

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51563; File No. SR-Amex-2005-001)

April 15, 2005

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to the Adoption of Generic Listing Standards for Index-Linked Securities

I. Introduction

On January 6, 2005, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to add Section 107D to the Amex Company Guide for the purpose of adopting generic listing standards pursuant to Rule 19b-4(e) of the Act<sup>3</sup> in connection with index-linked securities (“Index Securities”). On February 25, 2005, Amex amended its proposal.<sup>4</sup> The proposed rule change, as modified by Amendment No. 1, was published for notice and comment in the Federal Register on March 4, 2005.<sup>5</sup> The Commission received no comment letters regarding the proposed rule change. On April 15, 2005, Amex amended the proposed rule change.<sup>6</sup> This order

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(e).

<sup>4</sup> See Amendment No. 1, dated February 25, 2005 (“Amendment No. 1”). In Amendment No. 1, the Exchange revised the proposed rule text and corresponding description. Amendment No. 1 replaced Amex’s original filing in its entirety.

<sup>5</sup> See Securities Exchange Act Release No. 51258 (February 25, 2005), 70 FR 10700 (“Notice”).

<sup>6</sup> See Amendment No. 2, dated April 15, 2005 (“Amendment No. 2”). In Amendment No. 2, the Exchange proposed minor clarifications to the rule text.

approves the proposed rule change, as modified by Amendment No. 1. Simultaneously, the Commission provides notice of filing of Amendment No. 2 and grants accelerated approval of Amendment No. 2.

## II. Description of Proposal

Under section 107A of the Amex Company Guide, the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred securities, bonds, debentures, or warrants.<sup>7</sup> The Amex proposes to add Section 107D to the Amex Company Guide to provide generic listing standards to permit the listing and trading of Index Securities pursuant to Rule 19b-4(e) under the Act.<sup>8</sup>

### A. Generic Listing Standards

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,<sup>9</sup> if the Commission has approved, pursuant to Section 19(b) of the Act,<sup>10</sup> the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the self-regulatory organization has a surveillance program for the

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The text of Amendment No. 2 is available on Amex's Web site ([www.amex.com](http://www.amex.com)), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

<sup>7</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8624 (March 8, 1990) (order approving File No. SR-Amex-89-29).

<sup>8</sup> 17 CFR 240.19b-4(e).

<sup>9</sup> 17 CFR 240.19b-4(c)(1).

<sup>10</sup> 15 U.S.C. 78s(b).

product class.<sup>11</sup> Hence, Amex is proposing in this rule filing to adopt generic listing standard under new Section 107D of the Company Guide for this product class, pursuant to which it will be able to list and trade (including pursuant to unlisted trading privileges) Index Securities without individual Commission approval of each product pursuant to Section 19(b)(2) of the Act.<sup>12</sup> Instead, Amex represents that any securities it lists and/or trades pursuant to Section 107D of the Amex Company Guide will satisfy the standards set forth therein. The Exchange states that, within five (5) business days after commencement of trading of an Index Security in reliance on Section 107D, Amex will file a Form 19b-4(e).<sup>13</sup>

The Exchange submits that several Index Securities based on both broad-based and market segment indexes are currently trading on the Exchange.<sup>14</sup> Each of these products separately received approval for trading by the Commission. Amex believes

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<sup>11</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (the “19b-4(e) Order”).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 19b-4(e)(2)(ii); 17 CFR 249.820.

<sup>14</sup> See, e.g., Securities Exchange Act Release Nos. 48151 (July 10, 2003), 68 FR 42438 (July 17, 2003) (approving the listing and trading of notes linked to the Amex Biotech Index); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Note linked to S&P 500); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes linked to the S&P 500); 46021 (June 3, 2002), 67 FR 39753 (June 10, 2002) (approving the listing and trading of notes linked to the Select European 50 Index); 45639 (March 25, 2002), 67 FR 15258 (March 29, 2002) (approving the listing and trading of notes linked to the Oil Natural Gas Index); 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of notes linked to the Biotech-Pharmaceutical Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of notes linked to the Industrial 15 Index); and 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of notes linked to the Select Ten Index). See also infra notes 16.

that the proposed generic listing standards for Index Securities will serve to streamline and increase the efficiency of listing index-linked products on the Exchange.

B. Index Securities

Index Securities are designed for investors who desire to participate in a specific market segment or combination of market segments through index products by providing investors with exposure to an identifiable underlying market index.<sup>15</sup> Index Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than ten (10) years. Index Securities may or may not make interest payments based on dividends or other cash distributions paid on the securities comprising the Underlying Index or Indexes to the holder during their term. Despite the fact that Index Securities are linked to an underlying index, each will trade as a single, exchange-listed security.

A typical Index Security listed and traded on the Exchange provides for a payment amount in a multiple greater than one (1) times the positive index return or performance, subject to a maximum gain or cap.<sup>16</sup> More generally, Index Securities may

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<sup>15</sup> As explained in the Notice, the holder of an Index Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying component securities. For example, an Index Security may be subject to a “cap” on the maximum principal amount to be repaid to holders or a “floor” on the minimum principal amount to be repaid to holders at maturity.

<sup>16</sup> See, e.g., Securities Exchange Act Release Nos. 50812 (December 7, 2004), 69 FR 74544 (December 14, 2004) (approving the listing and trading of Wachovia Notes linked to the performance of the Nasdaq-100); 50278 (August 26, 2004), 69 FR 53751 (September 2, 2004) (approving the listing and trading of Citigroup Notes linked to the performance of the S&P 500); 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (approving the listing and trading of Morgan Stanley PLUS Notes linked to the performance of the S&P 500); 50016 (July 14, 2004), 69 FR 43639 (July 21, 2004) (approving the listing and trading of Morgan Stanley PLUS Notes linked to the performance of the Nikkei 225 Index); 48152 (July 10, 2003), 68 FR 42435 (July 17 2003) (approving the listing and trading of a UBS Partial

or may not be structured<sup>17</sup> with accelerated returns, upside or downside, based on the performance of the Underlying Index. Amex specifically represents that the proposed generic listing standards will not be applicable to Index Securities where the payment at maturity may be based on a multiple of negative performance of an underlying index or indexes. An Index Security may or may not provide “principal protection,” i.e., a minimum guaranteed amount to be repaid.<sup>18</sup> The Exchange believes that the flexibility to list a variety of Index Securities will offer investors the opportunity to more precisely focus their specific investment strategies.

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Protection Note linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to S&P 500); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500); 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of Market Recovery Notes on the DJIA) and 45966 (May 20, 2002), 67 FR 36942 (May 28, 2002) (approving the listing and trading of notes linked to the performance of the Nasdaq 100).

<sup>17</sup> See, e.g., Securities Exchange Act Release Nos. 48280 (August 1, 2003), 68 FR 47121 (August 7, 2003). As stated, the proposed generic listing standards will not be applicable to Index Securities that are structured with “downside” accelerated returns.

<sup>18</sup> Some Index Securities may provide for “contingent” protection of the principal amount, whereby the principal protection may disappear if the Underlying Index at any point in time during the life of such security reaches a certain pre-determined level. See, e.g., Securities Exchange Act Release Nos. 50850 (December 14, 2004), 69 FR 76506 (December 21, 2004) (approving the listing and trading of Wachovia Trigger Capitals linked to the performance of the S&P 500); 50414 (September 20, 2004), 69 FR 58001 (September 28, 2004) (approving the listing and trading of Lehman Contingent Protection Notes on the S&P 500); 49453 (March 19, 2004), 69 FR 15913 (March 26, 2004) (approving the listing and trading of Contingent Principal Protection Notes linked to the performance of the DJIA); 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protection Notes linked to the performance of the S&P 500); and 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of a UBS Partial Protection Note linked to the performance of the S&P 500).

The original public offering price of Index Securities may vary with the most common offering price expected to be \$10 or \$1,000 per unit. As discussed above, Index Securities entitle the owner at maturity to receive a cash amount based upon the performance of a particular market index or combination of indexes. The Index Securities do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the Underlying Index. Pursuant to Section 107D, the current value of an Underlying Index or composite value of the Underlying Indexes will be widely disseminated at least every 15 seconds during the trading day.

Index Securities are expected to trade at a lower cost than the cost of trading each of the underlying component securities separately (because of reduced commission and custody costs) and are also expected to give investors the ability to maintain index exposure without the corresponding management or administrative fees and ongoing expenses. The initial offering price for an Index Security will be established on the date the security is priced for sale to the public. The final value of an Index Security will be determined on the valuation date at or near maturity consistent with the mechanics detailed in the prospectus for such Index Security.

C. Proposed Listing Criteria

As explained more fully in the Notice, Amex has proposed asset/equity requirements and tangible net worth for each Index Security issuer, as well as minimum distribution, principal/market value, and term thresholds for each issuance of Index Securities.

### Criteria for Underlying Indexes

Each index or combination of indexes underlying an Index Security (the “Underlying Index” or “Underlying Indexes”) must satisfy the specific criteria set forth in proposed Section 107D(g) of the Company Guide or be an index previously approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act and rules thereunder. In general, the criteria for the underlying component securities of an Underlying Index is substantially similar to the requirements for index options set forth in Commentary .02 to Amex Rule 901C. In all cases, an Underlying Index is required to have a minimum of ten (10) component securities (“Underlying Security”).

Examples of Underlying Indexes intended to be covered under the proposed generic listing standards include the Standard & Poor’s 500 Index (“S&P 500”), Nasdaq-100 Index (“Nasdaq 100”), the Dow Jones Industrial Average (“DJIA”), Nikkei 225 Index (“Nikkei 225”), the Dow Jones STOXX 50 Index (“DJ STOXX 50”), the Global Titans 50 Index (“Global Titans 50”), Amex Biotechnology Index (“Amex Biotech”), and certain other indexes that represent various industry and/or market segments.<sup>19</sup> The

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<sup>19</sup> See supra notes 16, 18. See also Securities Exchange Act Release Nos. 49548 (April 9, 2004), 69 FR 20089 (April 15, 2004) (approving the listing and trading of notes linked to the performance of the Select Utility Index); 48151 (July 10, 2003), 68 FR 42438 (July 17, 2003) (approving the listing and trading of notes linked to the performance of the Amex Biotechnology Index); 46882 (November 21, 2002), 67 FR 71219 (November 29, 2002) (approving the listing and trading of notes linked to the performance of the Select Fifty Index); 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of notes linked to the performance of the Biotech-Pharmaceutical Index); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (Select Ten Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of notes linked to the performance of the Industrial 15 Index); and 46021 (June 3, 2002), 67 FR

Exchange will require that all changes to an Underlying Index, including the deletion and addition of underlying component securities, index rebalancings and changes to the calculation of the index, will be made in accordance with the proposed generic criteria or the Commission's Section 19(b)(2) order, which approved the similar derivative product containing the Underlying Index.

In order to satisfy the proposed generic listing standards, the Underlying Index will be calculated based on either a market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology.<sup>20</sup> If a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, such broker-dealer is required to erect and maintain a "firewall," in a form satisfactory to the Exchange, to prevent the flow of information regarding the Underlying Index from the index production personnel to the sales and trading personnel.<sup>21</sup> In addition, an Underlying Index that is maintained by a broker-dealer is also required to be calculated by an independent third party who is not a broker-dealer.

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39753 (June 10, 2002) (approving the listing and trading of notes linked to the performance of the Select European 50 Index).

<sup>20</sup> Details regarding each of these methodologies are described in the Notice. See Notice, notes 20-24.

<sup>21</sup> For certain indexes, an index provider, such as Dow Jones, may select the components and calculate the index, but overseas broker-dealer affiliates of U.S. registered broker-dealers may sit on an "advisory" committee that recommends component selections to the index provider. In such case, the Exchange should ensure that appropriate information barriers and insider trading policies exist for this advisory committee. See Securities Exchange Act Release No. 50501 (October 7, 2004), 69 FR 61533 (October 19, 2004) (approving NASD 2004-138, pertaining to index linked notes on the Dow Jones Euro Stoxx 50 Index). Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on February 23, 2005.

### Eligibility Standards for Underlying Securities

Index Securities will be subject to the criteria in proposed Amex Company Guide Section 107D(g) and (h) for initial and continued listing. For an Underlying Index to be appropriate for the initial listing of an Index Security, such Index must either be approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act and rules thereunder or meet the following requirements:

- Each Underlying Security must have a minimum market value of at least \$75 million, except that for each of the lowest weighted Underlying Securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least \$50 million;
- Each Underlying Security must have a trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted Underlying Securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;
- In the case of a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weight Underlying Securities in the index or the highest weighted Underlying Securities in the index that in the aggregate represent at least 30% of the total number of Underlying Securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;
- No component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index will

not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 Underlying Securities);

- 90% of the index's numerical index value (e.g., underlying securities that account for 90% of the weight of the index) and at least 80% of the total number of component securities will meet the then current criteria for standardized options trading set forth in Exchange Rule 915;
- Each component security shall be a 1934 Act reporting company which is listed on a national securities exchange or is traded through the facilities of a national securities association and is subject to last sale reporting; and
- Foreign country securities or American Depository Receipts ("ADRs") that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.

As described above in the Section entitled "Description of Underlying Indexes," all Underlying Indexes are required to have at least ten (10) component securities.

The proposed continued listing criteria set forth in proposed Amex Company Guide Section 107D(h)(1) regarding the underlying components of an Underlying Index provides that the Exchange will commence delisting or removal proceedings of an Index Security (unless the Commission has approved the continued trading of the Index Security) if any of the standards set forth in the initial eligibility criteria of proposed Amex Company Guide Section 107D(g) are not continuously maintained, except that:

- The criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components)

of the weight of the Index, need only be satisfied for capitalization-weighted, modified capitalization-weighted and price weighted indexes as of the first day of January and July in each year;

- The total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;
- The trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and
- In a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

In connection with an Index Security that is listed pursuant to proposed Amex Company Guide Section 107D(g)(1), the Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the Index Security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under

Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

As set forth in proposed Amex Company Guide Section 107D(h)(3), the Exchange will also commence delisting or removal proceedings of an Index Security (unless the Commission has approved the continued trading of the Index Security), under any of the following circumstances:

- If the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;
- If the value of the Underlying Index or composite value of the Underlying Indexes is no longer calculated and widely disseminated on at least a 15-second basis; or
- If such other event shall occur or condition exists which is the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The Amex represents that Index Securities listed and traded on the Exchange will be required to be in compliance with Rule 10A-3 under the Act.<sup>22</sup>

#### Exchange Rules Applicable to Index-Linked Securities

Index Securities will be treated as equity instruments and will be subject to all Exchange rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, market volatility related trading halt provisions pursuant to Amex Rule 117, and responsibilities of the specialist. Exchange equity margin rules and the regular equity trading hours of 9:30 a.m. to 4:00 p.m. will apply to transactions in Index Securities.

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<sup>22</sup> See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7).

### Information Circular

In addition, upon evaluating the nature and complexity of each Index Security, the Exchange represents that it will prepare and distribute, if appropriate, an Information Circular to members describing the product. Accordingly, the particular structure and corresponding risk of any Index Security traded on the Exchange will be highlighted and disclosed.<sup>23</sup> In particular, the circular will set forth the Exchange's suitability rule that requires member and member organizations and employees thereof recommending a transaction in Index Securities: (1) to determine that such transaction is suitable for the customer (Amex Rule 411) and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

### Surveillance

The Exchange will closely monitor activity in Index Securities to identify and deter any potential improper trading activity in Index Securities. Additionally, the Exchange represents that it will develop surveillance procedures adequate to properly monitor the trading of the Index Securities. Specifically, the Amex will rely on its

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<sup>23</sup> The Exchange notes that members conducting a public securities business are subject to the rules and regulations of the National Association of Securities Dealers, Inc. ("NASD"), including NASD Rule 2310(a) and (b). Accordingly, NASD Notice to Members 03-71 regarding non-conventional investments or "NCIs" applies to Exchange members recommending/selling index-linked securities to public customers. This Notice specifically reminds members in connection with NCIs (such as index-linked securities) of their obligations to: (1) conduct adequate due diligence to understand the features of the product; (2) perform a reasonable-basis suitability analysis; (3) perform customer-specific suitability analysis in connection with any recommended transactions; (4) provide a balanced disclosure of both the risks and rewards associated with the particular product, especially when selling to retail investors; (5) implement appropriate internal controls; and (6) train registered persons regarding the features, risk and suitability of these products.

existing surveillance procedures governing equities, options and exchange-traded funds, which have been deemed adequate under the Act. The Exchange has developed procedures to closely monitor activity in the Index Security and related Underlying Securities to identify and deter potential improper trading activity. Proposed Amex Company Guide Section 107D(j) provides that the Exchange will implement written surveillance procedures for Index Securities.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. As detailed above in the description of the generic standards, if the issuer or a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, such issuer or broker-dealer is required to erect and maintain a “firewall” in a form satisfactory to the Exchange, in order to prevent the flow of information regarding the Underlying Index from the index production personnel to sales and trading personnel. In addition, the Exchange will require that calculation of Underlying Indexes be performed by an independent third party who is not a broker-dealer.

### III. Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>24</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>25</sup> In particular, the Commission believes that the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>26</sup> in that it

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<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>26</sup> 15 U.S.C. 78f(b)(5)

is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principal of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission has previously approved the listing and trading of several Index Securities by the Exchange based on a variety of debt structures and market indexes.<sup>27</sup> In approving these securities for Exchange trading, the Commission thoroughly considered the structures, their usefulness to investors and to the markets, and Amex rules that govern their trading. The Commission believes that generic listing standards for these securities should fulfill the intended objective of Rule 19b-4(e) by allowing those Index Securities that satisfy the generic listing standards to commence trading without public comment and Commission approval.<sup>28</sup> This has the potential to reduce the time frame for bringing Index Securities to market and thereby reduce the burdens on issuers and other market participants. Further, the Exchange's ability to rely on Rule 19b-4(e) for Index Securities potentially reduces the time frame for listing and trading these securities, and thus enhances investors' opportunities. The Commission notes that it maintains

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<sup>27</sup> See supra notes 16, 18 and 19.

<sup>28</sup> The Exchange has previously received Commission approval to list and trade certain index options, exchange-traded fund shares and trust issued receipts pursuant to Rule 19b-4(e). See Securities Exchange Act Release Nos. 41091 (February 23, 1999), 64 FR 10515 (March 4, 1999) (Narrow-Based Index Options); 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (ETFs); and 43396 (September 29, 2000), 65 FR 60230 (October 10, 2000) (TIRs). The Commission notes that the failure of a particular index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular index-linked product.

regulatory oversight over any products listed pursuant to generic listing standards through regular inspection oversight.

A. Trading of Index Securities

Taken together, the Commission finds that the Amex proposal contains adequate rules and procedures to govern the trading of Index Securities listed pursuant to Rule 19b-4(e) on the Exchange or traded pursuant to unlisted trading privileges. All Index Security products listed under the standards will be subject to the full panoply of Amex rules and procedures that now govern the trading of Index Securities and the trading of equity securities on the Amex, including among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

Amex has proposed asset/equity requirements and tangible net worth for each Index Security issuer, as well as minimum distribution, principal/market value, and term thresholds for each issuance of Index Securities. As set forth more fully above, Amex's proposed listing criteria include minimum market capitalization, monthly trading volume, and relative weighting requirements for the Index Securities. These requirements are designed to ensure that the trading markets for index components underlying Index Securities are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. The Commission believes that these requirements should significantly minimize the potential for of manipulation. The Commission also finds that the requirement that each component security underlying an Index Security be listed on a national securities exchange or traded through the facilities of a national securities system and subject to last sale reporting will contribute significantly to the transparency of the market for Index Securities. Alternatively, if the index component securities are foreign

securities that are not reporting companies, the generic listing standards permit listing of an Index Security if the Commission previously approved the underlying index for trading in connection with another derivative product and certain surveillance sharing arrangements exist with foreign markets. The Commission believes that if it has previously determined that such index and its components were sufficiently transparent, then the Exchange may rely on this finding, provided it has comparable surveillance sharing arrangements with the foreign market that the Commission relied on in approving the previous product.

The Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities approved pursuant to Section 107D.

The Commission also believes that the requirement that at least 90 percent of the component securities, by weight, and 80 percent of the total number of component securities, be eligible individually for options trading will prevent an Index Security from being a vehicle for trading options on a security not otherwise options eligible.

The Exchange has also developed delisting criteria that will permit Amex to suspend trading of an Index Security in case of circumstances that make further dealings in the product inadvisable. The Commission believes that the delisting criteria will help ensure a minimum level of liquidity exists for each Index Security to allow for the maintenance of fair and orderly markets. Also, the Exchange will commence delisting proceedings in the event that the value of the underlying index or index is no longer calculated and widely disseminated on at least a 15-second basis.

B. Surveillance

The Exchange must surveil trading in any products listed under the generic listing standards. In that regard, the Commission believes that a surveillance sharing agreement between an Exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. When a new derivative securities product based upon domestic securities is listed and traded on an exchange pursuant to Rule 19b-4(e) under the Act, the exchange should determine that the markets upon which all of the U.S. component securities trade are members of the Intermarket Surveillance Group (“ISG”), which provides information relevant to the surveillance of the trading of securities on other market centers.<sup>29</sup> For new derivative securities products based on securities from a foreign market, the exchange should have a comprehensive Intermarket Surveillance Agreement with the market for the securities underlying the new securities product.<sup>30</sup> Accordingly, the Commission finds that Amex’s commitment to implement comprehensive surveillance sharing agreements, as necessary,<sup>31</sup> and the requirement that no more than 20 percent of the weight of the index may be comprised of foreign country securities or ADRs that are not subject to a comprehensive surveillance sharing agreement<sup>32</sup> will make possible adequate

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<sup>29</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98). ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. The Commission notes that all of the registered national securities exchanges, including the ISE, as well as the NASD, are members of the ISG.

<sup>30</sup> See *id.*

<sup>31</sup> Proposed Amex Company Guide Section 107D(j).

surveillance of trading of Index Securities listed pursuant to the proposed generic listing standards.

With regard to actual oversight, Amex represents that its surveillance procedures are sufficient to detect fraudulent trading among members in the trading of Index Securities pursuant to proposed Section 107D of the Amex Company Guide.

#### C. Acceleration

The Commission finds good cause for approving proposed Amendment No. 2 before the 30th day after the date of publication of notice of filing thereof in the Federal Register. In Amendment No. 2, Amex made minor modifications to the rule text and corresponding description, which clarified the scope of the proposal. The Commission believes that Amendment No. 2 will facilitate application of the Exchange's generic listing standards and enable more expeditious review and listing of Index Securities by Amex, reducing administrative burdens and benefiting the investing public. Thus, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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

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<sup>32</sup> Proposed Amex Company Guide Section 107D(g)(vii).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-001 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-2005-001. 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. 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-2005-001 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>33</sup> that the proposed rule change (SR-Amex-2005-001), as modified by Amendment No. 1, is hereby approved, and that Amendment No. 2 to the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>34</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</sup> 17 CFR 200.30-3(a)(12).