

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51566; File No. SR-Amex-2004-47)

April 18, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Yield Underlying Participating Securities (YUPS)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 10, 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, II, and III below, which Items have been prepared by the Exchange. On April 15, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to approve for listing and trading Yield Underlying Participating Securities (“YUPS”), representing a beneficial ownership interest in the common stock of a single, publicly-traded company and a series of U.S. Treasury Securities (“Treasury Securities”) with quarterly maturities. YUPS would be eligible for listing and trading, including trading pursuant to unlisted trading privileges, pursuant to Rule 19b-4(e)<sup>4</sup> if the product satisfies the criteria in proposed Commentary .03 of Rule 1202 for “Single TIRs.”<sup>5</sup> YUPS would also be

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

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

<sup>3</sup> Amendment No. 1 makes minor typographical edits to the proposed rule text.

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

<sup>5</sup> See Securities Exchange Act Release No. 51567 (April 18, 2005) (SR-Amex 2003-66)(“Single TIR Proposal”).

subject to proposed Commentary .13 to Amex Rule 170<sup>6</sup> to allow a limited exception for specialist in Single TIRs, including the YUPS, to buy on plus ticks and/or sell on minus ticks to bring the Single TIR/YUPS into parity with the underlying securities. YUPS would also be subject to the proposed Commentary .05 to Amex Rule 1202, which states that YUPS do not qualify for side-by-side trading and integrated market making as set forth in Amex Rule 175(c)(2) and 985(e).<sup>7</sup> Additionally, YUPS would be subject to proposed Commentary .06 to Amex Rule 1202, regarding trading halts, and proposed Commentary .07 to Amex Rule 1202, regarding allowable percentages set forth in Section 107B of the Amex Company Guide.<sup>8</sup> The text of the proposed rule change is available on the Amex's Web site <http://www.amex.com>, at the principal office of the Amex, and at the Commission's Public Reference Room. The text of the proposed rule change appears below. Additions are italicized, deletions are bracketed.

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### **Rule 1202. Initial and Continued Listing**

Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria:

(a) – (e)      No Change

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<sup>6</sup> This new Commentary .13 to Amex Rule 170 is proposed in the Single TIR Proposal.

<sup>7</sup> See Single TIR Proposal.

<sup>8</sup> See Single TIR Proposal.

**Commentary.....**

.01 through [-.2].03<sup>9</sup> No Change

.04 A series of Trust Issued Receipts based on a single component security approved for trading pursuant to Commentary .03 of this Rule may also include U.S. Treasury Securities (“Treasury Securities”). Up to 35% of the Trust in such case may consist of Treasury Securities.

.05 through .07 No Change<sup>10</sup>

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

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item III below. The Amex has prepared summaries, set forth in Section 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 Amex Rule 1201, the Exchange may approve for listing and trading trust issued

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<sup>9</sup> See Single TIR Proposal for text of proposed Commentary .03 to Rule 1202.

<sup>10</sup> See Single TIR Proposal for text of proposed Commentaries .05, .06, and .07 to Rule 1202.

receipts (“TIRs”)<sup>11</sup> based on one or more securities.<sup>12</sup> The Amex in this proposal seeks to list for trading under Amex Rule 1202, YUPS, representing ownership interests in a trust, the assets of which will consist of shares of the common stock of a single, publicly-traded company (the “Common Stock”) and a series of Treasury Securities with quarterly maturities in the form of strips (“U.S. Treasury Strips”).<sup>13</sup> The Exchange proposes that the minimum number of receipts or YUPS required to be outstanding when trading commences is 150,000. YUPS may be approved for listing and trading on Common Stock that meets certain criteria identified below relating to, among other things, public float and trading volume, required in proposed Commentary .03 to Amex Rule 1202.<sup>14</sup> The Exchange expects Cantor Fitzgerald & Co. (“Cantor”), as initial depositor to the trust, to offer the YUPS and Bank of New York (“BNY”) will act as trustee.

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<sup>11</sup> A TIR is defined in Amex Rule 1200(b) as a security (a) that is issued by a trust which holds specified securities deposited with the trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

<sup>12</sup> The Exchange defines a “security” or “securities” to include stocks, bonds, options, and other interests or instruments commonly known as securities. See Amex Constitution, Article I, Section 3(j). Pursuant to Commentary .01 to Amex Rule 1202, initially, no component security of a TIR may represent more than 20% of the overall value of the receipt. If the portfolio of securities underlying the TIR drops to fewer than nine, the SRO will consult with the Commission staff to confirm the appropriateness of continued listing of such TIR. See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (“TIR Approval Order”).

<sup>13</sup> A “stripped bond” is a bond that is separated into its two component parts: periodic interest payments and principal repayment. In the case of stripped bond, each of the interest repayments and principal repayment are stripped apart by a brokerage firm and sold individually as zero-coupon securities. U.S. Treasury Securities that are “stripped” are called “STRIPS,” which stands for “separate trading of registered interest and principal of securities.”

<sup>14</sup> See Single TIR Proposal.

## Introduction

In September 1999, the Exchange adopted rules for the listing and trading of TIRs.<sup>15</sup> TIRs are negotiable receipts issued by trusts that represent investors' discrete identifiable and undivided beneficial ownership interest in the securities deposited into the trust. Since that time the Exchange has listed seventeen (17) TIRs under the trade name of HOLDRS,<sup>16</sup> representing a wide variety of industry sectors and the market as a whole. The original HOLDR was the Internet HOLDR.

To accommodate the listing of additional TIRs, the Exchange in September 2000 revised the existing listing criteria and trading rules to permit the listing and trading of TIRs pursuant to Rule 19b-4(e) under the Act ("Generic Listing Standards").<sup>17</sup> In order to efficiently list TIRs without submitting a separate rule filing with the Commission for each TIR, the Exchange consistent with Rule 19b-4(e) requires, among other things, evidence of sufficient size, liquidity and non-concentration of the underlying component securities of the TIR.<sup>18</sup> Because of the

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<sup>15</sup> See TIR Approval Order.

<sup>16</sup> See HOLDRS No-Action Letter infra note 21 and Registration No. 333-78575 filed with the Commission on September 23, 1999 pursuant to Rule 424 (b)(4) CIK No. 00007286(2).

<sup>17</sup> Commission Rule 19b-4(e), adopted on December 8, 1998, permits the Exchange to list and trade new derivative securities products without submitting a proposed rule change, provided the Exchange has in place trading rules, procedures, a surveillance program and listing standards that pertain to the class of securities covering the new product. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

<sup>18</sup> Commentary .01 of Amex Rule 1202 provides the eligibility criteria for component securities represented by a series of a TIR as follows: (1) each component security must be registered under Section 12 of the Act; (2) each component security must have a minimum public float of at least \$150 million; (3) each component security must be listed on a U.S. national securities exchange or traded through the facilities of The Nasdaq Stock Market, Inc. ("Nasdaq") and a reported national market system security; (4) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; (5) each component security must have an

structure of YUPS, representing an interest in shares of the Common Stock and a series of U.S. Treasury strips, the Exchange believes that the current Generic Listing Standards cannot be used by the Exchange to list this product. However, based on the TIR Approval Order, the Exchange represents that YUPS may be listed for trading pursuant to Amex Rule 1201 and Amex Rule 1202, subject to Commission review and approval. As a result, the Exchange submits this proposed rule change for the purpose of adding Commentary .04 to Amex Rule 1202 to permit the listing and trading, including pursuant to unlisted trading privileges, of a series of YUPS pursuant to Rule 19b-4(e) under the Act when the product complies with proposed Commentaries .03, .05, .06, and .07 to Amex Rule 1202 and proposed Commentary .13 to Amex Rule 170 in the Single TIR Proposal.

#### Listing Criteria

Under Amex Rule 1201, the Exchange may list and trade TIRs based on one or more securities. The securities that are included in a series of a TIR are required to be selected by the Exchange or its agent, a wholly owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in such TIRs.<sup>19</sup> Pursuant to Amex Rule 1201, the Exchange submits that it may designate YUPS for trading.

YUPS will conform to the initial and continued listing criteria under proposed Commentary .03 for Single TIRs in Amex Rule 1202.<sup>20</sup> Each YUPS trust will be formed under a

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average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and (6) the most heavily weighted component security may not initially represent more than 20% of the overall value of the TIR.

<sup>19</sup> Cantor, the initial depositor, and BNY, the trustee, will determine the particular underlying Common Stock to be included in each YUPS trust.

<sup>20</sup> Additionally, the initial listing standards set forth in Amex Rule 1202(a) for all TIRs provide that the Exchange must establish a minimum number of TIRs required to be outstanding at the time of the commencement of trading on the Exchange. As set forth

depository trust agreement, among BNY, as trustee, Cantor, the depositor, and other depositors, if any, and the holders of YUPS (the “YUPS Trust” or “Trust”).<sup>21</sup> The term of each YUPS Trust will expire on or shortly after three (3) years from its date of formation.

As noted above, the Exchange proposes to establish specific criteria in proposed Commentary .03 to Amex Rule 1202, for determining whether Common Stock is eligible for YUPS listing and trading. The criteria are similar to, and based on, the existing criteria for TIRs under the Generic Listing Standards.

Thus, the proposed eligibility criteria for the underlying equity component (“Common Stock”) represented by a series of YUPS are as follows:

1. The component Common Stock must be registered under Section 12 of the Act;

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above, the minimum number of YUPS required to be outstanding at the time of trading is 150,000 receipts. The continued listing guidelines for all TIRs are set forth in Amex Rule 1202(b) and currently state that the Exchange will consider the suspension of trading in or removal from listing of a trust upon which a series of TIRs is based under any of the following circumstances: (1) if the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; (2) if the trust has fewer than 50,000 receipts issued and outstanding; (3) if the market value of all receipts issued and outstanding is less than \$1,000,000; or (4) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable. Upon termination of a trust, the Exchange requires that any TIRs issued in connection with such trust be removed from Exchange listing. In addition, a trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of securities in the trust falls below a specified amount.

<sup>21</sup> The trust is not a registered investment company under the Investment Company Act of 1940 (“1940 Act”). See SEC No-Action Letter dated September 3, 1999 to Merrill Lynch, Pierce, Fenner & Smith Incorporated, providing relief from registration as a management investment company under the 1940 Act for HOLDRS (the “HOLDRS No-Action Letter”). The depositor, Cantor, has requested similar no-action relief from the staff of the Commission’s Division of Investment Management.

2. The component Common Stock must be listed on a national securities exchange or traded through the facilities of Nasdaq and reported national market system security;
3. The component Common Stock may be a security of the U.S. or foreign issuer that meets the requirements of Section 107B(f)<sup>22</sup> of the Company Guide;
4. The component Common Stock must have a minimum public float of at least \$150 million;
5. The component Common Stock must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; and
6. The component Common Stock must have an average daily dollar volume of shares traded during the preceding sixty-day period of at least \$1 million.

Additionally, a minimum of 150,000 receipts are required to be outstanding when trading commences. For continued listing, the component stock must be eligible for standardized equity option trading pursuant to Amex Rule 916. The eligibility criteria were selected to ensure that the Common Stock available for YUPS is well capitalized and actively traded. With respect to public float and trading volume, the Exchange states the criteria track the requirements for qualification as “actively traded securities” under Regulation M.<sup>23</sup>

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<sup>22</sup> Section 107B(f) of the Company Guide provides requirements to meet in connection with the listing and trading of equity linked notes based on foreign and U.S. underlying securities. In general, this provision limits the amount of outstanding common shares of an entity that may be linked to a derivative instrument. The Exchange has also set forth, in proposed Commentary .07, that if an issuer proposes to list a Single TIR that relates to more than the allowable percentages set forth in Section 107B(f) of the Company Guide, the Exchange will submit a proposed rule change with the Commission pursuant to Section 19(b)(2) and cannot list and trade such Single TIR until the Commission issues an approval order. See Single TIR Proposal.

<sup>23</sup> See Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520 (January 3, 1997) at 35-36. Rules 101(c) and 102(d) under Regulation M defines



Proposed Commentary .04 to Amex Rule 1202 provides that up to 35% of the YUPS Trust may consist of Treasury Securities. With respect to the U.S. Treasury strip component of YUPS, the Exchange notes that the market for Treasury Securities is the largest and most liquid securities market in the world.<sup>24</sup> For the year 2003, total daily average transaction volume for primary dealers<sup>25</sup> in U.S. Treasury coupon securities was approximately \$406.08 billion. During this same period, primary dealer average daily transaction volume in the 1-3 year range was approximately \$146.58 billion; average daily transaction volume in the 3-6 year range was approximately \$130.67 billion; average daily transaction volume in the 6-11 year range was approximately \$103.65 billion; and average daily transaction volume in the more than 11 year range was approximately \$25.08 billion.<sup>26</sup> In the first quarter of 2004, average daily transaction volumes for the same duration U.S. Treasury coupon securities were \$166.89 billion, \$135.4 billion, \$106.4 billion and \$24.12 billion, respectively. Most of this trading volume occurs in the most recently issued security in a particular maturity class.<sup>27</sup>

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“actively-traded securities” as those securities that have an average daily trading volume of at least \$1 million and are issued by an issuer whose common equity securities have a public float of at least \$150 million.

<sup>24</sup> See “The Treasury Securities Market: Overview and Recent Developments,” The Federal Reserve Bulletin, December 1999; which can be obtained from the Federal Reserve’s Web site [www.federalreserve.gov/pubs/bulletin/1999/99index.htm](http://www.federalreserve.gov/pubs/bulletin/1999/99index.htm).

<sup>25</sup> Primary dealers are selected by the Federal Reserve Bank of New York as counter parties for the New York Federal Reserve’s open market operations (government securities transactions related to the Federal Reserve’s implementation of monetary policy). Primary dealers are required to participate meaningfully in both open market operations and Treasury auctions and are required to provide policy relevant market information to the Federal Reserve Bank of New York.

<sup>26</sup> Primary dealers in Treasury Securities submit statistics to The Federal Reserve Bank of New York regarding their transactions in Treasuries. These statistics may be obtained from the New York Federal Reserve’s Web site [www.ny.frb.org](http://www.ny.frb.org).

<sup>27</sup> See supra note 24 at page 795.

The secondary market for Treasury Securities is a highly organized over-the-counter (“OTC”) market. Many dealers, and particularly the primary dealers, make markets in Treasury Securities. Trading activity takes place between primary dealers, non-primary dealers, and customers of these dealers, including financial institutions, non-financial institutions and individuals. Increasingly, trading in Treasury Securities occurs through automated trading systems.<sup>28</sup>

The primary dealers are among the most active participants in the secondary market for Treasury Securities. The primary dealers and other large market participants frequently trade with each other, and most of these transactions occur through an interdealer broker.<sup>29</sup> The interdealer brokers provide primary dealers and other large participants in the Treasury market with electronic screens that display the bid and offer prices among dealers and allow trades to be consummated.

Quote and trade information regarding Treasury Securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers also furnish trade and quote information to vendors such as Bloomberg LLC, Reuters, Moneyline Telerate, and CQG. GovPX,<sup>30</sup> for example, is a consortium of leading government securities dealers that provides market data from leading government securities dealers to market data vendors. TradeWeb, another example, is a consortium of 18 primary dealers that, in addition to providing a trading

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<sup>28</sup> See “eCommerce in the Fixed-Income Markets: The 2001 Review of Electronic Transaction Systems,” December 2001. This survey of electronic trading systems in the bond market was prepared by the staff of The Bond Market Association and is available through the Association’s Web site [www.bondmarkets.com](http://www.bondmarkets.com).

<sup>29</sup> E.g., BrokerTec Global, Cantor Fitzgerald, Garban-Intercapital, and Liberty Brokerage.

<sup>30</sup> [www.govpx.com](http://www.govpx.com).

platform, also provides market data direct to subscribers or to other market data vendors.<sup>31</sup> In addition, an interdealer broker of government securities (Cantor) for many years has provided Moneyline Telerate with market data.

In order to provide investors who purchase or sell YUPS with information regarding the value of the underlying Common Stock and Treasury strips, the Exchange will disseminate every 15 seconds an indicative value of the underlying portfolio.<sup>32</sup>

### Product Description

The Exchange states that YUPS are designed to provide investors with a current market yield, while also providing the opportunity to share in the appreciation, if any, of a publicly-traded share of common stock. YUPS represent an undivided beneficial interest in the underlying securities held by the YUPS Trust. A holder of YUPS may exchange the YUPS to receive each of the underlying securities. The Exchange states that the expenses associated with trading YUPS are expected to be less than the expenses associated with trading each of the underlying securities separately in a traditional brokerage account. YUPS are also expected to provide reduced volatility compared to the trading of each Common Stock, largely due to the existence of downside protection received through the current yield of U.S. Treasury strips.

YUPS are separate and distinct from the underlying securities comprising the portfolio of the YUPS Trust. Consistent with the TIR Approval Order,<sup>33</sup> each YUPS Trust will only issue

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<sup>31</sup> [www.tradeweb.com](http://www.tradeweb.com).

<sup>32</sup> Because YUPS will hold multiple securities (e.g., an equity security and Treasury strips), the Exchange finds it useful to disseminate an estimated intraday valuation indicative of the underlying portfolio.

<sup>33</sup> See TIR Approval Order.

and retire YUPS in a minimum issuance denominations,<sup>34</sup> which is expected to be eight (8) round-lots of 100 YUPS shares. Each Trust will only issue YUPS upon the deposit of the whole shares represented by the minimum issuance denomination and the series U.S. Treasury strips represented by such minimum issuance denomination. In the event that a fractional share is represented by the minimum issuance denomination, the Trust may require a minimum of more than one minimum issuance denomination for an issuance so that the Trust will always receive whole share amounts for issuance of YUPS. Thus, YUPS will trade on the Exchange only in round lots of 100 YUPS.

The number of outstanding YUPS will increase and decrease as a result of in-kind deposits and withdrawals of the underlying securities. The YUPS Trust will stand ready to issue additional YUPS on a continuous basis when an investor deposits the required securities with the trustee.

The initial public offering price for 100 YUPS will equal the sum of the closing market price on the Nasdaq National Market (for Nasdaq stocks) or the primary listed securities exchange (for listed stocks) on the pricing date for each underlying share of the Common Stock multiplied by the “share per receipt ratio amount”<sup>35</sup> to be determined on the pricing, and the closing prices of the U.S. Treasury strips in the futures market on the pricing date, plus an underwriting fee. After the initial public offering, each Trust may issue additional YUPS

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<sup>34</sup> YUPS will be evidenced by one or more global certificates that the trustee will deposit with DTC and register in the name of Cede & Co., as nominee for DTC. YUPS will be available only in book-entry form. Owners of YUPS may hold their YUPS through DTC, if they are participants in DTC, or indirectly through entities that are participants in DTC.

<sup>35</sup> The “share per receipt ratio amount” is the number of shares of the underlying Common Stock (or multiplier) for each one (1) YUP. The “share per receipt ratio” for each separate YUPS issue will depend on the price of the Common Stock and will vary from issue to issue. In general, the higher the market price of the Common Stock, the lower the “share per receipt ratio.”

regarding a specific underlying Common Stock on a continuous basis. Investors may acquire YUPS in two ways: (1) through a purchase on the Exchange, or (2) through an in-kind deposit with the trustee during normal business hours of the number of the underlying shares of Common Stock represented by the specified round-lots of 100 YUPS and the series of U.S. Treasury Strips represented by the specified round-lots of 100 YUPS. Investors that create YUPS by delivery to the Trust of the requisite underlying Common Stock and U.S. Treasury Strips will be required to pay an issuance fee that is expected to be approximately 1% of the value of the securities represented by the YUP receipt.<sup>36</sup> In addition, investors will also be responsible for paying any sales commissions that are charged by a broker in connection with any purchase of the underlying securities.

The initial weighting of YUPS will be approximately 70% allocated to Common Stock and 30% allocated to the U.S. Treasury Strips. The specific share amounts for each round-lot of 100 YUPS will be determined on the pricing date. The underlying securities of YUPS consist of shares of a Common Stock that is registered under Section 12 of the Act and meets the other listing criteria discussed above, and a series of zero-coupon U.S. Treasury Strips, maturing quarterly. In selecting the Common Stock, no investigation or review of the individual publicly-traded company, including the public filings, will be performed other than to the extent required to determine whether the company and its common stock satisfies the listing criteria for YUPS.

After the pricing, the “share per receipt ratio amount” for an underlying Common Stock will not change, except for changes due to corporate events, such as stock splits or reverse stock splits. Under no circumstances will the common stock of a different publicly-traded company be substituted for the initial common stock established for the YUPS. The actual number of shares

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<sup>36</sup> Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 15, 2005.

and weighting will be determined on the date of the initial capitalization of the Trust by the initial depositor and will appear in the final prospectus delivered in connection with sales of YUPS.<sup>37</sup> The notional amount and weighting of the underlying U.S. Treasury Strips will also be determined on the pricing date and, except as a result of the maturity of the U.S. Treasury Strips, will not change during the term of the Trust. The relative weightings of the deposited securities will change based on the current market price of the deposited securities, but the component securities held by each YUPS Trust and represented by a YUPS will not change except as a result of the quarterly maturity of the U.S. Treasury Strips.

Investors may withdraw the underlying securities of YUPS upon request by delivering a minimum issuance denomination (expected to be eight (8) round lots of 100 YUPS) or integral multiple thereof to the trustee during normal business hours. To the extent that any exchange of YUPS requires the delivery of a fractional share, the trustee will sell such share in the market and deliver cash in lieu of such share. Beneficial owners of YUPS will have the same rights and privileges as they would have if they beneficially owned the underlying securities outside of the Trust.<sup>38</sup> These include the right of investors to instruct the trustee to vote the securities, the right

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<sup>37</sup> As a result of the share per receipt ratio amount or multiplier, the initial issue price will be a multiple of the current price of the Common Stock. For example, the initial issue price of a YUP may be \$49.99 (plus a 1% issuance fee) provided a share per receipt ratio of 1.7825 and a current price of \$20.00 per share for a given stock that qualifies as a YUP candidate and \$15.00 principal amount of Treasury Securities (with a current market value of \$14.34). If YUPS are surrendered to the trustee in a minimum issuance amount (expected to be eight (8) round lots of 100 YUPS), the investor will receive 1,426 shares of the Common Stock and \$12,000 principal amount of Treasury Securities for each minimum issuance denomination. In the event a minimum issuance denomination represents fractional shares due to certain corporate events such as stock splits or reverse stock splits or other corporate distributions, the trustee will deliver cash in lieu of such fractional share.

<sup>38</sup> The trustee will deliver proxy soliciting materials provided by the publicly-traded company underlying YUPS to permit holders of YUPS to give the trustee instructions as

to receive dividends and other distributions on the underlying securities, if any, and the right to exchange YUPS to receive the underlying securities.<sup>39</sup> However, except with respect to the right to vote for dissolution of the Trust, holders of YUPS will not have voting rights with respect to the YUPS Trust.<sup>40</sup> The Trust will not be managed and will remain static over the term of the Trust.

The Trust will not publish or otherwise calculate the aggregate value of the underlying security represented by YUPS. However, as noted above, the Exchange will disseminate every 15 seconds over the Consolidated Tape Association's Network B an indicative value of the underlying portfolio of YUPS. YUPS may trade in the secondary market at prices that are lower than the aggregate value of the corresponding underlying security. If, in such case, a holder of a YUPS wishes to realize the net asset value of the underlying security, that owner will have to exchange the YUPS.

The Exchange believes that YUPS will not trade at a material discount or premium to the underlying securities held by the Trust based on potential arbitrage opportunities. The arbitrage process, which provides the opportunity to profit from differences in prices of the same or similar securities, increases the efficiency of the markets and serves to prevent potentially manipulative efforts. If the price of YUPS deviates enough from the portfolio of the deposited

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to how to vote on matters to be considered at any annual or special meeting of shareholders held by that company.

<sup>39</sup> Dividends and distributions will generally be passed-through to the holders of the YUPS. However, distributions, if any, of additional shares of common stock will be retained by the Trust and added to the quantity of the common stock underlying the outstanding YUPS. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 15, 2005.

<sup>40</sup> Beneficial owners of YUPS, other than Cantor, will have the right to vote to dissolve and liquidate the Trust.

securities to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy the YUPS at a discount, immediately cancel them in exchange for the deposited securities and sell the underlying securities in the cash market at a profit, or sell the YUPS short at a premium and buy the securities represented by YUPS to deposit in exchange for YUPS to deliver against the short position. In both instances the arbitrageur locks in a profit and the markets move back into line.

### Prospectus Delivery

In connection with the listing and trading of YUPS, all investors in YUPS who purchase in the initial offering will receive a prospectus. In addition, purchasers of YUPS directly from the Trust (by delivering the underlying securities to the Trust) will also receive a prospectus. Finally, Amex members purchasing YUPS from the Trust for resale to customers will deliver a prospectus to such customers.<sup>41</sup>

### Fee Structure

As set forth in the Registration Statement in connection with the YUPS Trust, investors purchasing YUPS by delivery to the Trust of the securities represented by the YUPS are required to pay an issuance fee of 1% of the value of the securities underlying the YUPS receipt. There are no cancellation or withdrawal fees.<sup>42</sup>

Brokerage commissions may be charged by a securities broker for the purchase of the underlying securities in connection with the creation of the YUPS. In addition, purchases of YUPS on the Exchange may also be subject to brokerage commissions.

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<sup>41</sup> Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 15, 2005.

<sup>42</sup> Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 15, 2005 (as to fee structure generally).



BNY as trustee also will charge an annual custody fee of .04 % of the Trust's assets, to be paid quarterly by Cantor (and thus will not be paid out of the assets of the Trust).

#### Termination Events

The YUPS Trust will be terminated if any of the following circumstances occur: (1) the individual publicly-traded company of the underlying YUPS no longer has a class of securities registered under Section 12 of the Act; (2) the Commission finds that individual publicly-traded company underlying the YUPS or the Trust should be registered as an investment company under the 1940 Act, and the trustee has actual knowledge of the Commission finding; (3) the securities of the individual publicly-traded company underlying the YUPS cease to be outstanding as a result of a merger, consolidation or other corporate combination; (4) the individual publicly-traded company's common stock is no longer listed for trading on the Amex or New York Stock Exchange, Inc. ("NYSE") or authorized for quotation on Nasdaq National Market System ("NMS") for five (5) business days from the date the securities are no longer authorized for listing or quotation; (5) the YUPS are delisted from the Amex and are not listed for trading on another U.S. national securities exchange or authorized for quotation on Nasdaq NMS within five (5) business days from the date the YUPS are delisted; (6) the trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to Cantor, the initial depositor, of its intent to resign; (7) 50% of beneficial owners of outstanding YUPS vote to dissolve and liquidate the trust; and/or (8) the withdrawal of such number of common stock from the Trust so that the aggregate value of the Trust's assets fall below a pre-determined amount.

Upon termination of the Trust, the beneficial owners will surrender the YUPS and the trustee will distribute the underlying securities to the YUPS holders.

## Information Circular

The proposed rule change would require the Exchange to evaluate the nature and complexity of YUPS, prior to the commencement of its trading, and, if appropriate, distribute and circulate to the membership guidance regarding member firm compliance responsibilities when handling transactions in such securities. In addition, prior to the commencement of trading in YUPS, the Exchange will issue a circular to members informing them of, among other things, Exchange policies regarding trading halts in such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the circular will advise that, in addition to other factors that may be relevant, the Exchange may consider factors such as the extent to which trading is not occurring in a deposited share(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; however, in any event, trading in the YUPS will be halted if trading in the underlying equity security is halted because of a regulatory trading halt as defined in Rule 6h-1 under the Act.<sup>43</sup>

In addition, the circular will also discuss the special characteristics and risks of trading YUPS. Specially, the circular, among other things, will discuss how the YUPS are issued and redeemed from the trust, that shares are not individually redeemable, member prospectus delivery requirements, and applicable Exchange rules, such as the limited exception to Amex Rule 170. The circular will also explain the various fees as described in the Registration

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<sup>43</sup> Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 14, 2005 (regarding content of information circular generally and definition of regulatory trading halt).

Statement. The circular will also advise members of their suitability obligations with respect to a recommended transaction in the YUPS shares.<sup>44</sup>

### Trading Rules

YUPS are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening and customer suitability (Amex Rule 411), with the prior approval of a floor official, of a stop or limit order by a quotation (Amex Rule 154, Commentary .04(c)). Initial equity margin requirements of 50% and the regular equity trading hours of 9:30 a.m. to 4:00 p.m. will apply to transactions in YUPS. However, trading rules pertaining to the availability of odd-lot trading in Amex equities will not apply to the trading of YUPS, since they can only be traded in round-lots. YUPS will be deemed “Eligible Securities,” as defined in Amex Rule 230, for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade through provisions of Amex Rule 236 that require that Amex members avoid initiating trade-throughs for ITS securities.

Specialist transactions of YUPS made in connection with the creation and redemption of YUPS will not be subject to the prohibitions of Amex Rule 190.<sup>45</sup> YUPS will trade in minimum fractional increments pursuant to Amex Rule 127, resulting in a minimum fractional change of \$0.01. YUPS will be subject to the short sale rule, Rule 10a-1 under the Act and Regulation SHO under the Act.<sup>46</sup> In addition, Proposed Commentary .13 of Amex Rule 170 would grant a

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<sup>44</sup> See Amex Rule 411.

<sup>45</sup> See Commentary .05 to Amex Rule 190. Pursuant to Commentary .05, Amex Rule 190(a) will not restrict the specialist in YUPS from purchasing or canceling the YUP or its component securities in connection with the issuance of the YUP, from the Trust as appropriate to facilitate the maintenance of a fair and orderly market.

<sup>46</sup> 17 CFR 240.10a-1; 17 CFR 242.200(g).

specialist in a Single TIR a limited exception from Commentaries .01, .02, and .07 of Amex Rule 170.<sup>47</sup> Such exception would allow a specialist in a Single TIR to buy on plus ticks and/or sell on minus ticks for the purpose of bringing the Single TIR into parity with its underlying security. The Exchange represents that its surveillance procedures applicable to the YUPS are adequate to deter manipulation,<sup>48</sup> and will be similar to those used for other TIRs and exchange-traded funds (“ETFs”) and will incorporate and rely upon existing Amex surveillance procedures governing options and equities.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act<sup>49</sup> in general and furthers the objectives of Section 6(b)(5)<sup>50</sup> 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.

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<sup>47</sup> See Single TIR Proposal.

<sup>48</sup> Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 14, 2005.

<sup>49</sup> 15 U.S.C. 78f(b).

<sup>50</sup> 15 U.S.C. 78f(b)(5).

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

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

- (A) by order approve such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-47 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Amex-2004-47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2004-47 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>51</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>51</sup> 17 CFR 200.30-3(a)(12).