agrees that it will not implead, cross-claim against or commence a separate action against any of the Corporations or otherwise attempt to obtain contribution, indemnification or any other form of recovery from any of the Corporations relating to such third party claim.*

#### 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Issuers of structured products, exchange-traded funds, trust issued receipts and other novel securities products have found that the Exchange is extremely receptive to accommodating product innovation in our marketplace. New products, however, can pose some measure of added litigation risk as a result of third party claims of infringement of property rights, or for other reasons.

As part of its effort to reduce the Exchange's potential legal exposure in this area, the Exchange proposes to amend the Amex Listing Agreement to provide that issuers of such products agree, in connection with their execution of the Listing Agreement, that, in the event they are sued by a third party for any reason regarding an Amex-listed security, they will not implead, cross-claim against or sue the Amex or its affiliates. This would include, for example, claims of patent infringement or any other intellectual property rights.

The proposed amendments to the Exchange Listing Agreement will be applicable to issuers of securities listed under section 106 (*Currency and Index Warrants*) and 107 (*Other Securities*) of the Company Guide; and Rules 1000 (*Portfolio Depositary Receipts*), 1000A (*Index Fund Shares*) and 1200 (*Rules of General Application*; Trust Issued Receipts). The Listing Agreement for these issuers, therefore, would differ from that for common stock issuers. The proposed amended Listing Agreement would apply to (1) new issuers, and (2) new series of securities listed under Rules 1000, 1000A or 1200 or sections 106 and 107 of the Company Guide by issuers that currently list securities under those provisions.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>3</sup> in general and furthers the objectives of Section 6(b)(5)<sup>4</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market

and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. 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 proposed rule change, or

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

**V. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the proposed rule change and amendments will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-

2002-46 and should be submitted by August 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

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

[FR Doc. 02-18561 Filed 7-22-02; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46213; File No. SR-Amex-2002-21]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments Nos. 1, 2, 3 and 4 Thereto by the American Stock Exchange LLC to Permit Limited Side-by-Side Trading and Integrated Market Making**

July 16, 2002.

**I. Introduction**

On March 18, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Exchange Rules 174, 175, 193, 900, and 958 to (1) permit affiliates of Amex specialists in securities admitted to dealings on an unlisted basis to act as a specialist, Registered Options Trader ("ROT") or other registered market maker in the related options provided there are Exchange-approved information barriers between the stock specialist and the options specialist, ROT or other registered options market maker established pursuant to Exchange Rule 193, and (2) provide that specified Exchange-Traded Fund Shares ("ETFs") or Trust Issued Receipts ("TIRs") and their related options may be traded by the same specialist, specialist firm, and the approved persons of such specialist or specialist firm without information or physical barriers or other restrictions. The Exchange filed Amendment No. 1 to the proposed rule change on March 22, 2002.<sup>3</sup> The Exchange filed Amendment No. 2 to the proposed rule change on March 27, 2002.<sup>4</sup> The Exchange filed Amendment No. 3 to the

<sup>5</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> On March 22, 2002, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety ("Amendment No. 1").

<sup>4</sup> On March 27, 2002, the Exchange filed a second amended Form 19b-4 ("Amendment No. 2").

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).