

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57514; File No. SR-Amex-2008-02)

March 17, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Amendment No. 2 to Proposed Rule Change and Order Granting Accelerated Approval of Such Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Rules Permitting the Listing and Trading of Managed Fund Shares, Fees Applicable to Such Managed Fund Shares, and the Listing and Trading of Shares of the Bear Stearns Current Yield Fund

I. Introduction

On February 7, 2008, 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 seeking to: (1) adopt new Amex Rules 1000B, 1001B, 1002B, and 1003B to permit the listing and trading of securities (“Managed Fund Shares”) issued by an actively managed, open-end investment management company; (2) list and trade the shares (“Shares”) of the Bear Stearns Current Yield Fund (“Fund”), an investment portfolio of the Bear Stearns Active ETF Trust (“Trust”), pursuant to those rules; and (3) amend its original listing and annual listing fees to include Managed Fund Shares and make certain other changes. The proposed rule change was published for comment in the Federal Register on February 14, 2008.³ On February 20, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ On March 14, 2008, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57297 (February 8, 2008), 73 FR 8723 (“Notice”).

⁴ In Amendment No. 1, Amex made several clarifying corrections to the definitions of “Disclosed Portfolio” and “Portfolio Indicative Value” and conforming changes to Form 19b-4 and Exhibit 1 thereto to account for such corrections. Because Amendment No. 1 to the proposed rule change is technical in nature, it is not subject to notice and comment.

Exchange filed Amendment No. 2 to the proposed rule change.⁵ The Commission received no comments regarding the proposal. This order provides notice and solicits comments from interested persons regarding Amendment No. 2 to the proposed rule change and approves the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to add new Amex Rules 1000B, 1001B, 1002B, and 1003B to permit the listing and trading of Managed Fund Shares. Pursuant to these new rules, the Exchange proposes to list and trade the Shares. Amex states that the Shares will conform to the initial and continued listing criteria under proposed Amex Rules 1000B, 1001B, and 1002B. The Exchange also proposes to amend its original listing and annual listing fees in Sections 140 and 141 of the Amex Company Guide to include Managed Fund Shares and make certain other technical and conforming changes in the Amex rules to incorporate references to the new Amex rules proposed herein.

Proposed Listing Rules

Proposed new Amex Rules 1000B, 1001B (for initial listing), and 1002B (for continued listing) define and establish listing standards for Managed Fund Shares. Proposed Amex Rule 1000B(b) sets forth the relevant definitions. In particular, proposed Amex Rule 1000B(b)(1)

⁵ In Amendment No. 2, Amex added Commentary .06 to proposed Amex Rule 1000B which would require: (1) the investment adviser to the Investment Company (as defined herein) issuing Managed Fund Shares to erect a “firewall” around personnel who have access to information concerning the composition and/or changes to the Investment Company portfolio; and (2) personnel who make decisions on the Investment Company’s portfolio composition to be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio. In addition, Amex provided a representation describing the ethical and fiduciary requirements under the Investment Advisers Act of 1940 (“Advisers Act”), as they apply to Bear Stearns Asset Management, Inc., the investment adviser of the Fund.

defines “Managed Fund Share” as a security that: (a) represents an interest in a registered investment company (“Investment Company”), organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”); and (c) when aggregated in the same specified minimum number, may be redeemed at a holder’s request for a specified portfolio of securities and/or cash with a value equal to the next determined NAV.

Proposed Amex Rule 1000B(b)(2) defines Disclosed Portfolio as the securities and other assets in the Investment Company portfolio that will form the basis for the Investment Company’s calculation of its NAV. The term “Portfolio Indicative Value,” set forth in proposed Amex Rule 1000B(b)(3), is defined as the estimated indicative value of a Managed Fund Share based on updated information regarding the value of the securities in the Disclosed Portfolio.

Proposed Amex Rule 1000B(b)(4) defines “Reporting Authority” to mean the Exchange, a subsidiary of the Exchange, or an institution or service designated by the Exchange or its subsidiary as the official source for determining and reporting the information relating to a series of Managed Fund Shares, including, but not limited to, the Portfolio Indicative Value, the Disclosed Portfolio, the amount of any cash distribution to holders of Managed Fund Shares, NAV, or other information relating to the issuance, redemption, or trading of Managed Fund Shares.

Proposed Commentaries .01 through .05 to proposed Amex Rule 1000B substantially mirror Commentaries .05, .02(j), .06, .08, and .09 to current Amex Rule 1000A-AEMI,

respectively. Specifically, proposed Commentaries .01(a), (b), (c), and (d) are substantively identical to Commentaries .05(d), (f), (e), and (c), respectively, to Amex Rule 1000A-AEMI. The proposed Commentary provisions relate to minimum price variation, hours of trading, listing fees, and surveillance procedures. In addition, the substance of Commentary .05(a) to Amex Rule 1000A-AEMI is set forth in proposed Amex Rule 1000B(b)(3) in connection with the dissemination of information. Proposed Commentary .06 to Amex Rule 1000B is similar to Commentary .02(b)(i) and (iii) to Amex Rule 1000A-AEMI,⁶ except that the required “firewall” to be established around certain personnel and procedures designed to prevent such personnel from using and disseminating material non-public information reflect restricted access and dissemination of the Investment Company’s portfolio, as opposed to an underlying benchmark index, as is the case with index-based exchange-traded funds (“ETFs”).

Proposed Commentary .02 to Amex Rule 1000B is substantively identical to existing Commentary .02(j) to Amex Rule 1000A-AEMI, which relates to international or global portfolio creations/redemptions. With respect to a Managed Fund Share based on an international or global portfolio, this provision requires that the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 (“1940 Act”) for the series of Managed Fund Shares state that such series will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption

⁶ See Commentary .02(b)(i) and (iii) to Amex Rule 1000A-AEMI (providing that: (1) if the index on which a series of Index Fund Shares is based is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor must erect a “firewall” around the personnel who have access to information concerning changes and adjustments to the index, and the index must be calculated by a third party who is not a broker-dealer or fund advisor; and (2) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index or portfolio composition, methodology, and related matters, must implement and maintain, or be

securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

Proposed Commentary .03 to Amex Rule 1000B is substantively identical to Commentary .06 to Amex Rule 1000A-AEMI in connection with Exchange obligations for those Managed Fund Shares that receive an exemption from certain prospectus delivery requirements under Section 24(d) of the 1940 Act. Proposed Commentary .04 to Amex Rule 1000B, relating to the limitation of entering multiple limit orders by members and member organizations, is also substantively identical to Commentary .09 to Amex Rule 1000A-AEMI. Proposed Commentary .05 to Amex Rule 1000B relating to “trading ahead” is substantively identical to Commentary .09 to Amex Rule 1000A-AEMI. Lastly, proposed Commentary .06 to Amex Rule 1000B provides that the investment adviser of the Investment Company must erect a “firewall” around its personnel who have access to information regarding the composition and/or changes to the Investment Company’s portfolio.⁷ In addition, proposed Commentary .06 further requires that

subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index).

⁷ The Exchange states that an Investment Company’s investment adviser, which is required to be registered under the Advisers Act, would be subject to the provisions of Rule 204A-1 under the Advisers Act (17 CFR 275.204A-1) relating to codes of ethics for investment advisers. Rule 204A-1 requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, the Exchange notes that “firewall” procedures, as well as procedures designed to prevent the misuse of non-public information by an investment adviser, must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act (17 CFR 275.206(4)-7) makes it unlawful for an investment adviser to provide investment advice to clients, unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the rules thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of such policies and procedures and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person)

personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Investment Company's portfolio.

With respect to the initial listing standards for Managed Fund Shares, proposed Amex Rule 1001B(i) provides that the Exchange will establish a minimum number of shares outstanding at the time of commencement of trading. In addition, proposed Amex Rule 1001B(ii) requires that the Exchange obtain a representation from the issuer of each series of Managed Fund Shares that the NAV per share for the series will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Proposed Commentary .01 to Amex Rule 1001B specifically provides that each series of Managed Fund Shares, prior to listing and/or trading, is required to submit for Commission review and approval, a proposed rule change pursuant to Section 19(b) of the Act. Accordingly, each series of Managed Fund Shares will require Commission review and approval prior to listing and trading.

The proposed continued listing criteria set forth in proposed Amex Rule 1002B(iii) provides for the delisting of the Shares under any of the following circumstances:

- If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of the Managed Fund Shares for 30 or more consecutive trading days;

responsible for administering such policies and procedures. See also Section 204A of the Advisers Act (15 U.S.C. 80b-4a) (requiring investment advisers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such investment adviser or any person associated with such investment adviser).

- If the value of the Portfolio Indicative Value is no longer calculated or available, or the Disclosed Portfolio is not made available to all market participants at the same time;
- If the Trust has not filed, on a timely basis, any required filings with the Commission, or if the Exchange becomes aware that the Trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to or otherwise applicable to the Trust; or
- If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Managed Fund Shares on the Exchange inadvisable.

Proposed Amex Rule 1002B also sets forth the continued listing criteria relating to the Portfolio Indicative Value and the Disclosed Portfolio. Specifically, proposed Amex Rule 1002B(i) requires that the Portfolio Indicative Value for a Managed Fund Share be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the Managed Fund Shares are traded on the Exchange. Proposed Amex Rule 1002B(ii)(a) provides that the Disclosed Portfolio be disseminated at least once daily to all market participants at the same time. Further, proposed Amex Rule 1002B(ii)(b) requires that the Reporting Authority for the Disclosed Portfolio implement and maintain, or be subject to, “firewall” procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Disclosed Portfolio.

Pursuant to proposed Amex Rule 1002B(iv), the Exchange will halt trading under the following circumstances:

- If the circuit breaker parameters of Amex Rule 117 have been reached, the

Exchange will halt trading in a series of Managed Fund Shares.

- If the Portfolio Indicative Value of the Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.
- If a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series if the primary listing market halts trading in that series of Managed Fund Shares because the Portfolio Indicative Value applicable to that series of Managed Fund Shares is not being disseminated as required.
- If the Exchange becomes aware that the NAV or Disclosed Portfolio related to a series of Managed Fund Shares is not being disseminated to all market participants at the same time, the Exchange will halt trading in such Managed Fund Shares. The Exchange may resume trading in the Managed Fund Shares only when the NAV or Disclosed Portfolio is disseminated to all market participants at the same time.
- Finally, in exercising its discretion to halt or suspend trading in Managed Fund Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b), in addition to other factors that may be relevant.

Proposed Amex Rule 1003B would limit Exchange liability in connection with potential claims, damages, losses, or expenses regarding a Managed Fund Share. The Exchange states that proposed Amex Rule 1003B is substantially similar to current Amex Rule 1003A.

Original and Annual Listing Fees

The Exchange seeks to amend its rules relating to listing fees to include Managed Fund Shares. As proposed, Amex's original listing fee applicable to the listing of series of Managed Fund Shares will be \$5,000, but may be deferred, waived, or rebated upon transfer to Amex from another marketplace. In addition, the annual listing fee applicable under Section 141 of the Amex Company Guide will be based upon the year-end aggregate number of Shares outstanding at the end of each calendar year. In connection with Section 140 of the Company Guide, the Exchange proposes to make a technical revision so that "Trust Units" are also included among the types of securities whose initial listing fees may be deferred, waived, or rebated upon transfer to Amex from another marketplace.

Description of the Fund

The Fund, an exchange-traded fund, is the sole investment portfolio of the Trust. The Trust is organized as a Delaware statutory trust and is an open-end fund registered under the 1940 Act.⁸ The investment objective of the Fund is to seek as high a level of current income as is consistent with the preservation of capital and liquidity. The Fund will be actively managed by its portfolio manager, who will have discretion to choose securities for the Fund's portfolio consistent with the Fund's investment objective.⁹ The Fund's portfolio manager seeks to attain the Fund's objective by investing primarily in short-term debt obligations, including U.S. government securities, bank obligations, corporate debt obligations, mortgage-backed and asset-backed securities, municipal obligations, foreign bank obligations (U.S. dollar

⁸ The Exchange states that the Fund is not a "money market fund" and is not subject to certain rules and regulations under the 1940 Act governing money market funds.

⁹ The Exchange states that the Fund's investment objective may be changed without shareholder approval upon 30 days' written notice to shareholders.

denominated), foreign corporate debt obligations (U.S. dollar denominated), repurchase agreements, and reverse repurchase agreements.

The Exchange proposes to list and trade the Fund Shares pursuant to proposed Amex Rules 1000B, 1001B, and 1002B. Amex represents that the Shares will conform to the initial and continued listing criteria under such proposed rules.¹⁰ The Registration Statement, including the Prospectus and Statement of Additional Information (“SAI”), provides a detailed description of the Fund including, but not limited to, the structure of the Fund, cash-only creation and redemption processes, investment objective and policies, characteristics, tax status, and distributions.¹¹

Availability of Information Regarding the Fund and the Shares

The daily NAV for the Fund will be calculated and disseminated publicly each Business Day¹² to all market participants at the same time. In addition, prior to the opening each Business Day, the Fund will make publicly available on its Web site the Disclosed Portfolio, which is the file of all the portfolio securities held by the Fund and the quantities thereof, including, as applicable, the specific types and amounts of short-term debt securities and the amount of cash held in the portfolio of the Fund, as of the close of business on the prior

¹⁰ The Exchange represents that, for initial and/or continued listing, the Shares must also be in compliance with Section 803 of the Amex Company Guide and Rule 10A-3 under the Act (17 CFR 240.10A-3). In addition, the Exchange represents that Bear Stearns Asset Management, Inc. (“Bear Stearns Asset Management”), the investment adviser of the Fund, and its related personnel are subject to Rule 204A-1 under the Advisers Act. See supra note 7.

¹¹ See the Trust’s Form N-1A/A filed with the Commission on August 6, 2007 (File Nos. 333-141421 and 811-22038). Additional information regarding arbitrage opportunities relating to the Shares can be found in the Notice. See Notice, supra note 3.

¹² “Business Day” is defined as a day in which the Trust will sell and redeem Creation Units of the Fund.

Business Day, reflecting all securities bought and sold on such prior Business Day.¹³ This information will be available to all investors and market participants at the same time and will form the basis for the Fund’s calculation of NAV as of the close of regular trading on the Exchange (ordinarily 4:00 p.m. Eastern Time).

Amex will disseminate at least every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association (“CTA”), the Portfolio Indicative Value. An independent pricing service will calculate the Portfolio Indicative Value during the hours of trading on the Exchange by dividing the “Estimated Fund Value” as of the time of the calculation by the total Shares outstanding. “Estimated Fund Value” is the sum of the estimated amount of cash held in the Fund’s portfolio, the estimated value of the securities held in the Fund’s portfolio, and the estimated amount of accrued interest, minus the estimated amount of liabilities.¹⁴

The Web site for the Fund will display the Prospectus, the SAI, and additional quantitative information that is updated on a daily basis, including, among other things, the following information, on a per-Share basis: (a) the prior Business Day’s NAV, the reported mid-point of the bid-ask spread at the time of NAV calculation (“Bid-Ask Price”), and a calculation of the premium or discount of the Bid-Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid-Ask

¹³ The Exchange states that the Trust will comply with its obligations to disclose in its SAI its policies and procedures with respect to the Disclosed Portfolio and state in its Prospectus that a description of the Fund’s policies and procedures is available in the SAI. See Investment Company Act Release No. 26418 (April 16, 2004), 69 FR 22300 (April 23, 2004).

¹⁴ The Exchange states that the methodology used to calculate the Portfolio Indicative Value for the Fund is similar to those used by some existing ETFs listed on the Exchange that track fixed-income securities indices, as well as numerous fixed-income mutual funds.

Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Amex also intends to disseminate a variety of data with respect to the Shares on a daily basis, by means of CTA and Consolidated Quotation High Speed Lines, including quotation and last sale data, information of the previous day's close with respect to NAV, and the number of Shares outstanding. In addition, as with other ETFs, information regarding secondary market prices and volume of the Shares will be broadly available in real-time throughout the trading day.

Trading Rules

The Shares are equity securities subject to Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity, and precedence of orders, specialist responsibilities, account opening, and customer suitability (Amex Rule 411). Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205-AEMI) will also apply. Specialist transactions of the Shares made in connection with the creation and redemption of Shares will not be subject to the prohibitions of Rule 190.¹⁵

Amex Rules 154-AEMI(c)(ii) (Election by Quotation of Stop and Stop Limit Orders) and 126A-AEMI (Protected Bids and Offers of Away Markets) will apply to the trading of the Shares. In addition, Exchange members and member organizations will be subject to proposed Commentary .04 to Amex Rule 1000B prohibiting such member or member organizations from entering into the Exchange's order routing system multiple limit orders as agent (i.e., customer agency orders). Further, proposed Commentary .05 to Rule 1000B provides that it may be

¹⁵ Commentary .04 to Amex Rule 190 states that nothing in Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market. See Commentary .04 to Amex Rule 190.

considered inconsistent with just and equitable principles of trade for a member or person associated with a member to “trade ahead” of a related customer order in Managed Fund Shares based on material, non-public information obtained from such customer order.

Information Circular

The Exchange will distribute an Information Circular to Exchange members and member organizations prior to the commencement of trading of the Shares that describes the prospectus delivery requirements and, as relevant, the application of proposed Commentary .03 to Amex Rule 1000B. The Exchange notes that investors purchasing Shares directly from the Fund by delivery of a Creation Unit will receive a Prospectus.

In addition, the Information Circular will inform Exchange members and member organizations that procedures for purchases and redemptions of Shares in Creation Units are described in the Fund’s Prospectus and SAI, and that Shares are not individually redeemable, but are redeemable only in Creation Units or multiples thereof. The Exchange will also inform members and member organizations of the characteristics of the Fund and the Shares and of applicable Exchange rules, as well as of the suitability requirements of Amex Rule 411 (Duty to Know and Approve Customers).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

III. Discussion

After careful consideration, 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.¹⁶ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,¹⁷ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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.

Proposed Listing Rules for Managed Fund Shares

The Commission finds that Amex's proposal contains adequate rules and procedures to govern the listing and trading of Managed Fund Shares on the Exchange.¹⁸ Prior to listing and/or trading on the Exchange, Amex must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Managed Fund Shares. All such securities listed and/or traded under proposed Amex Rule 1000B will be subject to the full panoply of Amex rules and procedures that currently govern the trading of equity securities on the Exchange.

For the initial listing of each series of Managed Fund Shares under proposed Amex Rule 1001B, the Exchange must establish a minimum number of Managed Fund Shares required to be outstanding at the commencement of trading on the Exchange. In addition, the Exchange must obtain a representation from the issuer of Managed Fund Shares that the NAV per share will be

¹⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ The Commission believes that the proposed rules and procedures are adequate with respect to the Fund Shares. However, the Commission notes that other proposed series of Managed Fund Shares may require additional Exchange rules and procedures to govern their listing and trading on the Exchange. For example, in the case of a proposed series of Managed Fund Shares that are based on a portfolio, at least in part, of non-U.S.

calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

The Commission believes that the proposed continued listing and trading standards under proposed Amex Rule 1002B are adequate to ensure transparency of key values and information regarding the securities. For continued listing of each series of Managed Fund Shares, the Portfolio Indicative Value must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange. Further, the Disclosed Portfolio must be disseminated at least once daily and made available to all market participants at the same time.

The Commission finds that the Exchange's rules with respect to trading halts under proposed Amex Rule 1002B(iv) should help ensure the availability of key values and information relating to Managed Fund Shares. If the Portfolio Indicative Value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption of such value persists past the trading day in which it occurred, the Exchange must halt trading no later than the beginning of the trading day following the interruption.¹⁹ In addition, if the Exchange becomes aware that the NAV or Disclosed Portfolio related to a series of Managed Fund Shares is not being disseminated to all market participants at the same time, the Exchange will halt trading in such series of Managed Fund Shares. The Exchange may resume trading in such

securities, rules relating to comprehensive surveillance sharing agreements and quantitative initial and continued listing standards may be required.

¹⁹ Under proposed Amex Rule 1002B(iv)(c), if a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series if the primary listing market halts trading in that series of Managed Fund Shares because the Portfolio Indicative Value applicable to that series of Managed Fund Shares is not being disseminated as required.

series of Managed Fund Shares only when the NAV or Disclosed Portfolio is disseminated to all market participants.

The Exchange may also consider the suspension of trading in, or removal from listing of, a series of Managed Fund Shares if: (1) following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of the Managed Fund Shares for 30 or more consecutive trading days; (2) the value of the Portfolio Indicative Value is no longer calculated or available, or the Disclosed Portfolio is not made available to all market participants at the same time; (3) the Trust has not filed, on a timely basis, any required filings with the Commission, or if the Exchange becomes aware that the Trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to or otherwise applicable to the Trust; or (4) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Managed Fund Shares on the Exchange inadvisable.

The Commission believes that the foregoing requirements of proposed Amex Rules 1001B and 1002B should help to prevent trading when a reasonable degree of transparency cannot be assured and to maintain a fair and orderly market for Managed Fund Shares.

The Commission believes that the proposed listing and trading rules for Managed Fund Shares, many of which track existing Exchange rules relating to Index Fund Shares, are reasonably designed to promote a fair and orderly market for such Managed Fund Shares by, among other things, requiring disclosure of information that may be necessary to price Managed Fund Shares. The proposed rules also prescribe “trading ahead” restrictions,²⁰ require

²⁰ See Commentary .05 to proposed Amex Rule 1000B.

surveillance procedures,²¹ establish trading guidelines,²² and prospectus and/or product description requirements.²³ In addition, Commentary .06 to proposed Amex Rule 1000B requires: (1) the investment adviser of the Investment Company to erect a “firewall” around its personnel who have access to information regarding the composition and/or changes to the Investment Company’s portfolio; and (2) personnel, who make decisions on the Investment Company’s portfolio composition, to be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Investment Company’s portfolio. Lastly, proposed Amex Rule 1002B(ii)(b) requires that the Reporting Authority that provides the Disclosed Portfolio implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

Amendments to Original and Annual Listing Fees

As proposed, Amex’s original listing and annual listing fees will be applicable to a series of Managed Fund Shares under Sections 140 and 141 of the Amex Company Guide. In connection with Section 140 of the Company Guide, the Exchange also proposes to make a technical revision so that “Trust Units” are also included among the types of securities whose initial listing fees may be deferred, waived, or rebated upon transfer to Amex from another marketplace. The Commission finds that the changes made to Amex’s original listing and annual listing fees to include Managed Fund Shares, and the technical revision to add “Trust Units” to Section 140 of the Amex Company Guide, are reasonable and promote transparency of the fees to be imposed with respect to a series of Managed Fund Shares and Trust Units.

²¹ See Commentary .01 to proposed Amex Rule 1000B. See also supra note 18.

²² See, e.g., Commentaries .01 and .04 to proposed Amex Rule 1000B.

Proposal to List and Trade the Shares of the Fund

The Exchange proposes to list and trade the Fund Shares pursuant to proposed Amex Rules 1000B, 1001B, and 1002B. Amex represents that the Shares will conform to the initial and continued listing criteria under such proposed rules.

The Commission believes that the proposal to list and trade the Shares of the Fund on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,²⁴ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations and last-sale information for the Shares will be disseminated by means of CTA and Consolidated Quotation High Speed Lines. In addition, the Portfolio Indicative Value will be disseminated at least every 15 seconds throughout Amex's trading hours, in accordance with proposed Amex Rule 1002B(i). Amex will also disseminate via CTA and Consolidated Quotation High Speed Lines various other data, including information of the previous day's close with respect to NAV and the number of Shares outstanding. The daily NAV for the Fund will be calculated and disseminated publicly each Business Day to all market participants at the same time, and, prior to the opening each Business Day, the Fund will make the Disclosed Portfolio available to all market participants at the same time on its Web site. The Fund's Web site will also contain a variety of other information for the Shares, including a display of the Prospectus and SAI and quantitative information on a per-Share basis.

²³ See Commentaries .02 and .03 to proposed Amex Rule 1000B.

²⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange is required to obtain a representation from the Trust, prior to listing, that the NAV per Share for the Fund will be calculated daily, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.²⁵ The Exchange may consider the suspension of trading in, or removal from listing of, the Shares if the value of the Portfolio Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.

Commentary .05 to proposed Amex Rule 1000B restricts members or persons associated with members who have knowledge of all material terms and conditions of an order being facilitated or orders being crossed to enter, based on such knowledge, an order to buy or sell a Share that is the subject of the order, an order to buy or sell the overlying option class, or an order to buy or sell any related instrument²⁶ until all the terms of the order are disclosed to the trading crowd or the trade is no longer imminent in view of the passage of time since the order was received.

Commentary .06 to proposed Amex Rule 1000B restricts certain personnel of Bear Stearns Asset Management with respect to access, use, and dissemination of information concerning the composition and/or changes to the Fund's portfolio.²⁷ In addition, proposed Amex Rule 1002B(ii)(b) requires that the Reporting Authority that provides the Disclosed Portfolio

²⁵ See proposed Amex Rule 1001B(ii).

²⁶ For purposes of Commentary .05, an order to buy or sell a "related instrument" means an order to buy or sell securities that have been disclosed as comprising 10% or more of the weight of the Managed Fund Share portfolio. See Commentary .05 to proposed Amex Rule 1000B.

²⁷ See supra notes 7 and 10.

implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

For the reasons discussed above, the Commission believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. Proposed Amex Rule 1002B(iv)(a) provides that the Exchange will halt trading in the Shares if the circuit breaker parameters of Amex Rule 117 have been reached. In addition, proposed Amex Rule 1002B(iv)(b) provides that, if the Portfolio Indicative Value applicable to the Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.²⁸ In addition, if the Exchange becomes aware that the NAV or Disclosed Portfolio related to the Shares is not being disseminated to all market participants at the same time, the Exchange will halt trading in the Shares. The Exchange may resume trading in the Shares only when the NAV or Disclosed Portfolio is disseminated to all market participants. Finally, in exercising its discretion to halt or suspend trading in the Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) and other relevant factors.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Amex's rules governing the trading of equity securities.

²⁸ See supra note 19 and accompanying text.

In support of this proposal, the Exchange has made the following representations:

- (1) The Shares will conform to the initial and continued listing criteria under proposed Amex Rules 1000B, 1001B, and 1002B.
- (2) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares.²⁹
- (3) Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular regarding the prospectus delivery requirements and, as relevant, the application of Commentary .03 to Amex Rule 1000B. The Information Circular will also provide guidance with regard to the characteristics of the Fund and the Shares and of applicable Exchange rules, including the suitability requirements of Amex Rule 411. In addition, the Information Circular will disclose that the procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's Prospectus and SAI, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof.
- (4) The Exchange represents that the Trust is required to comply with Section 803 of the Amex Company Guide and Rule 10A-3 under the Act³⁰ for the initial and continued listing of the Shares.

This approval order is based on the Exchange's representations.

²⁹ See supra note 18.

³⁰ 17 CFR 240.10A-3. See supra note 10.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 to the proposed rule change, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, 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 SR-Amex-2008-02 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2008-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2008-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 2 in the Federal Register. In Amendment No. 2, Amex provided additional safeguards in Commentary .06 to proposed Amex Rule 1000B that relate to restricted access and dissemination of key information regarding the composition of, and changes to, the Investment Company portfolio, including the requirement of “firewalls” to be erected around certain personnel of the investment adviser to the Investment Company and procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In addition, the Exchange represented that Bear Stearns Asset Management, the investment adviser of the Fund, would be subject to such requirements and is already subject to the provisions of Rule 204A-1 under the Advisers Act.³¹ The Commission notes that Commentary .06 is based on, and substantially similar to, Commentary .02(b)(i) and (iii) to Amex Rule 1000A-AEMI.³² The Commission believes that Amendment No. 2 strengthens the proposal by promoting fair disclosure of Investment Company portfolio information and raises no new regulatory issues. Accordingly, the Commission finds good cause

³¹ See supra notes 7 and 10.

³² See supra note 6 and accompanying text.

for approving the proposal, as modified by Amendment Nos. 1 and 2 thereto, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³³ that the

³³ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-Amex-2008-02), as modified by Amendment Nos. 1 and 2 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Florence E. Harmon
Deputy Secretary

³⁴ See 17 CFR 200.30-3(a)(12).