

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52298; File No. SR-Amex-2004-47)

August 18, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto, Relating to Listing and Trading of Yield Underlying Participating Securities (YUPS)

I. Introduction

On June 10, 2004, the American Stock Exchange LLC (“Amex”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change 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 with quarterly maturities. On April 15, 2005, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change and Amendment No. 1 thereto were published for comment in the Federal Register on April 22, 2005.³

The Commission received no comments on the proposal. This order approves the proposed rule change, as amended by Amendment No. 1. Simultaneously, the Commission provides notice of filing of Amendment No. 2 to the proposed rule change and grants accelerated approval of Amendment No. 2.⁴

YUPS will be eligible for listing and trading, including trading pursuant to unlisted

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 51566 (April 18, 2005), 70 FR 20946 (“YUPS Notice”).

⁴ On August 16, 2005, the Exchange submitted Amendment No. 2 to the proposed rule change.

trading privileges, pursuant Commentary .03(a)-(f) of Rule 1202.⁵ YUPS will also be subject to Commentary .13 to Amex Rule 170,⁶ which allows 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 will not qualify for side-by-side trading and integrated market making as set forth in Amex Rule 175(c)(2) and 985(e),⁷ under Commentary .05 to Amex Rule 1202. Furthermore, YUPS will be subject to Commentary .06 to Amex Rule 1202, regarding trading halts, and Commentary .07 to Amex Rule 1202, regarding allowable percentages set forth in Section 107B of the Amex Company Guide (“Company Guide”).⁸

II. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁹ and, in particular, the requirements of Section 6 of the Act¹⁰ and the rules

⁵ The listing standards for YUPS described herein were originally incorporated in a separate proposal for generic listing standards for trust issued receipts based on a single underlying listed security (“Single TIRs”). See Securities Exchange Act Release No. 51567 (April 18, 2005), 70 FR 20939 (April 22, 2005) (“Single TIR Proposal”). Following Amex’s withdrawal of the Single TIR Proposal, Amex submitted Amendment No. 2 to this proposed rule change to incorporate those same listing standards solely for YUPS products. Therefore, in this order, the Commission is only approving the listing and trading of the YUPS-type product, which represents beneficial ownership interests in the common stock of a single publicly traded company and a series of U.S. Treasury securities with quarterly maturities.

⁶ This new Commentary .13 to Amex Rule 170 was proposed in the Single TIR Proposal.

⁷ See Single TIR Proposal.

⁸ See Single TIR Proposal.

⁹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f.

and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 finds good cause for approving proposed Amendment No. 2 before the 30th day after the date of publication of notice of filing thereof in the Federal Register. Amex filed Amendment No. 2 solely for the purpose of incorporating generic listing standards pursuant to Rule 19b-4(e)¹² for YUPS. The generic listing standards proposed in Amendment No. 2 were previously noticed in the separately proposed Single TIR proposal,¹³ and incorporated by reference in the YUPS notice.¹⁴ Amex has recently withdrawn the Single TIR proposal. In order to retain the generic listing standards for the YUPS product, Amex submitted Amendment No. 2 to this proposed rule change, to incorporate those standards as part of this proposed rule change. Because the generic listing standards proposed in Amendment No. 2 were already published in the Federal Register as part of the Single TIR proposal and because no comments were received on the Single TIR proposal, the Commission finds good cause for accelerating approval of Amendment No. 2 in order to prevent any unnecessary delay in the approval of this proposed rule change in its entirety.

¹¹ 15 U.S.C. 78f(b)(5).

¹² 17 CFR 240.19b-4(e).

¹³ See Single TIR proposal.

¹⁴ See YUPS Notice.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 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-2004-47 on the subject line.

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-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 Room. Copies of such filing also will be available for inspection and copying at the principal office 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-2004-47 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-Amex-2004-47), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland
Deputy Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).