

counsel to report on the likelihood of settlement during the prehearing conference.

Further procedures. Those wishing to be heard in this matter may choose from among the modes of participation specified in sections 20 through 20b of the Commission's rules of practice (39 CFR 3001.20, -20a and -20b). Notices of intervention under sections 20 and 20a will be due on December 20, 2004, and shall be filed using the Filing Online system at the Commission's Web site (<http://www.prc.gov>) unless a waiver is obtained for hardcopy filing. See sections 9(a) and 10(a) of the rules (39 CFR 3001.9a and 10a). Notices should indicate whether participation will be on a full or limited basis. Comments pursuant to section 20b may either be filed online as described in section 20b(a) or submitted as a hardcopy letter to the Secretary of the Commission, Steven W. Williams, 1333 H Street, NW., Suite 300, Washington, DC 20268-0001.

Experimental Status

At this stage of the proceeding, the Commission has docketed the instant filing as an experimental case for administrative purposes. Formal status as an experiment under Commission rules 67-67d, which the Service makes clear it seeks for this Request, is based on an evaluation of factors such as the proposal's novelty, magnitude, ease or difficulty of data collection, and duration. A final determination regarding the appropriateness of accepting the filing as an experimental case and application of Commission rules 67-67d will not be made until participants have had an adequate opportunity to comment. Participants are invited to file comments on this matter by December 20, 2004.

Section 67a of the rules specifies procedures for the limitation of issues in considering requests that involve classification changes that are properly designated as experimental. Pursuant to section 67a(b) [39 CFR 3001.67a(b)], participants are directed to submit statements in their notices of intervention indicating whether they seek a hearing and, if so, to identify with particularity any genuine issues of material facts believed to warrant such a hearing.

The Commission grants the Service's Request for Establishment of Settlement Procedures and appoints Postal Service lead counsel as settlement coordinator. In this capacity, counsel for the Service shall file periodic reports on the status of settlement discussions, with the first report to be submitted orally during the prehearing conference scheduled below.

The Commission further authorizes the settlement coordinator to hold settlement and/or technical conferences, at the convenience of participants, anytime between January 3 and 6, 2005.

Prehearing conference. A prehearing conference will be held in this docket on January 7, 2005. Participants shall be prepared to address whether there are issues of material fact requiring a hearing in this matter, in order to inform the Commission's determination regarding the limitation of issues pursuant to section 67a(c) of the rules of practice [39 CFR 3001.67a(c)].

Public participation. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2005-1, Experimental Premium Forwarding Service, to consider the Postal Service Request described in the body of this order.
2. The Commission will sit en banc in this proceeding.
3. The deadline for filing notices of intervention is December 20, 2004.
4. Notices of intervention shall indicate whether the participant seeks a hearing and identify with particularity any genuine issues of material fact that warrant a hearing.
5. The deadline for answers to the Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, filed November 19, 2004, is December 20, 2004.
6. The Commission grants the United States Postal Service Request for Establishment of Settlement Procedures, November 19, 2004, under the terms described in the body of this ruling.
7. The Commission appoints Postal Service lead counsel to serve as settlement coordinator in this proceeding.
8. The deadline for comments on the Postal Service's request for treatment of its Request as experimental under Commission rules 67-67d is December 20, 2004.
9. The Commission will make its hearing room available for settlement

and/or technical conferences during the period of January 3 through 6, 2005.

10. A prehearing conference will be held January 7, 2005 at 10 a.m. in the Commission's hearing room.

11. Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public in this proceeding.

12. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission,

Steven W. Williams,
Secretary.

[FR Doc. 04-26354 Filed 11-29-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27916]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 23, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 17, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 17, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities et al. (70–9541)

Northeast Utilities (“NU”), a public utility holding company registered under the Public Utility Holding Company Act of 1935, as amended (“Act”), the Connecticut Light and Power Company (“CL&P”), Public Service Company of New Hampshire (“PSNH”) and Western Massachusetts Electric Company (“WMECO”), each an electric utility subsidiary of NU, North Atlantic Energy Corporation (“NAEC”), formerly a public utility company under the Act, NU Enterprises, Inc. (“NUEI”), a sub-holding company over certain of NU’s non-utility subsidiaries, Northeast Generation Company (“NGC”), Northeast Generation Services Company (“NGS”), Select Energy, Inc. (“SE”), HEC Inc., now known as Select Energy Services, Inc. (“SESI”), Select Energy Portland Pipeline, Inc. (“SEPPI”), Reeds Ferry Supply Co., Inc. (“Reeds”), Select Energy Contracting, Inc. (“SECI”) and HEC Energy Consulting Canada Inc. (“HEC Energy”), each a direct or indirect non-utility subsidiary of NU, and E.S. Boulos Company (“Boulos”) and Woods Electrical Contracting, Inc. (“Woods”), wholly-owned subsidiaries of NGS, Yankee Energy Service Company (“YESCO”) and Yankee Energy Financial Services Company (“Yankee Financial”), subsidiaries of Yankee Energy System, Inc., Select Energy New York, Inc. (“SENY”), a subsidiary of SE, (“Applicants”), have filed with the Commission a post-effective application/declaration (“Application”) under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 26(c)(3), 42, 43, 44, 46(a) and 54 under the Act.

On March 7, 2000, the Commission issued an order (HCAR No. 27147) (“Prior Order”) granting Applicants’ previously-submitted application/declaration (“Original Application”) and authorizing (a) the payment of dividends to, and/or the repurchase of stock from, NU out of capital or unearned surplus by each of CL&P, PSNH, WMECO and NAEC, from certain restructuring proceeds, though, as a result of the issuance of Rate Reduction Bonds (as described herein) each of CL&P, WMECO and PSNH (“Utilities”), and NU, on a consolidated basis, would fall below the Commission’s common equity-to-total capitalization threshold of 30% (the “30% Threshold”), (b) the payment of dividends to, and/or the repurchase of stock from, NU out of capital or unearned surplus by NUEI, the payment of dividends, and/or the repurchase of stock out of capital or unearned surplus by each of NGC, NGS, SE, SESI, SEPPI, Reeds, SECI and HEC

Energy, in each case from their respective parent company, (c) the payment of dividends and/or the repurchase of stock out of capital or unearned surplus by CL&P from certain restructuring proceeds in accordance with the provisions of CL&P’s dividend covenant under its First Mortgage Indenture and Deed of Trust dated May 1, 1921 to the Bankers Trust Company as trustee all through December 31, 2004 (the “Initial Authorization Period”), and (d) the issuance of additional shares by NU to the extent necessary to fulfill its obligations under one or more forward stock purchase contracts through June 30, 2001.

Applicants now seek a modification and extension through December 31, 2007 (“Authorization Period”), of the authorization for the payment of dividends to, and/or the repurchase of stock from, NU out of capital or unearned surplus by NUEI, the payment of dividends to, and/or the repurchase of stock from their respective parent company, out of capital or unearned surplus by each of NGC, NGS, SE, SESI and SECI, subject to the limitations set forth herein; (b) authorization for E.S. Boulos Company (“Boulos”) and Woods Electrical Contracting, Inc. (“Woods”), wholly-owned subsidiaries of NGS, Yankee Energy Service Company (“YESCO”) and Yankee Energy Financial Services Company (“Yankee Financial”), subsidiaries of Yankee Energy System, Inc., Select Energy New York, Inc. (“SENY”), a subsidiary of SE, and any other direct or indirect to-be-formed non-utility subsidiary of NU, to pay dividends to, and/or repurchase stock from their respective parent company out of capital or unearned surplus, (NUEI, NGC, NGS, SE, SENY, SESI, Reeds, SECI, Boulos, Woods, YESCO, Yankee Financial and any direct or indirect non-utility subsidiary of NU are collectively referred to as the “Non-Utility Subsidiaries”),¹ and (c) an extension through the Authorization Period of the authorization granted in the Prior Order for CL&P and PSNH to remain below the 30% Threshold, as a result of the impact of the Rate Reduction Bonds. The Utilities are not seeking an extension of any other authorizations granted in the Prior Order.

In the Prior Order, the Commission noted that restructuring legislation in each state in which the utility

subsidiaries of NU were located allowed for the issuance of Rate Reduction Bonds by each Utility to finance a portion of its cost incurred in the sale of its regulatory assets and/or renegotiation of its obligations under purchase power contracts. Rate Reduction Bonds are securities issued by a subsidiary of the Utility and are non-recourse to the Utility or the NU system. Because of the mandated divestiture of generating assets and issuance of Rate Reduction Bonds, the Utilities experienced a significant decrease in the amount of tangible assets that each owned and received a significant influx of cash.

The Original Application noted that as a result of increased debt from the issuance of the Rate Reduction Bonds, NU and the Utilities would fall below the Commission’s benchmark 30% common equity-to-total capitalization ratio (“Common Equity Ratio”). After giving effect to various restructuring transactions, including the then-contemplated issuance of the Rate Reduction Bonds, CL&P’s pro forma Common Equity Ratio, as reported in Exhibit K filed with the Original Application was projected to be 19.1%, WMECO’s pro forma Common Equity Ratio was projected to be 16.6%, PSNH’s pro forma Common Equity Ratio was projected to be 14.2%, and NU’s pro forma Common Equity Ratio was projected to be 29.1%. In the Original Application, the Applicants stated that they expected NU’s Common Equity Ratio to be above 30% by December 31, 2001 but that the Utilities expect that their Common Equity Ratios would remain below 30% throughout the duration of the Initial Authorization Period and thereafter. The Commission, in the Prior Order, noted that after the end of the Initial Authorization Period, further Commission authority would be required if the Common Equity Ratios of any of the Utilities would be below 30%. CL&P and PSNH seek authorization through the Authorization Period for their respective Common Equity Ratios to remain below the 30% Threshold when the impact of Rate Reduction Bonds is considered.

Applicants seek a modification and extension, through the Authorization Period, of the authorization contained in the Prior Order for the payment of dividends to, and/or the repurchase of stock from, the respective parent company of each such Non-Utility Subsidiary, in each case out of capital or unearned surplus, subject to the new limitations set forth in the Application to extend that authorization to Boulos, Woods, SENY, YESCO and Yankee Financial and to add the limitations on

¹ In the Prior Order, NAEC was listed as a utility; as a result of the sale of its utility assets, NAEC is no longer a utility for purposes of the Act. NAEC, along with SEPPI and HEC Energy, which are now inactive, do not seek an extension of the authorizations previously granted and are not applicants to the Application.

the payment of dividends as set forth below. There may be situations in which one or more of the Non-Utility Subsidiaries would have unrestricted cash available for distribution in excess of current and retained earnings resulting from a disposition of assets, a restructuring or other accounting charge that eliminated retained earnings or its normal operations (excluding debt financing). Consistent with these considerations, Applicants seek authorization for the payment of dividends to, and/or the repurchase of stock from, the respective parent company of each such Non-Utility Subsidiary, in each case out of capital or unearned surplus provided, however, that, without further approval of the Commission, no Non-Utility Subsidiary will declare or pay any dividend out of capital or unearned surplus if it derives any material part of its revenues from the sale of goods, services or electricity to an associate Utility ("Non-exempt Subsidiary"). In addition, no Non-Utility Subsidiary will declare or pay any dividend out of capital or unearned surplus unless it: (a) Has received excess cash as a result of the sale of its assets; (b) has engaged in a restructuring or reorganization; and/or (c) is returning capital to an associate company. NU further requests that the Commission reserve jurisdiction over the payment of dividends out of capital or unearned surplus by any Non-exempt Subsidiary.

Northeast Utilities (70-10256)

Northeast Utilities ("NU"), a public utility holding company registered under the Public Utility Holding Company Act of 1935, as amended ("Act") has filed with the Commission a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

NU requests authority to issue up to 275,000 Northeast Utilities Common Shares, \$5.00 par value ("Common Shares") from the date of the order granting the authorization requested through December 31, 2014, inclusive. This figure is based on a projected need of not more than 25,000 Common Shares per year from 2005 through 2014, plus the 25,000 shares currently needed to satisfy deferred shares obligations. NU expects to modify its trustee compensation program from time to time in the future as necessary or desirable to take into account trends in director compensation, regulatory and tax changes and business needs.

E.ON AG, et al. (70-10260)

E.ON AG ("E.ON"), E.ON US Holding GmbH ("E.ON Holding"), E.ON US Investments Corp. ("EUSIC"), and LG&E Energy LLC ("LG&E Energy" and

collectively with E.ON, E.ON Holding and EUSIC, the "E.ON Holding Companies"), registered holding companies under the Act, Louisville Gas and Electric Company, a public utility subsidiary of LG&E Energy ("LG&E" and together with the E.ON Holding Companies, the "E.ON Applicants"), and American Electric Power Company, Inc. ("AEP", together with the E.ON Applicants, the "Applicants"), a registered holding company not affiliated with E.ON, have filed an application-declaration ("Application") with the Commission under sections 8, 9(a), 10, 11(b) and 12(d) of the Act and rules 44 and 54 under the Act.

Applicants seek authorization for the proposed acquisition by LG&E from AEP of 730 shares of common stock, \$100 par value ("Shares") of Ohio Valley Electric Corporation ("OVEC"), an Ohio corporation and an electric utility company under the Act (the "Transaction").

E.ON, an entity incorporated under the laws of the Federal Republic of Germany, registered as a holding company under the Act on July 1, 2002, as a result of E.ON's acquisition of Powergen Limited, formerly known as Powergen plc ("Powergen"). The Commission approved the acquisition of Powergen in Holding Company Act Release No. 27539 (June 14, 2002) (the "Acquisition Order"). E.ON owns LG&E Energy, which in turn owns two public utility companies, LG&E and Kentucky Utilities Company ("KU" and together with LG&E, the "E.ON Utility Subsidiaries"). E.ON's interest in LG&E Energy is held indirectly through E.ON Holding and EUSIC, as intermediate holding companies.

AEP, a New York corporation registered as a holding company under the Act, owns, directly, and indirectly through AEP Utilities, Inc. (formerly Central and South West Corporation), a Delaware corporation and registered holding company under the Act, numerous utility and non-utility subsidiaries, including the following public utility subsidiaries: AEP Generating Company, AEP Texas Central Company (formerly Central Power and Light Company), AEP Texas North Company (formerly West Texas Utilities Company), Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and Wheeling Power Company (collectively, "the AEP Utility Subsidiaries").

OVEC and its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation ("IKEC"), own two generating stations located in Ohio and Indiana with a combined electric production capability of approximately 2,256 megawatts. OVEC and IKEC are both electric utility companies within the meaning of the Act. OVEC is currently owned by AEP (39.9%), Columbus Southern Power Company, a subsidiary of AEP (4.3%), LG&E (4.9%), KU (2.5%), Allegheny Energy, Inc. (12.5%), The Cincinnati Gas & Electric Company, a subsidiary of Cinergy Corp. (9.0%), The Dayton Power and Light Company, a subsidiary of DPL Inc. (4.9%), Ohio Edison Company, a subsidiary of FirstEnergy Corp. (16.5%), Southern Indiana Gas and Electric Company, a subsidiary of Vectren Corporation (1.5%), and the Toledo Edison Company, also a subsidiary of FirstEnergy Corp. (4.0%).

On April 8, 2004, LG&E and AEP entered into a stock purchase agreement ("Agreement"), under which the parties agreed, subject to certain conditions, including approval of the transaction by the Commission, that AEP would AEP to sell, assign and transfer to LG&E, and for LG&E to purchase from AEP, the Shares upon closing of the Transaction (the "Closing"). LG&E agreed to pay \$104,286 ("Purchase Price") for the Shares upon the Closing, which is subject to customary conditions for a transaction of this size and magnitude, all as set forth in the Agreement. LG&E will finance the Transaction with cash on hand.

On April 30, 2004, irrespective of the consummation of the proposed Transaction and not conditioned upon its approval, OVEC and its shareholders, including AEP (and/or its affiliates), LG&E and KU, entered into an Amended and Restated Inter-Company Power Agreement (the "Amended Power Agreement"), to be effective beginning March 2006, upon the expiration of the Power Agreement. In negotiation of the Amended Power Agreement, disputes arose between AEP and LG&E over a number of issues, including their respective ongoing rights to purchase power from OVEC. In order to avoid litigation, and the cost, delay and uncertainty relating thereto, AEP and LG&E settled these disputes. As part of the settlement, AEP agreed to sell, and LG&E agreed to purchase, the Shares, representing 0.73% of the outstanding common stock of OVEC, at the same price per share paid by AEP in 1990. Upon the effectiveness of the Amended Power Agreement, AEP (and/or its affiliates) and LG&E will receive allocations of marginal cost-based

power from OVEC in an amount proportional to their respective ownership interests in OVEC after giving effect to the Transaction.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50719; File No. SR-Amex-2004-55]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Notes Linked to the Performance of the CBOE S&P 500 BuyWrite IndexSM

November 22, 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 July 19, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in items I and II below, which items have been prepared by the Exchange. On November 4, 2004, the Exchange submitted an amendment to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change 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 notes, under Section 107A of the Amex Company Guide ("Company Guide"), the performance of which is linked to the Chicago Board Options Exchange ("CBOE") S&P 500 BuyWrite Index^(SM) ("BXM Index" or "Index"). The text of the proposed rule change is

available at the principal offices of the Amex and from 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 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. 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 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.⁴ The Amex proposes to list for trading under section 107A of the Company Guide notes linked to the performance of the BXM Index ("Notes"). The BXM Index is determined, calculated, and maintained solely by the CBOE.⁵

⁴ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

⁵ If the BXM Index is discontinued or suspended, the calculation agent, in its sole discretion, may substitute the BXM Index with an index substantially similar to the discontinued or suspended BXM Index (the "Successor Index"). The Successor Index may be calculated and/or published by the CBOE or any other third party. If the calculation agent is unable to identify a Successor Index, then the Maturity Valuation Date will be accelerated to the last scheduled trading day prior to the expiration of the call option positions of the BXM Index ("Roll Date"). The calculation agent will accordingly determine the Entitlement Value on such date. Under certain circumstances, the calculation agent or an affiliate will calculate the Index value until a Successor Index is substituted. This may occur if adequate notice of the Index's discontinuance or suspension is not provided to the calculation agent. The calculation agent will then undertake to identify and designate, in its sole discretion, a Successor Index prior to the Roll Date that falls at least one (1) month following the discontinuance or suspension of the BXM Index. If the calculation agent is unable to identify a Successor Index five (5) days prior to the Roll Date that falls at least one (1) month following such discontinuance or suspension, the Maturity Valuation Date will be accelerated to the last scheduled trading day prior to the Roll Date following such discontinuance or suspension. In calculating the Index value, the calculation agent or affiliate will use the current method employed prior to the discontinuance or suspension. The Exchange agrees to delist the Notes (or seek Commission approval pursuant to Rule 19b-4 to list and trade

Morgan Stanley will issue the Notes under the name "Strategic Total Return Securities."⁶

The Notes will conform to the initial listing guidelines under section 107A⁷ and continued listing guidelines under sections 1001-1003⁸ of the Company Guide. The Notes are a series of medium-term debt securities of Morgan Stanley that provide for a cash payment at maturity, or upon earlier exchange at the holder's option or the earlier redemption of the issue, based on the performance of the BXM Index adjusted by the Adjustment Amount.⁹ The principal amount of each Note is expected to be \$10. The Notes will not have a minimum principal amount that will be repaid and, accordingly,

a Note that reflects the Successor Index) in the event that CBOE stops calculating and disseminating the value of the BXM Index. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on November 19, 2004.

⁶ Morgan Stanley and Standard & Poor's ("S&P"), a division of the McGraw-Hill Companies, Inc., have entered into a non-exclusive license agreement providing for the use of the BXM Index by Morgan Stanley in connection with certain securities, including the Notes. S&P is not responsible for and will not participate in the issuance and creation of the Notes.

⁷ The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a 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 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 pursuant to Section 107A of the Company Guide 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.

⁸ 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.

⁹ The Adjustment Amount will equal the sum of the monthly adjustments. Each monthly adjustment will equal 0.168% (equivalent to approximately 2% per year) multiplied by the Net Entitlement Value on the trading day prior to the trading day the monthly SPX call option expires. SPX options generally expire on the third Friday on the month. See *infra* for a description of how the monthly rolling or successive SPX call options are taken into account in the BXM Index.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated November 3, 2004 ("Amendment No. 1"). Amendment No. 1 reflects certain changes regarding issuer redemptions of the Notes beginning in June 2007.