SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50241; File No. SR-Amex-2004-57)

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Standard & Poor's 500 Stock Index

August 24, 2004

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 27, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposed to list and trade notes, the performance of which is linked to the Standard & Poor's 500 Index ("S&P 500" or "Index").

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. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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1 15 U.S.C. 78s(b)(l).

2 17 CFR 240. 19b-4.

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

1. Purpose

Under Section 107A of the Amex Company Guide ("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.[3] The Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the S&P 500 (the "S&P Notes" or "Notes").[4] Wachovia will issue the Notes under the name "LUNARS," "Leveraged Upside Indexed Accelerated Return Securities." Each Note will be offered at an original public offering price of $1,000. The S&P 500 is determined, calculated and maintained solely by S&P.[5] At maturity the Notes will provide for a multiplier of

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

4 Wachovia Corporation ("Wachovia") and Standard & Poor's Corporation, a division of the McGraw-Hill Companies, Inc. ("S&P") have entered into a non-exclusive license agreement providing for the use of the S&P 500 by Wachovia and certain affiliates and subsidiaries in connection with certain securities including these Notes. S&P is not responsible and will not participate in the issuance and creation of the Notes.

5 The S&P 500 Index is a broad-based stock index, which provides an indication of the performance of the U.S. equity market. The Index is a capitalization-weighted index reflecting the total market value of 500 widely held component stocks relative to a particular base period. The Index is computed by dividing the total market value of the 500 stocks by an Index divisor. The Index Divisor keeps the Index comparable over time to its base period of 1941-1943 and is the reference point for all maintenance adjustments. The securities included in the Index are listed on the Amex, New York Stock Exchange, Inc. ("NYSE") or traded through NASDAQ. The Index reflects the price of the common stocks of 500 companies without taking into account the value of the dividend paid on such stocks. The Index Value is disseminated once every fifteen seconds through numerous data providers. Telephone conference between Laura Clare, Assistant General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on August 20, 2004 (pertaining to dissemination of Index Value).

any positive performance of the S&P 500 during such term subject to a maximum payment amount or ceiling to be determined at the time of issuance (the "Capped Amount"). The Capped Amount is expected to be $1,125.[6]

The S&P 500 Notes will conform to the initial listing guidelines under Section 107A[7] and

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In connection with the S&P 500, the Exchange notes that S&P has announced a change to its methodology so that weightings are based on the "public float" of a component stock and not those shares of stock that are not publicly traded. The S&P 500 is currently a market capitalization weighted index that is expected to be changed to a "float-adjusted" market capitalization index by September 2005. In a "traditional" market capitalization index, the value of the index is calculated by multiplying the total number of shares outstanding of each component by the price per share of the component. The result is then divided by the divisor. On March 1, 2004, S&P announced that it intends to shift its major indexes, such as the S&P 500 to a "float-adjusted" market capitalization index. In a "float-adjusted" market capitalization index, the value of the index will be calculated by multiplying the public float of each component by the price per share of the component. The result is then divided by the divisor. Accordingly, a "float-adjusted" market capitalization index will exclude those blocks of stocks that do not publicly trade from determining the weight for a stock in the index. The transition from a market capitalization weighted index to a "float-adjusted" capitalization weighted index will be implemented over an 18-month period.

6 See prospectus supplement dated August 3, 2004.

7 The initial listing standards for the Notes require: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer that is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange 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. The Exchange concluded, pursuant to its evaluation of the nature and complexity of the product pursuant to Section 107A, not to issue a circular regarding member firm compliance responsibilities because the notes are issued in $1,000 denominations and are categorized as debt. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 24, 2004 (pertaining to issuance of a circular to members).

continued listing guidelines under Sections 1001-1003[8] of the Company Guide. The Notes are senior non-convertible debt securities of Wachovia. The Notes will have a term of not less than one or more than ten years. Wachovia will issue the Notes in denominations of whole units (a "Unit") with each Unit representing a single Note. The original public offering price will be $1,000 per Unit. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the S&P 500. At maturity, if the value of the S&P 500 has increased over the term of the Notes, a beneficial owner will be entitled to receive a payment on the Notes equal to two (2) times the amount of that percentage increase, not to exceed the Capped Amount of $1,125. The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes because the final payment per Note will be exposed to the full decrease of the Index. Thus, if the Index ending level is lower than the Index starting Level, the investor will lose some or all of his principal.[9] The Notes are also not callable by the Issuer, Wachovia, or redeemable by the holder.

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[8] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv) because the Notes are issued in $1,000 denominations. Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[9] A negative return of the S&P 500 will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment. Accordingly, the Notes are not "principal protected," and are fully exposed to any decline in the level of the S&P 500.

The cash payment that a holder or investor of a Note will be entitled to receive (the "Redemption Amount") depends entirely on the value of the S&P 500 at the close of the market on the valuation date, which will be four (4) business days prior to the maturity date[10] of the Notes (the "Final Level"), and the closing value of the S&P 500 on the date the Notes are priced for initial sale to the public (the "Initial Level").

If the Final Level is greater than the Initial Level, the Redemption Amount per Unit will equal:

$$\$1000 \times [1+ (2 \times \left(\frac{\text{Initial Level - Final Level}}{\text{Initial Level}}\right)], \text{ subject to Capped Amount.}$$

If the Final Level is less than or equal to the Initial Level, the Redemption Amount per Unit will equal:

$$\$1000 \times [1+ \left(\frac{\text{Initial Level - Final Level}}{\text{Initial Level}}\right)]$$

10 If the maturity date is not a trading day or if a market disruption event occurs on such day, the valuation date will be the next following trading day on which no market disruption event has occurred. A "market disruption event" is defined as (i) the occurrence of a suspension, absence or material limitation of trading of 20% or more of the component stocks of the Index on the primary market for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such primary market; (ii) a breakdown or failure in the price and trade reporting systems of any primary market as a result of which the reported trading prices for 20% or more of the component stocks of the Index during the last one-half hour preceding the close of the principal trading session on such primary market are materially inaccurate; (iii) the suspension, material limitation or absence of trading on any major securities market for trading in futures or options contracts or exchange traded funds related to the Index for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such market; and (iv) a determination by Wachovia Securities that any event described in clauses (i)-(iii) above materially interfered with the ability of Wachovia or any of its affiliates to unwind or adjust all or a material portion of the hedge position with respect to the Notes.

The Notes are cash-settled in U.S. dollars and 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 S&P 500. The Notes are designed for investors who want to participate or gain exposure to the S&P 500, subject to a cap, and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of options on, and securities, the performance of which have been linked to or based on, the S&P 500 Index.[11]

As of July 15, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of $352.199 billion to a low of $0.738 billion. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 9.507 million shares to a low of .943 million shares.

Because the Notes are issued in $1000 denominations, the Amex's existing debt floor trading rules will apply to the trading of the Notes. 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 Notes.[12] With respect to suitability recommendations and risks, the Exchange will require members, member organizations and

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11 See Securities Exchange Act Release Nos. 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (approving the listing and trading of notes (Morgan Stanley PLUS) linked to the S&P 500); 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protection Notes on the S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of a UBS Partial 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); and 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).

12 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.

employees thereof recommending a transaction in the Notes: (1) to determine that such transaction is suitable for the customer, 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. In addition, Wachovia will deliver a prospectus in connection with the initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. 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 is consistent with Section 6 of the Act[13] in general and furthers the objectives of Section 6(b)(5)[14] 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, and, in general, protect investors and the public interest.

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

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

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13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(5).

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. 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 SR-Amex-2004-57 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 SR-Amex-2004-57. 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 Commissions 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 SR-Amex-2004-57 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Approval of Proposed Rule Change

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, and, in particular, with the requirements of Section 6(b)(5) of the Act.[15] The Commission has approved the listing of securities with a structure similar to that of the Notes.[16] Accordingly, the Commission finds that the listing and trading of the Notes based on the Index is consistent with Act and will promote just and equitable principles of trade, foster cooperation and coordination with person engaged in regulating, clearing, settling, processing

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15 Id.

16 See Securities Exchange Act Release Nos. 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of the UBS Partial Protection Note linked to the Index); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to Index); 47911 (May 22, 2003,), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the Index); 31591 (December 18, 1992,), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992)(approving the listing and trading of a unit investment trust linked to the Index) (SPDR); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the Index); and 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the Index).

information with respect to, and facilitating transactions securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[17]

The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with means to participate or gain exposure to the Index, subject to the Capped Value. The Notes are non-convertible debt securities whose prices will be derived and based upon the Initial Level. The Commission notes that the Notes will not have a minimum principal investment amount that will be repaid, and payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. At maturity, if the Final Value of the S&P 500 is greater than the Initial Value, the performance of the Note is leveraged on the "upside." In other words, the investor will receive, for each Note a payment equal to the $1,000 principal amount plus double the percent increase in the value of the S&P 500, subject to the Capped Value of $1,125 or 12.5% of the issue price. However, the if the S&P 500 declines from the Initial Value, then the investors will receive proportionately less than the original issue price of the Notes. The return on the notes, however, is not leveraged on the downside.

Thus, the Notes are non-principal protected instruments, but are not leveraged on the downside. The level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final level of return of the Notes is derivatively priced and based upon the performance of an index of securities; because the Notes are debt instruments that do not guarantee a return of principal; and because investors' potential return is limited by the Capped Value, if the value of the Index has increased over the term of such Note, there are several issues regarding the trading of this type of product.

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17 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C.

However, for the reasons discussed below, the Commission believes the Exchange's proposal adequately addresses the concerns raised by this type of product.

The Commission notes that the protections of Section 107A of the Company Guide were designed to address the concerns attendant on the trading of hybrid securities like the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure and compliance requirements noted above, the Commission believes the Amex has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Wachovia will deliver a prospectus in connection with the initial sales of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing equities, which have been deemed adequate under the Act.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index[18] of 500 companies listed on Nasdaq, the NYSE, and the Amex. The Exchange represents that the Index will be determined, calculated, and maintained by S&P. As of July 15, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of $352.199 billion to a low of $0.738 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 9.507 million shares to a low of .943 shares.

Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and trading of the Notes that are linked to the Index should not unduly impact the market for the underlying securities

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78c(f).

18 See supra note 5.

compromising the Index or raise manipulative concerns.[19] As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, Wachovia. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least $4 million.[20] In any event, financial information regarding Wachovia in addition to the information on the 500 common stocks comprising the Index will be publicly available.[21]

The Commission also has a systemic concern, however, that a broker-dealer such as Wachovia, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous orders for other hybrid instruments

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[19] The issuer Wachovia disclosed in the prospectus that the original issue price of the Notes includes commissions (and the secondary market prices are likely to exclude commissions) and Wachovia's costs of hedging its obligations under the Notes. These costs could increase the initial value of the Notes, thus affecting the payment investors receive at maturity. The Commission expects such hedging activity to be conducted in accordance with applicable regulatory requirements.

[20] <u>See</u> Company Guide Section 107A.

[21] The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

issued by broker-dealers,[22] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Wachovia.

Finally, the Commission notes that the value of the Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the Federal Register. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[23] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[24] to approve the proposal on an accelerated basis.

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22 See Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq- 100 Index) (File No. SR-NASD-2001-73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR-Amex-2001-40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

23 See supra note 11.

24 15 U.S.C. 78f(b)(5) and 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR-Amex-2004-57) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[26]

Jill M. Peterson
Assistant Secretary

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[25] 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

[26] 17 CFR 200.30-3(a)(12).