

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50850; File No. SR-Amex-2004-87)

December 14, 2004

Self-Regulatory Organization; 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 Contingent Principal Protected Notes Linked to the Performance of the Standard and Poor's 500 Composite Stock Price Index

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 November 1, 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. 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 contingent principal protected notes, the performance of which is linked to the Standard and Poor's 500 Composite Stock Price 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, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

below. 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 Amex Company Guide (“Company Guide”), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.³ Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the S&P 500 that provide for contingent principal protection (“Contingent Principal Protected Notes” or “Notes”).⁴ Wachovia will issue the Notes under the name “Trigger CAPITALS.”TM The Index is determined, calculated, and maintained solely by S&P.⁵ The Notes will provide for

³ See Securities Exchange Act Release No. 27753 (March 1, 1990) 55 FR 8624 (March 8, 1990) (order approving File No. SR-Amex-89-29).

⁴ Wachovia Corporation (“Wachovia”) and Standard & Poor’s, 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 for, and will not participate in the issuance and creation of, the Notes.

⁵ The S&P 500 is a broad-based stock index which provides an indication of the performance of the U.S. equity market. The S&P 500 is a capitalization-weighted index reflecting the total market value of 500 widely-held component stocks relative to a particular base period. 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 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 Amex or the New York Stock Exchange, Inc. (“NYSE”) or traded through The Nasdaq Stock Market, Inc. (“Nasdaq”). The Index is calculated and disseminated every 15 seconds to numerous market data vendors. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (“Division”), Commission, on December 13, 2004.

an uncapped participation in the positive performance of the S&P 500 during their term while also reducing the risk exposure to the principal investment amount as long as the Index does not at any time decline to or below a pre-established level to be determined at the time of issuance (“Trigger Level”). This Trigger Level will be a pre-determined percentage decline from the level of the Index at the close of the market on the date the Notes are priced for initial sale to the public (“Index Starting Level”). The Issuer expects that the Trigger Level will be approximately 75% of the Index Starting Level. A decline of the Index to the Trigger Level is referred to as a “Trigger Event.”

The Contingent Principal Protected Notes will conform to the initial listing guidelines under Section 107A⁶ and continued listing guidelines under Sections 1001-1003⁷ of the Company Guide. The Notes are senior non-convertible debt securities of Wachovia. The

⁶ The initial listing standards for the Notes require: (1) a market value of at least \$4 million; and (2) a term of at least one year. Because the Notes will be issued in \$1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 holders do not apply. 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 who 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.

⁷ 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 the aggregate market value has become so reduced as 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) 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.

principal amount of each Note is expected to be \$1,000. The Notes will have a term of at least one (1) but no more than ten (10) years. The Notes will entitle the owner at maturity to receive at least 100% of the principal investment amount as long as the S&P 500 never experiences a Trigger Event. In the case of a positive Index return, the holder would receive the full principal investment amount of the Note plus the product of \$1,000 and the quotient of the Index Ending Level (as defined below) divided by the Index Starting Level. In the case of a negative Index return, if the Index declines but never reaches the Trigger Level, the holder will receive the principal investment amount of the Notes at maturity. If, however, the Notes experience a Trigger Event at any time during the term, the holder loses the “principal protection” and will be entitled to receive a payment based on the percentage change of the Index, positive or negative. Thus, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. Accordingly, if the Index experiences a negative return and a Trigger Event, the Notes would be fully exposed to any decline in the level of the S&P 500.⁸ The Notes are not callable by the Issuer or redeemable by the holder.

The payment that a holder or investor of a Note will be entitled to receive (“Maturity Payment Amount”) will depend on the Index Starting Level and the relation of the level of the S&P 500 at the close of the market on the fifth business day (“Valuation Date”) prior to maturity of the Notes (“Index Ending Level”). In addition, whether the Notes retain “principal protection” or are fully exposed to the performance of the Index is determined by whether the S&P 500 experiences a Trigger Event at any time during the term of the Notes. In the event that

⁸ A negative return of the S&P 500, together with a Trigger Event, will reduce the redemption amount at maturity with the potential that the holder of the Note could lose the entire investment amount.

the Valuation Date occurs on a non-trading day or if a market disruption event⁹ occurs on such date, the Valuation Date will be the next trading day on which no market disruption event occurs.

If the percentage change of the Index is positive, the Maturity Payment Amount per Note will equal:

$$\$1,000 \times \left(\frac{\text{Index Ending Level}}{\text{Index Starting Level}} \right)$$

If the percentage change of the Index is zero or negative and the Index never experience a Trigger Event, the Maturity Payment Amount per Note will equal the principal investment amount of \$1,000.

If the Index experiences a Trigger Event at any time during the term, the Maturity Payment Amount per Note will equal:

$$\$1,000 \times \left(\frac{\text{Index Ending Level}}{\text{Index Starting Level}} \right)$$

⁹ A “market disruption event” is defined as the failure of the primary market or related markets to open for trading during regular trading hours or the occurrence or existence of any of the following events: (i) a trading disruption, if material, at any time during the one hour period that ends at the close of trading for a relevant exchange or related exchange; (ii) an exchange disruption, if material, at any time during the one hour period that ends at the close of trading for a relevant exchange or related exchange; or (iii) an early closure. A “trading disruption” generally means any suspension of, or limitation imposed on trading by, the relevant exchange or related exchange or otherwise, whether by reason of movements in price exceeding limits permitted by the relevant exchange or related exchange or otherwise (i) relating to securities that comprise 20% or more of the level of the Index or (ii) in options contracts or futures contracts relating to the Index on any relevant related exchange. An “exchange disruption” means any event (other than a scheduled early closure) that disrupts or impairs the ability of market participants in general to (i) effect transactions in, or obtain market values on, any relevant exchange or related exchange in securities that comprise 20% or more of the level of the Index or (ii) effect transactions in options contracts or futures contracts relating to the Index on any relevant related exchange. A “related exchange” is an exchange or quotation system on which futures or options contracts relating to the Index are traded.

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 do not pay interest.¹⁰ The Notes are designed for investors who want to participate or gain exposure to the S&P 500 while partially limiting their investment risk and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of securities and options linked to the performance of the S&P 500.¹¹

The Exchange notes that S&P announced a change to its methodology so that Index weightings are based on the “public float” of a component stocks and not those shares of stock that are not publicly traded.¹² 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 the

¹⁰ Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on December 13, 2004.

¹¹ See e.g. Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500 Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index); 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 S&P 500 Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500 Index)(SPDR); 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); 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); 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); 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); 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (approving the listing and trading of Morgan Stanley PLUS Notes); and 50414 (September 20, 2004), 69 FR 58001 (September 28, 2004) (approving the listing and trading of Wachovia Contingent Principal Protected Notes on the S&P 500).

¹² See S&P Press Release dated March 1, 2004, available at www.standardandpoors.com.

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. In September 2004, S&P published procedures and float adjustment factors, and began calculation of provisional float adjusted indexes.¹³ S&P started calculating a provisional index alongside the regular index, although there is still only one official set of index values. In March 2005, the non-provisional index values will then shift to partial float adjustment, using float adjustment factors that represent half of the total adjustment, based on the information published in September 2004. In September 2005, the shift to float adjustment will be completed so that official index values will be fully float-adjusted, and the provisional indexes will be discontinued.

As of October 18, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of approximately \$359.7 billion to a low of approximately \$505 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of approximately 9 million shares to a low of approximately 819,817 shares. The Exchange represents that the Index levels will be disseminated at least once every fifteen (15) seconds throughout the trading day.

¹³ The Exchange clarified that S&P published procedures and float adjustment factors on September 28, 2004. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Molly M. Kim, Attorney, Division, Commission, on December 2, 2004.

Because the Notes are issued in \$1,000 denominations, the Amex's existing debt 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.¹⁴ Second, even though the Exchange's debt trading rules apply, the Notes will be subject to the equity margin rules of the Exchange.¹⁵ 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. 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, 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, 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 which prohibits the distribution of material, non-public information by its employees.

¹⁴ 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.

¹⁵ See Amex Rule 462 and Section 107B of the Company Guide.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5),¹⁷ 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.

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 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-2004-87 on the subject line.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-87. 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 offices of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-87 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

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.¹⁸ The Commission notes that the proposal is similar to several approved instruments currently listed and traded on Amex.¹⁹ Accordingly, the Commission finds that the listing and trading of the Notes based on the 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 securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.²⁰

The requirements of Section 107A of the Company Guide were designed to address the concerns attendant to the trading of hybrid securities, like the Notes. For example, Section 107A of the Company Guide provides that 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.²¹ The Commission also 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

¹⁸ Id.

¹⁹ See Securities Exchange Act Release Nos. 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); 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); 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); 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (approving the listing and trading of Morgan Stanley PLUS Notes); and 50414 (September 20, 2004), 69 FR 58001 (September 28, 2004) (approving the listing and trading of Wachovia Contingent Principal Protected Notes on the S&P 500).

²⁰ 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. 78c(f).

²¹ See Company Guide Section 107A.

Act.²² Thus, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes Amex has addressed adequately the potential problems that could arise from the hybrid nature of the Notes.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index of 500 companies listed on Nasdaq, NYSE, and Amex. 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 compromising the Index or raise manipulative concerns. 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.

The Commission also believes that any concerns that a broker-dealer, such as Wachovia, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the Notes issuance in relation to the net worth of Wachovia.²³

Finally, the Commission notes that the value of the Index will be widely disseminated, at least once every fifteen (15) seconds throughout the trading day. The Exchange represents that the Index will be determined, calculated, and maintained by S&P.

²² 15 U.S.C. 78l.

²³ 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).

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 Amex.²⁴ 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,²⁵ to approve the proposal on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²⁶ that the proposed rule change (SR-Amex-2004-87) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland
Deputy Secretary

²⁴ See supra, note 17.

²⁵ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

²⁶ Id.

²⁷ 17 CFR 200.30-3(a)(12).