

the board of directors of the investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company. Applicants believe that the assumption by Funds Management of the investment advisory responsibilities for the C&B Funds and the compensation to be paid by Funds Management to C&B in connection with the Reorganization constitute a transaction covered by section 15(f) of the Act. Applicants state that, without the requested exemption, following the Reorganization, Funds Trust would have to reconstitute its Board to meet the seventy-five percent non-interested director requirement of section 15(f)(1)(A).

2. Section 15(f)(3)(B) of the Act provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all of the assets by, a registered company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the Commission in determining whether, or to what extent, to grant exemptive relief under section 6(c) from section 15(f)(1)(A).

3. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, or any rule or regulation under the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an exemption under section 6(c) of the Act from section 15(f)(1)(A) of the Act. Applicants state that, as of March 31, 2004, Funds Trust had approximately \$75 billion and C&B Funds had approximately \$500 million in aggregate net assets, respectively, making the C&B Funds' aggregate net assets less than 1% of the aggregate net assets of Funds Trust.

5. Applicants state that two of the seven trustees who serve on the Board of Funds Trust are "interested persons," within the meaning of section 2(a)(19) of the Act, of Funds Management. Applicants state that none of the trustees who serve on the Board of Funds Trust is an interested person of C&B or the C&B Funds.

6. Applicants state that to comply with section 15(f)(1)(A) of the Act, Funds Trust would have to alter the composition of its Board, either by asking an experienced trustee to resign or by adding a new non-interested trustee. Applicants state that either of

these solutions would be unfair to shareholders of Funds Trust, particularly in view of the amount of the assets of the C&B Funds being acquired relative to the amount of the assets of Funds Trust.

7. Applicants acknowledge that the Commission has adopted amendments to certain existing rules that will require that at least 75% of the board of directors of any registered investment company that relies on these rules not be "interested persons" of the investment company. Funds Trust intends to comply with this requirement by the compliance date of the rule amendments. Applicants are not requesting relief from these rule amendments and acknowledge that the requested relief from section 15(f)(1)(A) will not extend beyond the compliance date of the rule amendments.

8. For the reasons stated above, applicants submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04-15187 Filed 7-2-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of July 12, 2004:

An open meeting will be held on Wednesday, July 14, 2004, at 10 a.m., in room 1C30, the William O. Douglas Room.

The subject matter of the Open Meeting scheduled for Wednesday, July 14, 2004, will be:

1. The Commission will consider whether to propose rule 203(b)(3)-2 under the Investment Advisers Act of 1940 to require hedge fund advisers to register with the Commission. The Commission also will consider whether to propose certain conforming and transitional amendments to rules 203(b)(3)-1, 204-2, 205-3, 206(4)-2 and Form ADV.

For further information, please contact Vivien Liu at (202) 942-0719.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942-7070.

Dated: July 1, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04-15446 Filed 7-1-04; 4:00 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49921; File No. SR-Amex-2004-04]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 thereto Relating to Auto-Ex for Exchange Traded Funds and Nasdaq Securities Traded on an Unlisted Basis

June 25, 2004.

On January 20, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to revise its automatic execution ("Auto-Ex") procedures for Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts (collectively referred to as "Exchange Traded Funds" or "ETFs"), and Nasdaq securities admitted to trading on an unlisted basis. On March 4, 2004, the Amex amended the proposed rule change.³ On March 11, 2004, the Amex amended the proposed rule change.⁴

The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on March 25, 2004.⁵ The Commission received no comments on the proposal. On May 19, 2004, the Amex amended the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Office of Market Supervision ("OMS"), Commission, dated March 3, 2004 ("Amendment No. 1"). In Amendment No. 1, the Amex restated the proposed rule change in its entirety.

⁴ See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, OMS, Commission, dated March 11, 2004 ("Amendment No. 2"). In Amendment No. 2, the Amex restated the proposed rule change in its entirety.

⁵ See Securities Exchange Act Release No. 49449 (March 19, 2004), 69 FR 15411.

change.⁶ This order approves the proposed rule change.

The proposed rule change sets forth the Amex's proposed enhanced Auto-Ex technology, which would supersede the Exchange's earlier Auto-Ex systems and permit Auto-Ex to occur against orders on the book. Proposed Amex Rule 128A would govern Auto-Ex of both ETFs and Nasdaq stocks traded on the Exchange. The Exchange has represented that it does not intend to extend the proposed new Auto-Ex procedures to other Amex traded equities at this time, although it may do so in the future. The proposed new rule would not affect Auto-Ex for options.

In addition, the proposed rule change would amend Amex Rule 118 to create a new type of limit order, called an "institutional order," that would be used for customer orders of 10,000 shares or more in Nasdaq National Market Securities. This new order would be required either to be executed automatically in full at one price, or to be routed to the specialist for execution or partial execution. Unlike an all or none order, an institutional order would have standing on the book because it could be executed in part once it is on the book.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Specifically, the Commission believes that the Amex's proposal to enhance its Auto-Ex procedures should provide investors with faster execution of eligible orders. The proposed rule change should benefit the Nasdaq marketplace by providing faster executions of eligible Nasdaq orders, especially since all markets that trade Nasdaq securities at present provide some form of automatic execution. Likewise, speed of execution is important to trading of ETFs because they are derivative securities whose prices are based on baskets of other securities and can change rapidly in very short timeframes. The Commission notes, however, that while it believes the proposed rule change constitutes an improvement over the Amex's current Auto-Ex capabilities, the Amex's proposal would not be sufficient for Amex to be considered an "automated order execution facility," as defined in Rule 600(b)(3) of proposed Regulation NMS because, among other things, it would not provide for an immediate automated response to all incoming subject orders.¹⁰

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹¹, that the proposed rule change (SR-Amex-2004-04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Jill M. Peterson,
Assistant Secretary.

The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Trading in Nasdaq National Market Securities

Rule 118 (a) through (k) no change.
(l) & (m) (proposed in unapproved Amex rule filings).

¹⁰ See Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126 at 11203 (March 9, 2004).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

(n) *An institutional order is a limit order for a Nasdaq National Market Security of 10,000 shares or more transmitted to the order book electronically which is to be executed automatically in full at one price. If it is not executed automatically in full at one price, it is to be routed to the specialist for execution and may be partially executed. Unlike an all or none order, an institutional order has standing on the limit order book. An institutional order may not be entered for the proprietary account of a broker-dealer.*

* * * * *

[Automatic Execution for Nasdaq National Market Securities (Temporary)]

[Rule 118A-T. (a) An Auto-Ex eligible order in a Nasdaq National Market System security will be executed automatically at the Amex Published Quote ("APQ") for such security in accordance with the provisions of this rule.]

[(b) An Auto-Ex eligible order for a Tier 1 Nasdaq National Market security must be a round lot, or partial round lot ("PRL"), market or marketable limit order for 1,000 shares or less received by the Exchange electronically. An Auto-Ex eligible order for a Tier 2 Nasdaq National Market security must be a round lot, or PRL, market or marketable limit order for 500 shares or less received by the Exchange electronically. For purposes of this Rule, a "Tier 1" Nasdaq National Market security is a stock with an average daily consolidated trading volume of over 10 million shares during the preceding calendar quarter, and a "Tier 2" Nasdaq National Market security is a stock with an average daily consolidated trading volume of 10 million shares or less during the preceding calendar quarter.]

[(c) The specialist will be the contra side to each Auto-Ex execution. In the event that the specialist trades as a result of an automatic execution at a price at which the specialist could have executed one or more limit orders on the book, the specialist shall immediately execute any such limit orders at the price of the Auto-Ex trade to the extent such booked orders would have been executed had the incoming order not been executed automatically.]

[(d) An Auto-Ex eligible order will be routed to the specialist and will not be automatically executed in the following situations:

(i) Auto-Ex will be turned-off for one or more securities when the specialist, in conjunction with a Floor Governor or two Floor Officials, determine that quotes are not reliable and the Exchange

⁶ See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, OMS, Commission, dated May 18, 2004 ("Amendment No. 3"). In Amendment No. 3, the Amex revised the proposed rule text to (i) replace the term "Nasdaq National Market Security" with "Nasdaq National Market Securities" in the definition of Auto-Ex Eligible Security in proposed Amex Rule 128A(b); (ii) replace the term "Order Book Freeze" with "Order Book Pause" in proposed Amex Rule 128A(g); (iii) delete the second paragraph of proposed Amex Rule 128(h); (iv) delete subparagraph (vii) of proposed Rule 128A(j); (v) replace the language "according to its terms" with "in full at one price" in subparagraph (ix) of proposed Amex Rule 128A(j); and (vi) make corresponding changes to the numbering within the proposed rule. This was a technical amendment and is not subject to notice and comment. The language of the proposed rule change is attached as Exhibit A.

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

or the Nasdaq Stock Market is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes.

(ii) Auto-Ex will not occur if it would cause the election of a stop or stop limit order on the book, or it would cause a trade to occur through the price of an all or none order on the book.

(iii) Auto-Ex will not occur in a stock for 10 seconds after there has been an Auto-Ex trade in that security.

(iv) Auto-Ex will not occur in a stock when the spread in the Amex Published Quote in that security is equal to or greater than thirty cents.

(v) Auto-Ex will not occur in a stock when the Amex Published Quote on the opposite side of an incoming order is not at the NBBO for that security.

(vi) Auto-Ex will not occur when the size displayed in the APQ on the opposite side of an incoming order is less than the size of the incoming order.

(vii) Auto-Ex will not occur when an incoming order is larger than the applicable Tier 1 or Tier 2 size parameter for that stock.]

[(e) The Auto-Ex Enhancements Committee ("Committee") will review a request from a specialist with respect to one or more securities to:

(i) Increase the size of Auto-Ex eligible orders above 1,000 share Tier 1 or 500 share Tier 2 parameters,

(ii) Reduce the duration of the 10-second pause between Auto-Ex executions, and/or

(iii) Increase the number of trades before the implementation of the 10-second pause in Auto-Ex described in paragraph (d)(iii) above.

The Committee may approve, disapprove or conditionally approve such requests. The Committee will balance the interests of investors, the specialist, and the Exchange in determining whether to grant a specialist's request to modify the Auto-Ex parameters specified in (i) through (iii) of paragraph (e) of this Rule. The Committee also will consider a request from a specialist to reduce Auto-Ex parameters that previously had been increased, provided, however, that the Committee may not reduce the Auto-Ex parameters below the floors stated in paragraphs (b) and (d) of this Rule. The Committee may delegate its authority to one or more Floor Governors. The Committee will meet promptly to review a Governor's decision to modify Auto-Ex parameters in the event that a Governor acts pursuant to delegated authority.]

* * * * *

[Automatic Execution for Exchange Traded Funds]

[Rule 128A. The Exchange shall determine the size and other parameters of orders eligible for execution by its Automatic Execution System (Auto-Ex). An Auto-Ex eligible order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 10 seconds between entry of each such order on the same side of the market in a security. Members and member organizations are responsible for establishing procedures to prevent orders in a security on the same side of the market for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 10 seconds.]

[s s s Commentary]

[.01 Auto-Ex eligible orders for Exchange Traded Funds ("ETFs") must be round lot, market or marketable limit orders for 2,000 shares or less received by the Exchange electronically. Orders for an account in which a market maker in ETFs registered as such on another market has an interest are ineligible for Auto-Ex for ETFs. Notice concerning Auto-Ex eligibility criteria will be provided to members periodically via Exchange circulars and will be posted on the Exchange's web site.]

[.02 Upon the request of a specialist, the Auto-Ex Enhancements Committee ("Committee") will review and approve, disapprove or conditionally approve requests to increase the size of Auto-Ex eligible orders above 2,000 shares. The Committee will balance the interests of investors, the specialist, Registered Options Traders in the crowd, and the Exchange in determining whether to grant a request to increase the size of Auto-Ex eligible orders above 2,000 shares. The Committee also will consider a request from a specialist to reduce the size of Auto-Ex eligible orders balancing the same interests that the Committee would consider in determining whether to increase the size of Auto-Ex eligible orders.]

[.03 Upon the request of a specialist, a Floor Governor may reduce the size of Auto-Ex eligible orders below 2,000 shares or increase the size of Auto-Ex eligible orders up to 5,000 shares if such action is appropriate in view of system problems or unusual market conditions. Any such change in the size of Auto-Ex eligible orders will be temporary and will only last until the end of the unusual market condition or the correction of the system problem.

Auto-Ex eligible orders will be routed to the specialist and will not be

automatically executed in situations where the specialist in conjunction with a Floor Governor or two Floor Officials determine that quotes are not reliable and if the Exchange is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes.

Members and member organizations will be notified when the size of Auto-Ex eligible orders is adjusted due to system problems or unusual market conditions. Members and member organizations also will be notified when the Exchange has determined that quotes are not reliable and the Exchange is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes prior to disengaging Auto-Ex.]

[.04 When the Amex establishes the NBBO (National Best Bid or Offer), Auto-Ex will be programmed to execute eligible incoming ETF orders at the Amex Published Quote ("APQ") plus a programmable number of trading increments with respect to the Amex bid (with respect to incoming sell orders), and less a programmable number of trading increments with respect to the Amex offer (with respect to incoming buy orders). The amount of price improvement relative to the APQ will be determined by the Committee.

When the Amex does not establish the NBBO, Auto-Ex will be programmed to execute eligible incoming ETF orders at or better than the NBBO up to a specified number of trading increments relative to the APQ. Auto-Ex will execute eligible incoming orders at an improved price relative to the APQ unless a trade through would result of an away ITS participant market. If a trade through would result, the orders will be routed to the Amex specialist for execution. The extent to which Auto-Ex will better the APQ in order to match or improve the NBBO (if the Amex does not establish the NBBO) will be determined by the Committee.

Auto-Ex will be unavailable (i) with respect to incoming sell orders when the published bid on the Amex is for 100 shares, and (ii) with respect to incoming buy orders when the published offer on the Amex is for 100 shares. Auto-Ex also will be unavailable when the spread between the bid and offer on the Amex exceeds a specified minimum or maximum value. The Committee will determine the spread in the APQ at which Auto-Ex will be unavailable.

The Committee will act upon the request of a specialist and will balance the interests of investors, the specialist, Registered Options Traders in the crowd, and the Exchange in determining (i) the amount of price improvement

that will be programmed into Auto-Ex when the Amex establishes the NBBO, (ii) the extent to which Auto-Ex will better the APQ in order to match or improve the NBBO (if the Amex does

not establish the NBBO), and (iii) the spread in the APQ at which Auto-Ex will be unavailable.]

[.05 Specialist and Registered Options Traders that sign-on to Auto-Ex

will be automatically allocated the contra side of Auto-Ex trades for ETFs according to the following schedule:

Number of ROTs signed on to Auto-Ex in a crowd	Approximate number of trades allocated to the specialist throughout the day ("target ratio") (percent)	Approximate number of trades allocated to ROTs signed on to Auto-Ex throughout the day ("target ratio") (percent)
1	60	40
2-4	40	60
5-7	30	70
8-15	25	75
16 or more	20	80

At the start of each trading day, the sequence in which trades will be allocated to the specialist and Registered Options Traders signed-on to Auto-Ex will be randomly determined. Auto-Ex trades then will be automatically allocated in sequence on a rotating basis to the specialist and to the Registered Options Traders that have signed-on to the system so that the specialist and the crowd achieve their "target ratios" over the course of a trading session. If an Auto-Ex eligible order is greater than 100 shares, Auto-Ex will divide the trade into lots of 100 shares each. Each lot will be considered a separate trade for purposes of determining target ratios and allocating trades within Auto-Ex.]

[.06 The Committee may delegate its authority to one or more Floor Governors. The Committee will meet promptly to review a Governor's decision in the event that a Governor acts pursuant to delegated authority.]

* * * * *

Automatic Execution

Rule 128A. (a) An Auto-Ex Eligible Order for an Auto-Ex Eligible Security will be executed automatically in accordance with the provisions of this rule.

(b) Definitions: Amex Published Quote ("APQ"). The Amex Published Quote is the highest bid and lowest offer disseminated by the American Stock Exchange.

Best Bid and Offer ("BBO"). The Best Bid and Offer is the highest bid and lowest offer disseminated by the national securities exchanges and facilities of national securities associations other than the Amex. Auto-Ex will disregard a bid or offer of less than 200 shares disseminated by any national securities exchange or facility

of a national securities association in determining the BBO.

Auto-Ex Eligible Order. An Auto-Ex Eligible Order is a round lot or partial round lot market or marketable limit order delivered to the order book electronically. An Auto-Ex Eligible Order does not include an order update (e.g., a "cancel/replace" and "cancel/leaves" order) An Auto-Ex Eligible Order does not include an order entered into the order book by the specialist. Orders on the book may be automatically matched against incoming Auto-Ex Eligible Orders as provided in this Rule.

Auto-Ex Eligible Security. Auto-Ex Eligible Securities consist of Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts and Nasdaq National Market Securities traded on the Exchange together with such other securities as may be designated as Auto-Ex Eligible Securities from time to time by the Exchange.

Auto-Ex. Auto-Ex is the system for automatically executing Auto-Ex Eligible Orders.

Auto-Ex Step-Up. Auto-Ex Step-Up is a functionality that allows Auto-Ex Eligible Orders to be automatically executed against the Specialist/Registered Trader Quantity at the APQ plus (in the case of a bid) or minus (in the case of an offer) a specified number of trading increments designated by the Auto-Ex Enhancements Committee necessary to match the BBO when the APQ is inferior to the BBO. Auto-Ex Step-Up is not available to orders for the proprietary account of a broker-dealer.

Auto-Ex Step-Up Amount. The Auto-Ex Step-Up Amount is the specified maximum number of trading increments necessary to attempt to match the BBO when the APQ is inferior to the BBO.

Auto-Ex Step-Up Size: The Auto-Ex Step-Up Size is the maximum size of an Auto-Ex Eligible Order that is eligible for Auto-Ex Step-Up.

Specialist/Registered Trader Quantity: The Specialist/Registered Trader Quantity is the number of shares that the specialist and registered traders in a crowd signed on to Auto-Ex will purchase or sell through Auto-Ex executions.

Available Book Quantity: The Available Book Quantity is the number of shares on the order book at the APQ plus additional orders on the book that can be executed at or within the APQ minus shares on the book priced at or within the APQ that cannot be executed by their terms (e.g., all or none orders and tick sensitive orders).

Trade Threshold: The Trade Threshold is the number of Auto-Ex trades that the specialist and crowd will execute through Auto-Ex.

Maximum Spread Value: The Maximum Spread Value is the size of the spread at which Auto-Ex is automatically turned-off because the quote is too wide.

(c) Hours of Operation: Auto-Ex will be available for an Auto-Ex Eligible Security following the opening or reopening of a security on the Exchange once a trade has occurred and a quote has been disseminated in the security. Auto Ex will be turned-off at 3:59 p.m.. For securities that trade until 4:15 p.m., Auto-Ex will be re-enabled at 4:01 p.m. and will continue to be available until 4:14 p.m.

(d) Interaction of Auto-Ex and Auction Market. (i) A bid or offer incorporated in the APQ shall not be deemed accepted by a member in the trading crowd and, as the result, no contract shall be created, until the

specialist begins to enter the member's acceptance into the order book.

(ii) Auto-Ex will be turned-off on the bid or offer side of the market (as appropriate) in the event that (1) one or more brokers or registered traders in the trading crowd make a bid or offer within the APQ (a priority bid or offer), or (2) one or more brokers in the crowd make a bid or offer that is on parity with the APQ (a parity bid or offer). Auto-Ex will be turned-on again when all members signed-on to Auto-Ex in the crowd are on parity and no broker is making a parity bid or offer.

(e) Auto-Ex Enhancements Committee. The Auto-Ex Enhancements Committee will review, approve, disapprove, or conditionally approve specialist requests to take the following actions:

- (i) Establish the Trade Threshold;
- (ii) Establish the Specialist/Registered Trader Quantity;
- (iii) Limit the size of Available Book Quantity;
- (iv) Establish the Auto-Ex-Step-Up Size and Auto-Ex-Step-Up Amount in securities where there are Registered Traders in the crowd;
- (v) Establish the Maximum Spread Value;
- (vi) Establish the di-minimis trade through amount for securities that are listed in markets that have trade through rules.

The Committee will balance the interests of investors, the specialist, registered traders signed on to Auto-Ex, and the Exchange in considering such requests. In the event that the Committee changes one or more Auto-Ex parameters, the minutes of the Committee's meetings will state the change in market conditions, competitive environment or other circumstance(s) that caused the Committee to change the parameter(s). The Committee may delegate its authority to one or more Floor Governors. The Committee will meet promptly to review a Governor's decision in the event that a Governor acts pursuant to delegated authority.

(f) Determination of Execution Price: The price at which an Auto-Ex Eligible Order will be executed by Auto-Ex will be determined as follows:

(i) Auto-Ex will execute an Auto-Ex eligible order at the APQ (or better, as provided for in this Rule) when the APQ is equal to or better than the BBO as determined by the Exchange's order processing systems. Auto-Ex will not execute an order, and the order will be routed to the specialist for execution, if execution of the order at the APQ would result in a trade through of the BBO;

(ii) In the event that Auto-Ex Step-Up is engaged to match the BBO, Auto-Ex will execute an Auto-Ex eligible order against the available Specialist/Registered Trader Quantity at the APQ plus (in the case of a bid) or minus (in the case of an offer) the lesser of (1) the Auto-Ex Step-Up Amount, or (2) the minimum number of trading increments necessary to match the BBO where the APQ is inferior to the BBO as determined by the Exchange's order processing systems. Auto-Ex will not execute an order, and the order will be routed to the specialist for execution, if (1) execution of the order at the APQ plus (or minus) the Auto-Ex Step-Up amount would result in a trade through of the BBO, or (2) the incoming order is larger than the Auto-Ex Step-Up size;

(iii) If programmed to do so, Auto-Ex will execute an Auto-Ex eligible order at the APQ when the APQ is inferior to the BBO as determined by the Exchange's order processing systems by a specified number of trading increments (the "di-minimis trade through amount"). Auto-Ex will not execute an order, and the order will be routed to the specialist for execution, if execution of the order at the APQ would result in a trade through of the BBO by more than the di-minimis trade through amount.

Notwithstanding the foregoing, in the event that there are one or more executable limit orders on the order book on the opposite side of an Auto-Ex Eligible Order priced between the APQ, Auto-Ex will execute the incoming order against the order(s) on the order book at their limit price(s). In the event that there are one or more executable market orders in the order book on the opposite side of the incoming Auto-Ex-Eligible Order and the APQ spread is greater than the minimum trading variation, Auto-Ex will execute the incoming order against the resident market order(s) at the mid point between the best limit bid and offer or APQ (whichever is better), and, if this mid point value is not a trading interval, the price will be rounded up to the nearest trading interval.

(g) Auto-Ex Coming out of an Order Book Pause. During an Order Book Pause, messages coming into the order book (e.g., orders, status requests, cancels, cancel/replaces) queue and do not enter the order book. When the Order Book Pause ends, Auto-Ex will be re-enabled immediately if all incoming orders are on the same side of the market. Auto-Ex will not be re-enabled, however, if there are orders on both sides of the market to allow the specialist to pair-off the orders to the extent possible. Automatic execution

will resume once all messages in the queue are processed.

(h) Auto-Ex Size: Auto-Ex will execute Auto-Ex Eligible Orders up to the lesser of: (1) the size displayed in the APQ plus executable orders on the book within the APQ, or (2) the sum of the remaining Specialist/Registered Trader Quantity and Available Book Quantity. Notwithstanding the foregoing, Auto-Ex trades executed by the Auto-Ex Step-Up functionality are limited to the Auto-Ex Step-Up Size.

The round lot portion of a partial round lot order will be executed as if it were a round lot order and the odd lot portion of the order will be executed as if it were an odd lot order.

(i) Contra Parties to Auto-Ex Trades. Auto-Ex will first allocate the contra side to an Auto-Ex trade to the Available Book Quantity in price/time priority. Auto-Ex will then allocate any portion of the Auto-Ex Eligible Order that remains unexecuted to the available Specialist/Registered Trader Quantity in accordance with participation percentages ("target ratios") determined by the ETF Trading Committee.

At the start of each trading day, the sequence in which shares will be allocated to the specialist and Registered Traders signed-on to Auto-Ex will be randomly determined. Auto-Ex shares then will be automatically allocated in sequence on a rotating basis to the specialist and to the Registered Traders that have signed-on to the system so that the specialist and the crowd achieve their "target ratios" over the course of a trading session. If an Auto-Ex eligible order is greater than 100 shares, Auto-Ex will divide the trade into lots of 100 shares each. Each lot will be considered a separate trade for purposes of determining target ratios and allocating shares within Auto-Ex.

(j) Auto-Ex Unavailability. Auto-Ex will be unavailable in the following situations.

(i) Auto-Ex will not occur when the APQ is crossed with the BBO unless Auto-Ex is programmed to disregard the BBO in the case of a "di-minimis trade through" amount.

(ii) Auto-Ex will not occur when the Trade Threshold is exhausted and there is no Available Book Quantity.

(iii) Auto-Ex will not occur when the Specialist/Registered Trader Quantity is exhausted and there is no Available Book Quantity.

(iv) Auto-Ex will not occur when there is an open outgoing ITS commitment on behalf of a customer order.

(v) Auto-Ex will not occur on the Amex bid or offer (as appropriate) in the event that (1) one or more brokers or

registered traders in the trading crowd make a bid or offer within the APQ (a priority bid or offer), or (2) one or more brokers in the crowd make a bid or offer that is on parity with the APQ (a parity bid or offer). Auto-Ex will be turned-on again when all members signed-on to Auto-Ex in the crowd are on parity and no broker is making a parity bid or offer.

(vi) Auto-Ex will not occur on the bid or offer (as appropriate) in the event that the APQ on that side of the market is for less than 200 shares.

(vii) Auto-Ex will not occur when the order book on the Amex is locked or crossed with the APQ.

(viii) Auto-Ex will not occur with respect to an incoming Auto-Ex Eligible All Or None or Institutional Order in the event that there is insufficient size to execute the order in full at one price.

(ix) Auto-Ex will not occur if the execution of the incoming order would elect a stop order on the order book.

(x) Auto-Ex will not occur if the specialist is in the process of executing an order in the security.

(xi) Auto-Ex will not occur in one or more securities when the specialist, in conjunction with a Floor Governor or two Floor Officials, determine(s) that (1) quotes are not reliable, (2) the Exchange is experiencing communications or systems problems, "Unusual Market Conditions" as described in Amex Rule 115, or delays in the dissemination of quotes, or (3) the market(s) where the underlying securities trade (or Nasdaq with respect to Nasdaq National Market Securities) are experiencing communications or systems problems, "Unusual Market Conditions" as described in SEC Rule 11Ac1-1, or delays in the dissemination of quotes.

(xii) Auto-Ex will not occur if it would cause a trade to occur through the price of an all or none order on the book.

(xiii) Auto-Ex will not occur if there are orders on both sides of the market when the order book comes out of a Pause* condition to allow the specialist to pair-off the orders.

(xiv) Auto-Ex will not occur if the spread exceeds the Maximum Spread Value.

Auto-Ex Eligible Orders that are not automatically executed will be routed to the specialist for handling.

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* The Commission corrected the proposed rule text to replace "Freeze" with "Pause." Telephone conversation between William Floyd-Jones, Associate General Counsel, Amex, and Ann E. Leddy, Special Counsel, Division of Market Regulation ("Division"), Commission (June 25, 2004).

SECURITIES AND EXCHANGE COMMISSION

[Release 34-49940; File No. 600-23]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Approving an Extension of Temporary Registration as a Clearing Agency

June 29, 2004.

The Securities and Exchange Commission ("Commission") is publishing this notice and order to solicit comments from interested persons and to extend the Fixed Income Clearing Corporation's ("FICC") temporary registration as a clearing agency through June 30, 2005.¹

On May 24, 1988, pursuant to sections 17A(b) and 19(a) of the Act² and Rule 17Ab2-1 promulgated thereunder,³ the Commission granted the Government Securities Clearing Corporation ("GSCC") registration as a clearing agency on a temporary basis for a period of three years.⁴ The Commission subsequently extended GSCC's registration through June 30, 2003.⁵

On February 2, 1987, pursuant to sections 17A(b) and 19(a) of the Act⁶ and Rule 17Ab2-1 promulgated thereunder,⁷ the Commission granted MBS Clearing Corporation ("MBSCC") registration as a clearing agency on a temporary basis for a period of 18 months.⁸ The Commission subsequently extended MBSCC's registration through June 30, 2003.⁹

¹ On January 1, 2003, MBS Clearing Corporation ("MBSCC") was merged into the Government Securities Clearing Corporation ("GSCC") and GSCC was renamed the Fixed Income Clearing Corporation. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) File Nos. [SR-GSCC-2002-07 and SR-MBSCC-2002-01].

² 15 U.S.C. 78q-1(b) and 78s(a).

³ 17 CFR 240.17Ab2-1.

⁴ Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

⁵ Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; 43089 (July 28, 2000), 65 FR 48032; 43900 (January 29, 2001), 66 FR 8988; 44553 (July 13, 2001), 66 FR 37714; 45164 (December 18, 2001), 66 FR 66957; and 46135 (June 27, 2002), 67 FR 44655.

⁶ *Supra* note 2.

⁷ *Supra* note 3.

⁸ Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

⁹ Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR

On July 1, 2003, the Commission issued an order extending FICC's temporary registration through June 30, 2004.¹⁰

On June 9, 2004, FICC requested that the Commission extend FICC's temporary registration until such time as the Commission is prepared to grant FICC permanent registration.¹¹

The Commission today is extending FICC's temporary registration as a clearing agency in order that FICC may continue to provide its users clearing and settlement services as a registered clearing agency. During the third quarter of 2004, the Commission expects to publish a release requesting comment on granting FICC permanent registration as a clearing agency. FICC acts as the central clearing entity for the U.S. Government securities trading and financing marketplaces and provides for the safe and efficient clearance and settlement of transactions in mortgage-backed securities. 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 File Number 600-23 on the subject line.

Paper Comments

- 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 File Number 600-23. 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/>

50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997), 62 FR 36587; 39776 (March 20, 1998), 63 FR 14740; 41211 (March 24, 1999), 64 FR 15854; 42568 (March 23, 2000), 65 FR 16980; 44089 (March 21, 2001), 66 FR 16961; 44831 (September 21, 2001), 66 FR 49728; 45607 (March 20, 2002), 67 FR 14755; and 46136 (June 27, 2002), 67 FR 44655.

¹⁰ Securities Exchange Act Release No. 48116 (July 1, 2003), 68 FR 41031.

¹¹ Letter from Jeffrey Ingber, Managing Director, General Counsel, and Secretary, FICC (June 3, 2004).