

the ETF shares trade in the secondary market, but also highlights the differences of the New Fund from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any ETF under Amex Rule 1000A the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, Fixed Income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the New Funds, in addition to details on the composition of the fixed income indices upon which they are based and how each New Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under Exchange Rule 411 ("know your customer rule") regarding transactions in such Fixed Income ETFs. Exchange Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.²⁷ The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in New Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the New Funds is consistent with Section 6(b)(5) of the Exchange Act.²⁸

The Commission also notes that the Exchange's rules and procedures should address the special concerns attendant to the trading of new derivative products. In particular, by imposing the Index Fund Share listing standards in Amex Rule 1000A, and addressing the suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the derivative nature of the New Funds.

In particular, the Commission finds that adequate rules and procedures exist to govern the trading of Index Fund Shares, including New Funds. New Funds will be deemed equity securities subject to Amex rules governing the trading of equity securities. These rules include: General and Floor Rules, such as priority, parity, and precedence of orders, market volatility related trading halt provisions pursuant to Rule 117,

members dealing for their own accounts, specialists, odd-lot brokers, and registered traders, and handling of orders and reports;²⁹ Office Rules, such as conduct of accounts, margin rules, and advertising;³⁰ and Contracts in Securities, such as duty to report transactions, comparisons of transactions, marking to the market, delivery of securities, dividends and interest, closing of contracts, and money and security loans.³¹ The Amex also will consider halting trading in any series of Index Funds Shares under certain other circumstances including those set forth in Amex Rule 918C(b)(4) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. The Commission believes that the application of these rules should strengthen the integrity of the New Funds.

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman or Goldman, is involved in the development, maintenance, and calculation of an index upon which an ETF is based.

Goldman and Lehman have represented that each have procedures in place to prevent the misuse of material, non-public information relating to the index.³² The Commission believes that these provisions should help to address concerns raised by Goldman and Lehman's involvement in the management of the indices. The Commission believes that this should act to further minimize the possibility of manipulation.

The Commission also believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the New Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

Amex has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because the 1940 Act Application relating to the New Funds has been reviewed by the

Division of Investment Management and notice of the Application has been published in the **Federal Register**.³³ The Application disclosed the characteristics and risks associated with New Funds. No comments were submitted and the Commission granted the relief requested in the Application.³⁴ The New Funds will trade on the Exchange in the same manner as Index Fund Shares previously approved by the Commission. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,³⁵ that the proposed rule change, (File No. SR-Amex 2001-35), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46251; File No. SR-Amex-2002-50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Trading of Trust Issued Receipts and "Other Securities"

July 24, 2002.

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 May 31, 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. On July 8, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³ The

³³ Investment Company Act Release No. 25594 (May 29, 2002), 67 FR 38681 (June 5, 2002).

³⁴ Investment Company Act Release No. 25622 (June 25, 2002).

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ 17 CFR 200.3-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 3, 2002 ("Amendment No. 1"). Amendment No. 1 deleted a proposed technical change to Amex Rule 958.

²⁷ Amex Rule 411.

²⁸ 15 U.S.C. 78f(b)(f).

²⁹ Amex Rules 1-236.

³⁰ Amex Rules 300-590.

³¹ Amex Rules 700-891.

³² The Commission expects that the procedures implemented by Goldman and Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

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 Amex Rule 958, Commentary .10 relating to trading by regular members in securities listed pursuant to Section 107 of the Amex Company Guide (*Other Securities*) and Rule 1200 (*Rules of General Applicability*; Trust Issued Receipts). The text of the proposed rule change follows. Proposed new language is in italics; proposed deletions are in brackets.

Rule 958

* * *

Commentary

* * *

.10 Transactions on the Floor in index warrants [and], currency warrants, *securities listed pursuant to Section 107 of the Company Guide ("Other Securities")*, and *Trust Issued Receipts listed pursuant to Rules 1200 et seq. which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule, and shall only be effected by Registered Traders who are regular members.* [, and] [t] Transactions by Registered Traders on the Floor in derivative products (as defined in Article I, Section 3(d) of the Exchange Constitution) which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule. In addition, Rule 111, Commentary .01 shall not apply to such transactions. (See Rule 111, Commentary .12 and Rule 114, Commentary .14.)

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

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

1. Purpose

In 1992, the Commission approved Rule 958, Commentary .10 relating to trading on the Floor in "derivative products," index warrants and currency warrants.⁴ Commentary .10 requires that these securities be traded by Registered Traders under Rule 958, which relates to trading by Registered Options Traders ("ROT's"). Commentary .10 also states

that index warrants and currency warrants may be traded by ROT's who are regular members. Options Principal Members ("OPMs") and Limited Trading Permit Holders ("LTPs") are permitted to trade derivative products under Rule 958, but are not permitted to trade index or currency warrants. All of these securities must be traded under Rule 958 only and cannot be traded by Registered Equity Traders ("RETs") or Registered Equity Market Makers ("REMMs") under Rules 111 or 114.⁵ "Derivative Products" traded by Registered Traders under Rule 958 include all exchange-traded funds listed under Amex Rules 1000 and 1000A, including, for example, Nasdaq 100 Index Tracking Stock™, SPDRs®, DIAMONDS®, iShares™, and Select Sector SPDRs®.

Pursuant to Rule 958, Commentary .10, regular members trading derivative products, index warrants and currency warrants as ROTs are subject to continuous market making obligations. As such, ROTs receive market maker margin. OPMs and LTPs are permitted to trade derivative products pursuant to Article I, Section 3 and Article IV, Section 1(h), respectively, of the Exchange Constitution, and, because their trading under Rule 958 also requires ongoing market making obligations, OPMs and LTPs also receive market maker margin.⁶

When the Exchange first authorized trading in derivative products by OPMs and LTPs in 1990, the Exchange specifically intended to encourage trading crowds and competitive market making to develop in such products as SuperTrust securities (which represented interests in actual portfolios of securities such as the S&P 500 Index) and SPDRs®, which were then under development by the Exchange. In the Exchange's Rule 19b-4 filing with the Commission to authorize such OPM and LTP trading, the Exchange stated that

⁵ The term "derivative products" is defined in Article I, Section 3(d) of the Exchange Constitution to include "standardized options and other securities issued by the Options Clearing Corporation or another limited purpose entity or trust, and which are based solely on the performance of an index or portfolio of other publicly traded securities." The definition explicitly excludes warrants of any type and closed end funds.

⁶ OPMs also can trade stock options and index options. LTPs can trade index options but not stock options. As previously mentioned, OPMs and LTPs also may trade derivative products, but are not permitted to trade index or currency warrants. Derivative products cannot be traded by persons registered as RETs or REMMs under Rules 111 or 114. REMMs are not subject to Rule 958 type continuous market making obligations and do not receive "good faith" market maker margin, but instead are subject to full customer margin requirements.

the definition of derivative products was not intended to include products that OPMs and LTPs are not entitled to trade currently, including currency warrants, index warrants, or closed end mutual funds.⁷

The Exchange proposes to amend Rule 958, Commentary .10 to clarify that "structured products" and Trust Issued Receipts (HOLDRSSM) traded under Amex equity trading rules must be traded under Rule 958 and only by registered traders who are regular members. Structured products include all securities listed under Section 107 of the Amex Company Guide (e.g., Index-Linked Notes (MITTS®, BOXESSM, TIERSSM); Equity-Linked Term Notes (e.g., GOALS, ELKSSM, SPARQSSM, STRIDESSM) and Trust Preferred Securities (e.g., TOPrS)). Trust Issued Receipts include HOLDRSSM and are listed under Rules 1200 *et seq.* Therefore, these securities would not be eligible to be traded by OPMs or LTPs, or by RETs or REMMs under Rules 111 and 114. The Exchange believes that permitting regular member ROTs to trade structured products and HOLDRSSM under Rule 958 will promote additional market depth and liquidity. These securities do not fall within the definition of "derivative products" as contemplated by the Exchange in authorizing OPMs and LTPs to trade derivative products, and, therefore, OPMs and LTPs are not permitted to trade these securities listed under Section 107 of the Company Guide or Rule 1200. The Exchange is therefore amending Rule 958, Commentary .10 to clarify this position.⁸

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁹ in general and furthers the objectives of Section 6(b)(5)¹⁰ 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

⁷ See Securities Exchange Act Release No. 28612 (November 14, 1990), 55 FR 48308 (November 20, 1990) (File No. SR-Amex-90-17).

⁸ Amendment No. 1. The exchange also originally proposed a technical change to Amex Rule 958. The change is unnecessary because it was previously proposed by the Amex and approved by the Commission. (See Securities Exchange Act Release No. 45320 (January 18, 2002), 67 FR 3921 (January 28, 2002) (File No. SR-Amex-2001-79).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

⁴ Securities Exchange Act Release No. 30768 (June 2, 1992), 57 FR 24277 (June 8, 1992) (File No. SR-Amex-92-06).

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

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

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

III. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. 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 amended 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. Copies of the proposed rule change and Amendment No. 1 will also be available for inspection and copying at the principal office of the Amex. All submissions

should refer to File No. SR-Amex-2002-50 and should be submitted by August 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46255; File No. SR-CHX-2002-21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

July 25, 2002.

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 July 1, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or the "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 Exchange proposes to amend its membership dues and fees schedule (the "Schedule") to include a new tape credit for lead market makers in cabinet securities. The text of the proposed rule change follows. Proposed new language is in *italic*.

Membership Dues and Fees

A.-L. No change to text.

M. Credits

1. Specialist Credits

No change to text.

2. Floor Broker Credits

No change to text.

3. *Credits for Qualified Market Makers Registered in Cabinet Securities Effective July 1, 2002, total monthly fees owed by a market maker registered in a cabinet security will be reduced (and qualified market makers will be paid each month for any*

unused credits) by a Transaction Credit. "Transaction Credit" when used in connection with a credit for a Qualified Market Maker registered in a cabinet security means 18% of the monthly CHX tape revenue from the Consolidated Tape Association generated by the security in which the market maker is registered. To the extent that CHX tape revenue is subject to a year-end adjustment, market maker credits may be adjusted accordingly. "Qualified Market Maker" means a lead market maker who is registered as such in 100 or more cabinet securities.

N. No change to text.

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 aspects 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 amend the Schedule to include a new tape credit for lead market makers in cabinet securities. Under Article XXXIV of the Exchange's Rules, a market maker can be appointed to disseminate continuous two-sided quotations in issues that are not assigned to a specialist firm.³ The first market maker to assume that role in a particular issue is considered the "lead" or "primary" market maker.⁴ Issues in which a lead market maker disseminates a continuous two-sided market are often traded by the Exchange's floor brokers, but are not traded through the Exchange's MAX® system, its automated order routing and execution system.

The Exchange has proposed this rule change to reward lead market makers who undertake that role for a significant number of cabinet securities by implementing an 18% tape credit with respect to those issues.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Article XXXIV, Rule 3, Interpretation .02.

⁴ Article XXXIV, Rule 3, Interpretation .02(6).