

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49840; File No. SR-Amex-2004-23)

June 9, 2004

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by American Stock Exchange LLC and Amendment No. 1 Thereto Relating to Generic Listing Standards for Trust Certificate Securities Linked to a Portfolio of Investment Grade Securities

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 April 19, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 12, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to add new Section 107E to the Amex Company Guide (“Company Guide”) to provide generic listing standards for qualified trust certificate securities (“Trust Securities”)⁴ pursuant to Rule 19b-4(e) under the Act.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in [brackets].

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 Nancy Sanow, Assistant Director, Division of Market Regulation, (“Division”), Commission, dated May 12, 2004. In Amendment No. 1, the Amex made technical changes to its proposed rule filing.

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Section 107. Other Securities

The Exchange will consider listing any security not otherwise covered by the criteria of Sections 101 through 106, provided the issue is otherwise suited for auction market trading.

Such issues will be evaluated for listing against the following criteria:

A – C. No Change

D. Reserved

E. Trust Certificate Securities

(a) Initial Listing. Trust certificate securities representing an ownership interest in a special purpose trust created pursuant to a trust agreement, the assets of which consists primarily of a basket or portfolio of up to thirty (30) investment-grade fixed income or floating rate securities will be considered for listing and trading on the Exchange pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided:

- i. The trust certificates meet the requirements under the Securities Act of 1933 in connection with asset-backed securities.
- ii. The underlying portfolio securities consist solely of investment-grade corporate debt or debentures (the “Underlying Bonds”), U.S. Department of the Treasury securities (“Treasury Securities”) and government-sponsored entity securities (the “GSE Securities”).
- iii. Each issuer of an Underlying Bond and GSE Security meets the criteria set forth above in Section 107A(a) under “General Criteria.”

⁴ A qualified Trust Security is required to meet the requirements for asset-backed securities

- iv. The trust meets the criteria set forth above in Section 107A under “General Criteria,” except for the asset/equity tests of Section 107A(a).
- v. Each Underlying Security will meet the Exchange’s Bond and Debenture Listing Standards set forth in Section 104 of the Company Guide and be rated by a nationally recognized securities rating organization (an “NRSRO”) that is no lower than an S&P Corporation “B” rating or equivalent rating by another NRSRO.
- vi. Up to 15% of the underlying component securities at issuance may consist of Treasury Securities and GSE Securities.
- vii. The trust certificates will provide for the repayment of the original principal investment amount at the end of the term.
- viii. The trust certificates will provide for the pass-through of periodic payments of interest and principal of the underlying securities.
- iv. The trust certificates have a minimum term of five years.
- x. At least 75% of the component securities of the underlying portfolio must be from issuances of \$100 million or more.

Prior to commencement of the trading of trust certificate securities admitted to listing under this section, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities when handling transactions in such securities.

as set forth in the Securities Act of 1933 (“Securities Act”).

(b) Continued Listing. Trust certificate securities listed and traded under this section will be subject to the continued listing guidelines for bonds set forth in Section 1003(b)(iv). Under Section 1003(b)(iv), the Exchange will normally consider suspending or delisting a security if the aggregate market value or the principal amount of bonds publicly held is less than \$400,000 or the issuer is not able to meet its obligations on the listed securities.

(c) Trust certificate securities traded in thousand dollar denominations or multiples thereof will be treated as a debt instrument and will be subject to the debt trading rules of the Exchange. Trust certificate securities traded in other than thousand dollar denominations or multiples thereof will be treated as an equity instrument and subject to the equity trading rules of the Exchange.

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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 IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to add new Section 107E to the Company Guide to provide generic listing standards to permit the listing and trading of qualified Trust Securities pursuant to

Rule 19b-4(e) under the Act. Trust Securities represent an ownership interest in a special purpose trust created pursuant to a trust agreement (“Trust”). The assets of such Trust may consist of a basket or portfolio of up to thirty (30) investment-grade corporate securities (“Underlying Bonds”), securities issued by the United States Department of the Treasury (Treasury Securities)⁵ and/or government-sponsored entity securities (“GSE securities”). In the aggregate, the component securities of the basket or portfolio will be referred to as the “Underlying Securities.” Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the self-regulatory organization’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product, and the self-regulatory organization has a surveillance program for the product class.⁶

The Commission has previously approved the listing and trading of several Trust Securities by the Exchange.⁷ In approving these securities for Exchange trading, the

⁵ Treasury Securities include (“STRIPS”) which stands for “separate trading of registered interest and principal of securities.” A stripped fixed income security, such as a Treasury Security or GSE Security, is a security that is separated into its periodic interest payments and principal repayment. The separate strips are then sold individually as zero coupon securities providing investors with a wide choice of alternative maturities.

⁶ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (the “19b-4(e) Order”)

⁷ See Securities Exchange Act Release Nos. 49315 (February 24, 2004) 69 FR 9882 (March 2, 2004) (File No. SR-Amex-2004-08); 49136 (January 28, 2004), 69 FR 6345 (File No. SR-Amex-2003-99); 48791 (November 17, 2003), 68 FR 65750 (November 21, 2003) (File No. SR-Amex-2003-92); 47730 (April 24, 2003), 68 FR 23340 (May 1, 2003) (File No. SR-Amex-2003-25); 47884 (May 16, 2003), 68 FR 28305 (May 23, 2003) (File No. SR-Amex-2003-37) and 48312 (August 8, 2003), 68 FR 48970 (August 15, 2003) (File No. SR-Amex-2003-69); 46835 (November 14, 2002), 67 FR 70271 (November 21, 2002) (File No. SR-Amex-2002-70); and 46923 (November 27, 2002), 67 FR 72247 (December 4, 2002) (File No. SR-Amex-2002-92). These products have been issued by

Commission thoroughly considered the structure of these securities, their usefulness to investors and to the markets, and the Amex rules that govern their trading. Moreover, for each series of Trust Securities currently trading, the Exchange has separately filed a proposed rule changes pursuant to Rule 19b-4. The Exchange believes that adopting generic listing standards for these securities and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those Trust Securities that satisfy the proposed generic listing standards to start trading, without the need for public notice and comment and Commission approval. This has the potential to reduce the time frame for bringing Trust Securities to market and thereby reducing the burdens on issuers, other market participants and the Commission.

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.⁸ The Amex is now proposing to amend Section 107 to add Section 107E to provide additional criteria for certain trust certificate securities that serve as pass-through vehicles for a portfolio of investment-grade fixed income and/or floating rate securities.⁹

Structured Obligations Corporation (“SOC”), a wholly-owned special purpose entity of J.P. Morgan Securities Holdings, Inc., and satisfy the requirements of asset-backed securities under the Securities Act. See supra Note 4.

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

⁹ “Investment grade” is a current rating that is no lower than an S&P Corporation “B” rating or equivalent rating by another nationally recognized securities rating organization (“NRSRO”).

The Trust Securities will conform to the initial listing guidelines under Section 107A¹⁰ (except for the asset/equity requirements set forth in Section 107A(a)) and continued listing guidelines under Sections 1001-1003¹¹ of the Company Guide. The Exchange believes, as set forth below, that the requirements of Section 107A(a) of the Company Guide may be met by the issuer of each Underlying Security, rather than the Trust itself, due to the pass-through nature of the Trust Securities. The issuance of Trust Securities will generally consist of a repackaging of the Underlying Corporate Bonds. Other qualifying securities of the underlying portfolio may also consist of Treasury Securities and/or GSE Securities;¹² however, such securities will be limited to up to 15% of the underlying portfolio at the time of issuance.

¹⁰ The initial listing standards for the Trust Securities 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. However, if traded in thousand dollar denominations, then the minimum public distribution requirement of one (1) million units and the minimum requirement of 400 holders do not apply. In addition, the listing guidelines provide that the issuer have 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 which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange 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.

¹¹ 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 Trust Securities, the Exchange will rely 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.

¹² A GSE Security is a security that is issued by a government-sponsored entity such as Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), Student Loan Marketing Association ("Sallie Mae"), the Federal Home Loan Banks and the Federal Farm Credit Banks. All GSE debt is

The Trust is required to make distributions to holders of Trust Securities depending on the amount of distributions received by such Trust on the Underlying Securities. Due to the pass-through and passive nature of the Trust Securities, the Exchange will rely on the assets and stockholder equity of the issuers of the Underlying Bonds to meet the requirement in Section 107A(a) of the Company Guide. In order for a Trust Security to be listed, the corporate issuers of the Underlying Bonds and the issuers of GSE Securities will meet or exceed the requirements of Section 107A(a) of the Company Guide. In addition, Treasury Securities will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A(a).

The basket of Underlying Securities will not be managed and will generally remain static over the term of the Trust Securities. Underlying Securities will generally provide for the payment of interest which may be on a different schedule than the Trust Securities. To alleviate potential cash flow timing issues that may exist, the Trust may enter into an interest distribution agreement.¹³ Principal distributions on the Trust Securities are expected to be made on dates that correspond to the maturity dates of the Underlying Securities. However, some of the Underlying Securities may have redemption provisions and in the event of an early redemption or other liquidation (e.g., upon an event of default) of the Underlying Securities, the proceeds from such redemption (including any make-whole premium associated with such redemption) or liquidation

sponsored but not guaranteed by the federal government, whereas government agencies such as Government National Mortgage Association (“Ginnie Mae”) are divisions of the U.S. government whose securities are backed by the full faith and credit of the U.S.

¹³ In this manner, any shortfall in the amounts available to pay interest to holders of the Trust Securities due to varying interest payment schedules will be made to such Trust by a third party (typically a bank) and will be repaid out of future cash flow received by the Trust from the Underlying Securities.

will be distributed pro rata to the holders of the Trust Securities. Each Underlying Bond is expected to be issued by a corporate issuer and either purchased at the time of the initial issuance or in the secondary market. However, with respect to Treasury Securities and/or GSE Securities, the Trust will either purchase the securities directly from primary dealers or in the secondary market which consists of primary dealers, non-primary dealers, customers, financial institutions, non-financial institutions and individuals.

Holders of Trust Securities generally will receive interest on the face value in an amount to be determined at the time of issuance of the Trust Securities and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent received from the Underlying Securities. Distributions of interest may be made monthly, quarterly or semi-annually. Investors will also be entitled to be repaid the principal of their Trust Securities from the proceeds of the principal payments on the Underlying Securities.¹⁴ The payout or return to investors on the Trust Securities will not be leveraged.

The Trust Securities will mature on the latest maturity date of the Underlying Securities. Holders of the Trust Securities will have no direct ability to exercise any of the rights of a holder of an Underlying Bond; however, holders of the Trust Securities as a group will have the right to direct the Trust in its exercise of its rights as holder of the Underlying Securities. The Exchange currently lists and trades several Trust Securities under the names of “Select Notes” and

¹⁴ The Underlying Securities may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. The Prospectus for each Trust Security transaction will provide a schedule of the distribution of interest and of the principal upon maturity for each Underlying Security. In addition, such Prospectus will also disclose a description of payment default and acceleration of the maturity date.

“TRACERS.”¹⁵ The Exchange, consistent with prior Commission approvals, proposes in these generic standards to provide for the listing and trading of the Trust Securities where the Underlying Securities meet the Exchange’s Bond and Debenture Listing Standards set forth in Section 104 of the Company Guide.

The Exchange’s Bond and Debenture Listing Standards in Section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least \$5 million and any of: (1) the issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange, Inc. (“NYSE”) or on the Nasdaq National Market); (2) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq National Market) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq National Market) has guaranteed the debt security; (4) an NRSRO has assigned a current rating to the debt security that is no lower than an Standard & Poor’s Corporation (“S&P”) "B" rating or equivalent rating by another NRSRO; or (5) or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than a S&P "B" rating or an equivalent rating by another NRSRO to a pari passu or junior issue.

In addition to the Exchange’s Bond and Debenture Listing Standards, the Amex proposes that each Underlying Security must also be of investment grade quality as rated by a NRSRO and at least 75% of the underlying basket or portfolio contain Underlying Securities from issuances of \$100 million or more. The maturity of each Underlying Security is expected to

¹⁵ See supra note 4.

match the payment of principal of the Trust Securities with the maturity date of the Trust Securities being the latest maturity date of the Underlying Securities. Amortization of the Trust Securities will be based on (1) the respective maturities of the Underlying Securities, (2) principal payout amounts reflecting the pro-rata principal amount of maturing Underlying Securities and (3) any early redemption or liquidation of the Underlying Securities. Investors will be able to obtain the prices for the Underlying Securities through Bloomberg L.P. or other market vendors, including the broker-dealer through whom the investor purchased the Trust Securities. In addition, the Bond Market Association provides links to price and other bond information sources on its investor web site at <http://www.investingbonds.com>. Transaction prices and volume data for the most actively-traded bonds on the exchanges are also published daily in newspapers and on a variety of financial websites. The National Association of Securities Dealers, Inc. (“NASD”) Trade Reporting and Compliance Engine (“TRACE”) will also aid investors in obtaining transaction information for most corporate debt securities, such as investment grade corporate bonds.¹⁶ For a fee, investors can have access to intra-day bellwether quotes.¹⁷

Price and transaction information for Treasury Securities and GSE Securities may also be obtained at <http://www.publicdebt.treas.gov> and <http://www.govpx.com>, respectively. Price quotes are also available to investors via proprietary systems such as Bloomberg, Reuters and

¹⁶ See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at <http://www.nasdbondinfo.com/>.

¹⁷ Corporate prices are available at 20-minute intervals from Capital Management Services at <http://www.bondvu.com/>.

Dow Jones Telerate. Valuation prices¹⁸ and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The Trust Securities generally will be listed in \$1,000 denominations (or multiples thereof) with the Exchange's existing debt floor trading rules applying to trading. However, Trust Securities may be listed in face amounts in other than \$1,000 denominations (or multiples thereof) whereby the Exchange's existing equity floor trading rules would apply. In all cases, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Trust Securities.¹⁹ The Trust Securities will also be subject to the debt margin rules of the Exchange.²⁰ Finally, the Exchange will, in conjunction with the trading of Trust Securities, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Trust Securities and highlighting the special risks and characteristics of the Trust Securities. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Trust Securities: (1) to determine that such transaction is suitable for the customer, and (2) to have a reasonable basis

¹⁸ "Valuation Prices" refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

¹⁹ Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

²⁰ See Amex Rule 462.

for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Trust Securities. In addition, the Exchange also has a general policy that prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act²¹ in general and furthers the objectives of Section 6(b)(5)²² in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

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

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

The Exchange did not receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve the proposed rule change, as amended, or
- B. institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

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 SR-Amex-2004-23 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 SR-Amex-2004-23. 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/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 Section, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-2004-23 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).