

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50719; File No. SR-Amex-2004-55)

November 22, 2004

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Notes Linked to the Performance of the CBOE S&P 500 BuyWrite Index(sm)

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 19, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. On November 4, 2004, the Exchange submitted an amendment to the proposed rule change.³ 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 proposes to list and trade notes, under Section 107A of the Amex Company Guide (“Company Guide”), the performance of which is linked to the Chicago Board Options Exchange (“CBOE”) S&P 500 BuyWrite Index(sm) (“BXM Index” or “Index”). The text of the proposed rule change is available at the principal offices of the Amex and from the Commission.

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 Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated

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 III 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

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.⁴ The Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the BXM Index (“Notes”). The BXM Index is determined, calculated, and maintained solely by the CBOE.⁵

November 3, 2004 (“Amendment No. 1”). Amendment No. 1 reflects certain changes regarding issuer redemptions of the Notes beginning in June 2007.

⁴ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

⁵ If the BXM Index is discontinued or suspended, the calculation agent, in its sole discretion, may substitute the BXM Index with an index substantially similar to the discontinued or suspended BXM Index (the “Successor Index”). The Successor Index may be calculated and/or published by the CBOE or any other third party. If the calculation agent is unable to identify a Successor Index, then the Maturity Valuation Date will be accelerated to the last scheduled trading day prior to the expiration of the call option positions of the BXM Index (“Roll Date”). The calculation agent will accordingly determine the Entitlement Value on such date. Under certain circumstances, the calculation agent or an affiliate will calculate the Index value until a Successor Index is substituted. This may occur if adequate notice of the Index’s discontinuance or suspension is not provided to the calculation agent. The calculation agent will then undertake to identify and designate, in its sole discretion, a Successor Index prior to the

Morgan Stanley will issue the Notes under the name “Strategic Total Return Securities.”⁶

The Notes will conform to the initial listing guidelines under Section 107A⁷ and continued listing guidelines under Sections 1001-1003⁸ of the Company Guide. The Notes are a

Roll Date that falls at least one (1) month following the discontinuance or suspension of the BXM Index. If the calculation agent is unable to identify a Successor Index five (5) days prior to the Roll Date that falls at least one (1) month following such discontinuance or suspension, the Maturity Valuation Date will be accelerated to the last scheduled trading day prior to the Roll Date following such discontinuance or suspension. In calculating the Index value, the calculation agent or affiliate will use the current method employed prior to the discontinuance or suspension. The Exchange agrees to delist the Notes (or seek Commission approval pursuant to Rule 19b-4 to list and trade a Note that reflects the Successor Index) in the event that CBOE stops calculating and disseminating the value of the BXM Index. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on November 19, 2004.

⁶ Morgan Stanley and Standard & Poor’s (“S&P”), a division of the McGraw-Hill Companies, Inc., have entered into a non-exclusive license agreement providing for the use of the BXM Index by Morgan Stanley in connection with certain securities, including the Notes. S&P is not responsible for and will not participate in the issuance and creation of the Notes.

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 pursuant to Section 107A of the Company Guide 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.

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). 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.

series of medium-term debt securities of Morgan Stanley that provide for a cash payment at maturity, or upon earlier exchange at the holder's option or the earlier redemption of the issue, based on the performance of the BXM Index adjusted by the Adjustment Amount.⁹ The principal amount of each Note is expected to be \$10. 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. In fact, the value of the BXM Index must increase for the investor to receive at least the \$10 principal amount per security at maturity or upon exchange or redemption. If the value of the BXM Index decreases or does not increase sufficiently, the investor will receive less, and possibly significantly less, than the \$10 principal amount per security. The Notes will have a term of at least one (1) but no more than ten years.¹⁰

On a quarterly basis during the first ten (10) calendar days of March, June, September, and December, beginning in March 2005, holders of the Notes will have the right to exchange the Notes for a cash amount equal to the Net Entitlement Value on the valuation date for such exchange date. The minimum exchange amount is 10,000 Notes. Commencing in June 2007, Morgan Stanley will have the right to redeem the Notes for the Net Entitlement Value, upon at

⁹ The Adjustment Amount will equal the sum of the monthly adjustments. Each monthly adjustment will equal 0.168% (equivalent to approximately 2% per year) multiplied by the Net Entitlement Value on the trading day prior to the trading day the monthly SPX call option expires. SPX options generally expire on the third Friday on the month. See infra for a description of how the monthly rolling or successive SPX call options are taken into account in the BXM Index.

¹⁰ The term of the Notes is expected to be five years and will be disclosed in the pricing supplement.

least ten (10) calendar days' but no more than thirty (30) calendar days' notice to holders, on any quarterly exchange date. The Notes will mature on December 17, 2009.¹¹

The "Net Entitlement Value" as of any trading day equals (i) the "Initial Net Entitlement Value" multiplied by the "BXM Index Performance" on that trading day, minus (ii) the "Adjustment Amount" as of that trading day. The Initial Net Entitlement Value is equal to \$9.88 (e.g., 1.20% less than the original issue price of the Notes). The BXM Index Performance on any trading day is equal to the "Index Value" on that trading day divided by the "Initial Index Value." The Index Value on any trading day is the closing value of the BXM Index on that trading day. The Initial Index Value is the closing value of the BXM Index on the date Morgan Stanley prices the Notes for initial sale to the public. The Adjustment Amount, by which the investor's return is also reduced, will equal approximately 2.00% per year.¹² For purposes of determining the amount payable in respect of any early redemption or at maturity of the Notes, the Net Entitlement Value will be determined on the fifth scheduled trading day immediately prior to the early redemption date, or the maturity date, as applicable. For the purposes of determining the amount payable with respect to any exchange of the Notes, the Net Entitlement Value will be determined on the last trading day of the exchange period for that exchange.

The Net Entitlement Value that a holder of a Note will receive upon exchange, early redemption, or at maturity will depend on the relation of the Index Value (the "Final Index Value") to the Initial Index Value of the BXM Index and will always be 1.20% less than the original issue price and include the Adjustment Amount. If there is a "market disruption event"¹³

¹¹ See infra discussion of Net Entitlement Value.

¹² See supra note 9 (discussing the Adjustment Amount).

¹³ A "market disruption event" is defined as (i) the occurrence of or existence of a suspension, absence or material limitation of trading of stocks then constituting 20% or

when determining the Final Index Value, the Final Index Value will be determined on the next available trading day during which no “market disruption event” occurs. Thus, the Net Entitlement Value per Note will equal:

$$\$9.88 \times \left(\frac{\text{Final Index Value}}{\text{Initial Index Value}} \right) - \text{Adjustment Amount}$$

The Notes are cash-settled in U.S dollars and do not give the holder any right to receive any of the component securities, dividend payments, or any other ownership right or interest in the securities comprising the BXM Index. The Notes are designed for investors who want to participate in the exposure to the S&P 500 Index (the “S&P 500”) that the BXM Index provides while limiting downside risk, and who are willing to forego principal protection and market interest payments on the Notes during their term.

The Commission has previously approved the listing on the Amex of securities with structures similar to that of the proposed Notes.¹⁴

more of the value of the S&P 500 Index on the Relevant Exchanges for such securities for the same period of trading longer than two hours or during the one-half hour period preceding the close of the principal trading session on such Relevant Exchange; (ii) a breakdown or failure in the price and trade reporting systems of any Relevant Exchange as a result of which the reported trading prices for stocks then constituting 20% or more of the value of the S&P 500 Index during the last one-half hour preceding the close of the principal trading session on such Relevant Exchange are materially inaccurate; (iii) the suspension, material limitation or absence of trading on any major U.S. securities market for trading in futures or options contracts or exchange traded funds related to the BXM Index or the S&P 500 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 the calculation agent that any event described in clauses (i)-(iii) above materially interfered with the ability of Morgan Stanley or any of its affiliates to unwind or adjust all or a material portion of the hedge position with respect to the Notes.

¹⁴ See Securities Exchange Act Release Nos. 49548 (April 9, 2004), 69 FR 20089 (April 15, 2004) (approving the listing and trading of non-principal protected notes linked to the Select Utility Index); 45639 (March 25, 2002), 67 FR 15258 (March 29, 2002)

Description of the Index

The BXM Index is a benchmark index designed to measure the performance of a hypothetical “buy-write”¹⁵ strategy on the S&P 500. Developed by the CBOE in cooperation with S&P, the Index was initially announced in April 2002.¹⁶ The CBOE developed the BXM Index in response to several factors, including the repeated requests by options portfolio managers that the CBOE provide an objective benchmark for evaluating the performance of buy-

(approving the listing and trading of non-principal protected notes linked to the Oil and Natural Gas Index); 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of non-principal protected notes linked to the Biotech-Pharmaceutical Index); 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index); and 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected notes linked to the Select Ten Index).

¹⁵ A “buy-write” is a conservative options strategy in which an investor buys a stock or portfolio and writes call options on the stock or portfolio. This strategy is also known as a “covered call” strategy. A buy-write strategy provides option premium income to cushion decreases in the value of an equity portfolio, but will underperform stocks in a rising market. A buy-write strategy tends to lessen overall volatility in a portfolio.

¹⁶ The BXM Index consists of a long position in the component securities of the S&P 500 and options on the S&P 500 (e.g., “writing” the near-term S&P 500 Index covered call option, generally on the third Friday of each month). The Commission has approved the listing of numerous securities linked to the performance of the S&P 500 as well as options on the S&P 500. *See, e.g.*, Securities Exchange Act Release Nos. 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protected Notes on the S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of UBS Partial Principal Protected Notes linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of CSFB Accelerated Return Notes linked to the 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); and 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500). In addition, the Commission previously approved the listing and

write strategies, one of the most popular option trading strategies. Further, the CBOE developed the BXM Index to provide investors with a relatively straightforward indicator of the risk-reducing character of options which otherwise may seem complicated and inordinately risky.

The BXM Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the S&P 500, and (2) “writing” (or selling) near-term S&P 500 call options (SPX), generally on the third Friday of each month. This strategy consists of a hypothetical portfolio consisting of a “long” position indexed to the S&P 500 on which are deemed sold a succession of one-month, at-the-money call options on the S&P 500 (SPX) listed on the CBOE. Dividends paid on the component stocks underlying the S&P 500 and the dollar value of option premium deemed received from the sold call options are functionally “re-invested” in the covered S&P 500 portfolio.

The value of the BXM Index on any given date will equal: the value of the BXM Index on the previous day, multiplied by the daily rate of return¹⁷ on the covered S&P 500 portfolio on that date. Thus, the daily change in the BXM Index reflects the daily changes in value of the covered S&P 500 portfolio, which consists of the S&P 500 (including dividends) and the component S&P 500 option (SPX). The daily closing price of the BXM Index is calculated and disseminated by the CBOE on its Web site at <http://www.cboe.com> and via the Options Pricing

trading of a packaged buy-write option strategy known as “BOUNDS.” See Securities Exchange Act Release No. 36710 (January 11, 1996), 61 FR 1791 (January 23, 1996).

¹⁷ The daily rate of return on the covered S&P 500 portfolio is based on (a) the change in the closing value of the stocks in the S&P 500 portfolio, (b) the value of ordinary cash dividends on the stocks underlying the S&P 500, and (c) the change in the market price of the call option. The daily rate of return will also include the value of ordinary cash dividends distributed on the stocks underlying the S&P 500 that are trading “ex-dividend” on that date (that is, when transactions in the stock on an organized securities exchange or trading system no longer carry the right to receive that dividend or distribution) as measured from the close in trading on the previous day.

and Reporting Authority (“OPRA”) at the end of each trading day.¹⁸ The value of the S&P 500 Index is disseminated at least once every fifteen (15) seconds throughout the trading day. The Exchange believes that the dissemination of the S&P 500, along with the ability of investors to obtain S&P 500 call option pricing provides sufficient transparency regarding the BXM Index.¹⁹ In addition, as indicated above, the value of the BXM Index is calculated once every trading day, thereby providing investors with a daily value of such “hypothetical” buy-write options strategy on the S&P 500.

The BXM Index value will be calculated and disseminated by the CBOE once every trading day after the close. The daily change in the BXM Index reflects the daily changes in the S&P 500 and related options positions. The Exchange states that Morgan Stanley represents that it will seek to arrange to have the BXM Index calculated and disseminated on a daily basis

¹⁸ The Commission, in connection with Bond Index Term Notes and the Merrill Lynch EuroFund Market Index Target Term Securities, has previously approved the listing and trading of products where the dissemination of the value of the underlying index occurred once per trading day. See Securities Exchange Act Release Nos. 41334 (April 27, 1999), 64 FR 23883 (May 4, 1999) (approving the listing and trading of Bond Indexed Term Notes); and 40367 (August 26, 1998), 63 FR 47052 (September 3, 1998) (approving the listing and trading of Merrill Lynch EuroFund Market Index Target Term Securities).

¹⁹ Call options on the S&P 500 (SPX) are traded on the CBOE, and both last sale and quotation information for the call options are disseminated in real time through OPRA. The value of the BXM can be readily approximated as a function of observable market prices throughout the trading day. In particular, such a calculation would require information on the current price of the S&P 500 index and specific nearest-to-expiration call and put options on that index. These components trade in highly liquid markets, and real-time prices are available continuously throughout the trading day from a number of sources including Bloomberg and CBOE. The “Indicative Value” (as discussed below) may be a more accurate indicator of the valuation of the Notes because it reflects the fees associated with the Notes (e.g., on the initial principal amount and the Adjustment Amount); however, the “Indicative Value” is also not adjusted intraday. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Commission, on November 22, 2004.

through a third party if the CBOE ceases to calculate and disseminate the Index.²⁰ If, however, Morgan Stanley is unable to arrange the calculation and dissemination of the BXM Index as indicated above, the Exchange will delist the Notes.²¹

In order to provide an updated value of the Net Entitlement Value for use by investors, the Exchange will disseminate over the Consolidated Tape Association's Network B, a daily indicative Net Entitlement Value equal to the Net Entitlement Value on the previous trading day multiplied by the percentage change in the BXM Index, adjusted on a monthly basis on each Roll Date by the Adjustment Amount (the "Indicative Value"). The Indicative Value will be calculated by the Amex after the close of trading and after the CBOE calculates the BXM Index for use by investors the next trading day. It is designed to provide investors with a daily reference value of the adjusted Index. The Indicative Value may not reflect the precise value of the current Net Entitlement Value or amount payable upon repurchase or maturity. Therefore, the Indicative Value disseminated by the Amex during trading hours should not be viewed as a real time update of the BXM Index, which is calculated only once a day. While the Indicative Value that will be disseminated by the Amex is expected to be close to the current BXM Index value, the values of the Indicative Value and the BXM Index will diverge due to the application of the Adjustment Amount.

²⁰ Prior to such change in the manner in which the BXM Index is calculated, the Exchange will file a proposed rule change pursuant to Rule 19b-4, which must be approved by the Commission prior to continued listing and trading in the Notes. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Commission, on November 22, 2004.

²¹ See supra note 5.

From June 30, 1988 through September 30, 2004, the annualized returns for the BXM Index and the S&P 500 were 11.53% and 11.98%, respectively, with a total deviation of the returns during the same time period of 39.62%. As the chart in attached Exhibit A of the Exchange's Form 19b-4 indicates, the BXM Index will closely track the S&P 500 except in those cases where the market is significantly rising or decreasing. In the case of a fast rising market, the BXM Index will trail the S&P 500 due to the limited upside potential of the Index because of the "buy-write" strategy. Due to the cushioning effect of the "buy-write" strategy, the BXM Index has in the past exhibited negative returns that are less than the S&P 500 during a down market. The Exchange expects the BXM Index to continue to display these characteristics.

The call options included in the value of the BXM Index have successive terms of approximately one month. Each day that an option expires, which day is referred to as a "roll" date, that option's value at expiration is taken into account in the value of the BXM Index. At expiration, the call option is settled against the "Special Opening Quotation," a special calculation of the S&P 500. The final settlement price of the call option at expiration is equal to the difference between the Special Opening Quotation and the strike price of the expired call option, or zero, whichever is greater, and is removed from the value of the BXM Index. Subsequent to the settlement of the expired call option, a new, "short" or sold at-the-money call option is included in the value of the BXM Index.²² The initial value of the new call option is calculated by the CBOE and is based on the volume-weighted average of all the transaction prices of the new call option during a designated time period on the day the strike price is

²² Like the expired call option, the new call option will expire approximately one month after the date of sale.

determined.²³

As of October 18, 2004, the market capitalization of the securities included in the S&P 500 Index ranged from a high of \$351.4 billion to a low of \$373 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 63.8 million shares to a low of 140,500 shares.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Act.²⁴

Because the Notes are expected to be issued in \$10 denominations, the Exchange's existing equity floor trading rules will apply to the trading of the Notes. First, 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.²⁵ Second, the Notes will be subject to the equity margin rules of the Exchange.²⁶ Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. For example, the information circular will disclose that the Notes are suitable for investors pursuing a "buy and hold" strategy because the Notes are most appropriate for investors who want to be hedged against a full decline in the S&P 500 and are willing to forego

²³ For this purpose, the CBOE excludes from the calculation those call options identified as having been executed as part of a spread (*i.e.*, a position taken in two or more options in order to profit through changes in the relative prices of those options).

²⁴ See Rule 10A-3(c)(1).

²⁵ 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.

²⁶ See Amex Rule 462 and Section 107B of the Company Guide.

full appreciation of the S&P 500.²⁷ With respect to suitability recommendations and risks, the Exchange will require members, member organizations and 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, Morgan Stanley will deliver a prospectus in connection with its 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 and options that include additional monitoring on key pricing dates, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which 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 Act²⁸ in general and furthers the objectives of Section 6(b)(5)²⁹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to 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.

²⁷ Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Commission, on November 22, 2004.

²⁸ 15 U.S.C. 78f.

²⁹ 15 U.S.C. 78f(b)(5).

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.

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

The Exchange did not solicit or 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 File Number SR-Amex-2004-55 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-2004-55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule

change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of the 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-2004-55 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Amex has asked the Commission to approve the proposal on an accelerated basis to accommodate the timetable for listing the Notes. 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.³⁰ The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.³¹ Accordingly,

³⁰ 15 U.S.C. 78f(b)(5).

³¹ See, e.g., Securities Exchange Act Release Nos. 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protected Notes on the S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of UBS Partial Principal Protected Notes linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of 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); 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the

the Commission finds that the listing and trading of the Notes based on the BXM Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities consistent with Section 6(b)(5) of the Act.³²

The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to gain exposure to the Index, subject to the Adjustment Amount. 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.

As described more fully above, at maturity or upon earlier exchange or redemption during a designated period, the holder of a Note will receive an amount based upon the value of the BXM Index. The Commission notes that the Notes will be redeemable at the option of a holder thereof during a designated month each year, commencing in 2005, subject to certain minimum exchange amounts in the case of partial redemptions. The issuer, Morgan Stanley, will also be able to redeem the Notes on a quarterly basis beginning in June 2007.

Institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected notes linked to the Select Ten Index); and 36710 (January 11, 1996), 61 FR 1791 (January 23, 1996) (approving the listing and trading of BOUNDS).

³² 15 U.S.C. 78f(b)(5). In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

The entitlement value of the Notes at maturity or upon earlier exchange or redemption will depend on the relation of the Final Index Value and Initial Index Value of the BXM Index, reduced by an Adjustment Amount. The Commission notes that the Initial Index Value will equal the closing value of the BXM Index on the date Morgan Stanley prices the Notes for initial sale to the public. The Initial Net Entitlement Value will be equal to \$9.88 (e.g., 1.20% less than the original issue price of the Notes). The BXM Index Performance on any trading day will be equal to the “Index Value” on that trading day divided by the “Initial Index Value.” The Index Value on any trading day will be the closing value of the BXM Index on that trading day. The Adjustment Amount, by which the investor’s return is also reduced, will equal approximately 2.00% per year. For purposes of determining the amount payable in respect of any exchange or upon early redemption or at maturity of the Notes, the Net Entitlement Value will be determined on the fifth scheduled trading day immediately prior to the early redemption date, or the maturity date, as applicable. The Net Entitlement Value will be determined on the last trading day of that exchange period for any investor exchange of the Notes. The Net Entitlement Value that a holder of a Note will receive upon exchange, early redemption, or at maturity will depend on the relation of the Final Index Value to the Initial Index Value of the BXM Index and will always be 1.20% less than the original issue price and include the Adjustment Amount. In the case of a “market disruption event”³³ when determining the Final Index Value, the Final Index Value will be determined on the next available trading day during which no market disruption event occurs.

The Commission notes that the Adjustment Amount will reduce a holder’s participation in the BXM Index and will accordingly reduce the entitlement value upon maturity or earlier exchange or issuer redemption. Given the effect of the initial index value calculation combined

³³ See supra note 13 (defining “market disruption event”).

with the Adjustment Amount, the Commission notes that if the BXM Index decreases or does not increase significantly, a holder would likely receive less than the initial \$10 principal per note over the course of the term of the Notes.

The Commission notes the Exchange's rules that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Morgan Stanley will deliver a prospectus in connection with the initial sales of the Notes.

The Commission notes that the BXM Index is determined, calculated and maintained solely by the CBOE. As of October 18, 2004, the market capitalization of the securities included in the S&P 500 Index ranged from a high of \$351.4 billion to a low of \$373 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 63.8 million shares to a low of 140,500 shares.

Given the large trading volume and capitalization of the compositions of the stocks underlying the S&P 500 Index, the Commission believes that the listing and trading of the Notes that are linked to the BXM Index should not unduly impact the market for the underlying securities comprising the S&P 500 Index or raise manipulative concerns.³⁴

In addition, the Exchange's equity margin and trading rules will apply to the Notes.

Furthermore, the Commission notes that the Notes are dependant upon the individual credit of the issuer, Morgan Stanley. To some extent, this credit risk is minimized by the

³⁴ The issuer, Morgan Stanley, disclosed in the prospectus that the original issue price of the notes includes commissions and Morgan Stanley's costs of hedging its obligations under the Notes. The inclusion of these costs in the initial offering price of the Notes will likely adversely affect the secondary market price of the Notes. The Commission expects such hedging activity to be conducted in accordance with applicable regulatory requirements.

Exchange's listing standards in Section 107A of the Company Guide that provide that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Amex's listing standards require that the Notes have a market value of at least \$4 million.³⁵ In any event, financial information regarding Morgan Stanley, in addition to the information on the component stocks comprising the Index, will be publicly available.³⁶

Finally, the Commission notes that the value of the Index will be calculated and disseminated by the CBOE once every trading day after the close of trading. In addition, the Commission notes that the value of the S&P 500 Index will be disseminated at least once every fifteen seconds throughout the trading day and that investors are able to obtain call option pricing on the S&P 500 Index. Further, the Indicative Value, which will be calculated by the Amex after the close of trading and after the CBOE calculates the BXM Index for use by investors the next trading day, is designed to provide investors with a daily reference value of the adjusted Index. The Commission notes that Morgan Stanley has agreed to arrange to have the BXM Index calculated and disseminated on a daily basis through a third party in the event that the CBOE discontinues calculating and disseminating the Index. In such event, the Exchange agrees to obtain Commission approval, pursuant to filing the appropriate Form 19b-4, prior to the substitution of CBOE. Further, the Commission notes that the Exchange has agreed to undertake to delist the Notes in the event that CBOE ceases to calculate and disseminate the Index and Morgan Stanley is unable to arrange to have the BXM Index calculated and widely disseminated through a third party.

³⁵ Section 107A(c) of the Company Guide.

³⁶ The Commission notes that the component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth 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.³⁷ 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 hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act³⁸ to approve the proposal on an accelerated basis.

V. Conclusion

IS IT THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁹ that the proposed rule change (SR-Amex-2004-55) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴⁰

Margaret H. McFarland
Deputy Secretary

³⁷ See supra note 31.

³⁸ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

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

⁴⁰ 17 CFR 200.30-3(a)(12).