

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51868; File No. SR-Amex-2005-044)

June 17, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to Dissemination of the Underlying Index Value for Portfolio Depositary Receipts and Index Fund Shares

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 April 22, 2005, 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 Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

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

The Amex proposes to amend the listing standards for Portfolio Depositary Receipts (“PDRs”) and Index Fund Shares (“IFSs”) to provide that the current value of the underlying index must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the PDR or IFS trades on the Exchange. The text of the proposed rule change is available on the Amex’s Web site (<http://www.amex.com>), at the Amex’s principal office, and at the Commission’s Public Reference Room.

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

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

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 1000, Commentary .02 and Amex Rule 1000A, Commentary .03 provide listing standards for PDRs and IFSs, respectively, to permit listing and trading of these securities pursuant to Rule 19b-4(e) under the Act.<sup>3</sup> Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self regulatory organization has a surveillance program for the product class.<sup>4</sup>

The Amex rules for PDRs and IFSs currently provide that the current index value for the index underlying a series of PDRs (in the case of Amex Rule 1000) and IFSs (in the case of

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

<sup>4</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

Amex Rule 1000A) will be disseminated every 15 seconds over the consolidated tape. The Amex believes that, rather than identifying specifically in their rules the index dissemination service (that is, the consolidated tape), it is preferable to reflect in the rules a requirement for wide dissemination of the underlying index values. This proposed rule change would make clear that the value of the underlying index must be widely disseminated by a reputable index dissemination service, such as the Consolidated Tape Association, Reuters or Bloomberg. The Amex believes that the specific identity of the index dissemination service is not necessary, and the purpose of the rule would be achieved, as long as the service used for dissemination is reputable, accepted in the investment community, and effects appropriately wide dissemination of the particular index.

The Exchange therefore proposes to change the listing standards for PDRs and IFSs to provide that the value of the underlying index must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the PDR or IFS trades on the Exchange.

As currently is the case, if the official index does not change during some or all of the period when trading is occurring (as is typically the case with pre-market-open and after-hours trading, and also with foreign indexes because of time zone differences or holidays in the countries where such indexes' components trade), then the last official calculated index value must remain available throughout the Amex trading hours.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Amex believes that clarifying the rules helps all market participants.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were neither solicited nor received.

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-044 on the subject line.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-044. 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, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-Amex-2005-044 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.<sup>7</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires among other things, that the rules of the Exchange are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed index dissemination requirement, which is similar to the index dissemination requirement used in the listing standards for narrow-based index options,<sup>9</sup> will help to ensure the transparency of current index values for indexes underlying PDRs and IFSs.

The Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register. The Commission notes that it has recently approved a similar proposal regarding the dissemination of the underlying index value for PDRs and IFSs traded on Nasdaq.<sup>10</sup> The Commission believes that granting accelerated approval of the proposal will allow the Amex to immediately implement these similar listing standards already in place on Nasdaq. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> for approving the

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<sup>7</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See e.g., Chicago Board Options Exchange Rule 24.2(b); International Securities Exchange Rule 2002(b); Pacific Exchange Rule 5.13; and Philadelphia Stock Exchange Rule 1009A(b) (listing standards for narrow-based index options requiring that, among other things, the current underlying index value be reported at least once every 15 seconds during the time the index option trades on the exchange).

<sup>10</sup> See Securities Exchange Act Release No. 51748 (May 26, 2005) (order approving File No. SR-NASD-2005-024 relating to dissemination of the underlying index value for PDRs and IFSs trading on Nasdaq).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-Amex-2005-044) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Margaret H. McFarland  
Deputy Secretary

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

<sup>13</sup> 17 CFR 200.30-3(a)(12).