

[Release No. 34-36990; International Series Release No. 952; File No. SR-Amex-95-44]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Equity Linked Term Notes on Non-U.S. Securities

March 20, 1996.

I. Introduction

On November 9, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to amend Section 107B of the Amex Company Guide to provide alternate criteria for the listing and trading of hybrid debt securities whose value is linked to the performance of a non-U.S. company which is traded in the U.S. market as sponsored American Depositary Shares ordinary shares or otherwise.

Notice of the proposal was published for comment and appeared in the Federal Register on December 7, 1995.³ The Exchange filed with the Commission Amendment No. 1 to the proposed rule change on January 5, 1996.⁴ No comment letters were received on the proposed rule change. This order approves the Exchange's proposal, as amended.

II. Background

On May 20, 1993 and December 13, 1993, the Commission approved amendments to Section 107 of the Amex Company Guide to provide for the listing and trading of Equity Linked Term Notes ("ELNs").⁵ ELNs are intermediate term (two to seven years), non-convertible, hybrid debt instruments, the value of which is

linked to the performance of a highly capitalized, actively traded U.S. and non-U.S. companies.

In August 1994, the Exchange amended Section 107B of the Amex Company Guide to permit the listing and trading of ELNs linked to actively traded non-U.S. companies which are traded in the U.S. market as sponsored American Depositary Shares, ordinary shares or otherwise ("non-U.S. securities"), provided that (1) the Exchange has in place a comprehensive surveillance sharing agreement with the primary exchange on which the non-U.S. security trades; the trading volume of the non-U.S. security in the U.S. market represents at least 50% of the world-wide trading volume in the non-U.S. security ("50% Test"); and (2) the ELNs issuance does not exceed (i) 2% of the total shares of the underlying security outstanding provided at least 30% of the worldwide trading volume for the security for the six-months prior to the listing occurred in the U.S. market, (ii) 3% of the total shares of the underlying outstanding provided at least 50% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market, or (iii) 5% of the total shares of the underlying security outstanding provided at least 70% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market. No ELN may be listed if the U.S. market for the underlying security accounted for less than 30% of the worldwide trading volume for the security and related securities during the prior six months.⁶

III. Description of the Proposal

The Exchange proposes to amend its ELNs on non-U.S. security listing criteria by (1) revising the manner in which the applicable percentage of world-wide trading volume is calculated under the 50% Test; (2) adding new criteria for the listing of ELNs on non-U.S. securities, based on the daily trading volume in the U.S.; and (3) revising the current restrictions on the size of ELN issuances linked to non-U.S. securities to reflect the amendments to the listing criteria noted above.⁷ Specifically, the Exchange proposes to revise the 50% Test so that trading in non-U.S. securities and other related non-U.S. securities in any market with which the Exchange has in place a comprehensive/effective surveillance sharing agreement will be added to U.S. market volume for the purpose of

determining whether the 50% Test has been met. Currently, only trading in the U.S. market counts toward satisfying the 50% Test.

Additionally, the Exchange proposes to add an alternate set of criteria under which the Exchange may list ELNs on non-U.S. securities ("20% Test + Daily Trading Volume Standards"). The new standard will permit the Exchange to list ELNs on non-U.S. securities if all of the following conditions are satisfied: (1) The combined world-wide trading volume for the non-U.S. security in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and other related non-U.S. securities over the six month period preceding the date of selection of the non-U.S. security for an ELN listing;⁸ (2) the average daily trading volume for the non-U.S. security in the U.S. market over the six months preceding the date of selection of the non-U.S. security for an ELN listing.

Moreover, the Exchange proposes to amend the size limitations of ELN issuances linked to non-U.S. securities. Specifically, the Exchange proposes to require that the size of ELN issuances linked to non-U.S. securities will be limited to 2% of the total shares of the underlying security for the underlying security outstanding provided at least 20% of the worldwide trading volume for the security for the six-months prior to the listing occurred in the U.S. market. Additionally, under the proposed rule change, the 30% floor would be lowered to 20%⁹ so that an ELN would be permitted on a non-U.S. security if U.S. trading volume accounted for at least 20% of the world-wide trading volume during the six months prior to listing.¹⁰ As noted

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 36538 (November 30, 1995), 60 FR 62914.

⁴ The Exchange submitted Amendment No. 1 to the Commission to make certain technical changes, as further described herein, to the listing standards regarding Equity Linked Term Notes on non-U.S. securities. See Letter from Claire McGrath, Special Counsel, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated January 5, 1996 ("Amendment No. 1").

⁵ See Securities Exchange Act Release Nos. 32345 (May 20, 1993), 58 FR 30833 (May 27, 1993), and 33328 (December 13, 1993), 58 FR 66041 (December 20, 1993).

⁶ See Securities Exchange Act Release No. 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994).

⁷ See Amendment No. 1, *supra* note 4.

⁸ The calculation for the 20% Test + Daily Trading Volume Standard does not include foreign markets with which the Exchange has in place a comprehensive surveillance sharing agreement. See Amendment No. 1, *supra* note 4.

⁹ As with the 20% Test + Daily Trading Volume Standard, foreign markets with which the Exchange has in place a comprehensive surveillance sharing agreement are not included in the calculation for purposes of determining the size of eligible ELN issuances. See Amendment No. 1, *supra* note 4.

¹⁰ The other size limitations in Amex's rule remains unchanged. Accordingly, the size of ELN issuances linked to non-U.S. securities will be limited to 3% of the total shares of the underlying security outstanding provided at least 50% of the worldwide trading volume for the security for the

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above, the current rule requires at least 30% of the trading volume to occur in the U.S. to issue an ELN linked to up to 2% of the outstanding shares of a non-U.S. security.¹¹

The Exchange believes that the proposed rule change is appropriate in that it limits the listing of ELNs linked to non-U.S. securities to those that have both a significant amount of U.S. market trading volume and a substantial volume of trading covered by a comprehensive/effective surveillance sharing agreement, which provides reasonable assurances that the underlying non-U.S. securities are deliverable upon exercise of the ELNs, and gives the Exchange the ability to inquire into potential trading problems or irregularities in a market place that serves as a significant price discovery market for the non-U.S. security.

The Exchange also believes that the proposed amendment will benefit investors by expanding the number of non-U.S. securities that may be linked to ELNs, thereby providing investors with enhanced investment flexibility. The Exchange believes that it is appropriate to now include additional non-U.S. securities within the existing ELNs regulatory framework because of the significant level of U.S. investor interest in both U.S. and non-U.S. highly capitalized and actively traded reporting companies.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, 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.

IV. Commission Finding and Conclusions

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, the requirements of Section 6(b)(5) of the

Act.¹² Specifically, the Commission finds that the Exchange's proposal to provide alternate criteria for the listing and trading of ELNs on non-U.S. securities strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

The Commission believes that the proposed amendments to the listing standards for ELNs on non-U.S. securities will benefit investors by effectively increasing the number of available ELNs-eligible non-U.S. securities. At the same time, as described below, the proposal provides safeguards designed to reduce the potential for manipulation and other abusive trading strategies in connection with the trading of non-U.S. security ELNs and their underlying securities. Accordingly, the Commission believes that the proposal will extend the benefits associated with ELNs on non-U.S. securities to additional non-U.S. securities and provide market participants with opportunities to trade a greater number of ELNs on non-U.S. securities without compromising the effectiveness of the Exchange's listing standards for such securities.

Currently, the 50% Test allows the Exchange to list ELNs on a non-U.S. security in the absence of a comprehensive/effective surveillance sharing agreement with the primary exchange where the non-U.S. security trades if the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market during the six month period preceding the selection of the non-U.S. security for ELN listing represents (on a share equivalent basis) at least 50% of the combined world-wide trading volume in such securities.

The Commission has previously concluded that the 50% Test helps to ensure that the relevant pricing market for non-U.S. securities underlying ELNs occurs in the U.S. market.¹³ In such cases, the Commission has previously found that the U.S. market is the instrumental market for purposes of deterring and detecting potential

manipulations or other abusive trading strategies in conjunction with transactions in the overlying non-U.S. security ELN market. Because the U.S. self-regulatory organizations which comprise the U.S. market for non-U.S. securities are members of the Intermarket Surveillance Group,¹⁴ the Commission has concluded that there exists an effective surveillance sharing agreement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the non-U.S. security ELNs or their underlying securities.

The Exchange proposes to modify the 50% Test to include in the U.S. market volume calculation, the trading volume in non-U.S. securities and other related non-U.S. securities that occurs in any market with which the Exchange has in place a comprehensive/effective surveillance sharing agreement. The Commission believes that this proposed modification of the 50% Test is consistent with the Act and with the Commission's approach in the ELN Approval Orders because it will continue to ensure that the majority of world-wide trading volume in the non-U.S. security and other related non-U.S. securities occurs in trading markets with which the Exchange has in place a comprehensive/effective surveillance sharing agreement. The existence of such agreements should deter as well as detect manipulations or other abusive trading strategies and also provide an adequate mechanism for obtaining market and trading information from the non-U.S. markets that list the non-U.S. security underlying the Exchange's ELNs in order to adequately investigate any potential abuse or manipulation.

Additionally, the Commission finds that the proposed 20% Test + Daily

¹⁴ The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. ("NASD"); the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

six-months prior to listing occurred in the U.S. market, or 5% of the total shares of the underlying security outstanding provided at least 70% of the world-wide trading volume for the security for the six-months prior to listing occurred in the U.S. market.

¹¹ This 30% requirement is also currently the minimum volume that must have occurred in the U.S. market in order for the Exchange to list an ELN linked to any non-U.S. security.

¹² 15 U.S.C. 78f(b)(5).

¹³ See Securities Exchange Act Release Nos. 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (SR-Amex-93-46); 34759 (September 30, 1994), 59 FR 50939 (October 6, 1994) (SR-CBOE-94-04); 34758 (September 30, 1994), 59 FR 50943 (October 6, 1994) (SR-NASD-94-49); 34985 (November 18, 1994), 59 FR 60860 (November 28, 1994) (SR-NYSE-94-37); and 35479 (March 13, 1995), 60 FR 14993 (March 21, 1995) (SR-Phlx-95-09) ("ELN Approval Orders").

Trading Volume Standard is consistent with the Act and with the ELN Approval Orders. As noted above, the 20% Test + Daily Trading Volume Standard will allow the Exchange to list ELNs on a non-U.S. security if, over the six month period preceding the date of selection of the non-U.S. security for ELNs trading (1) the combined world-wide trading volume for the non-U.S. security in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and other related non-U.S. securities;¹⁵ (2) the average daily trading volume for the non-U.S. security in the U.S. market is at least 100,000 shares; and (3) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days.

The Commission believes that these requirements present a reasonable alternative to the 50% Test by limiting the actual listing of ELNs on non-U.S. securities to only those non-U.S. securities that have a significant amount of U.S. market trading volume. This will ensure that the U.S. market is sufficiently active to serve as a relevant pricing market for the non-U.S. security and that the underlying foreign security is readily available to meet the delivery requirements upon exercise of the ELN. Accordingly, the Commission believes that the 20% Test + Daily Trading Volume Standard should help to ensure that the U.S. markets serve a significant role in the price discovery of the applicable non-U.S. security and are generally deep, liquid markets.

Finally, the Exchange believes, for similar reasons, that it is appropriate to reduce the minimum U.S. trading volume requirements for ELNs issuances from 30% to 20%. As noted above, the Commission believes that the 20% Test + Daily Trading Volume Standard will ensure that an underlying non-U.S. security has deep and liquid markets to sustain an ELNs listing. The Commission believes that it is appropriate to adjust the limitations on the size of the ELNs issuance to correspond to this requirement. Accordingly, where the trading volume in the U.S. market for the underlying non-U.S. security is between 20% and 50% of the worldwide trading volume,

¹⁵ See *supra* note 8. The Commission notes that the 20% Test + Daily Trading Volume Standard does not include worldwide trading volume in the non-U.S. security that takes place in a foreign market regardless of the existence of a comprehensive surveillance sharing agreement with the listing exchange. The 20% Test is a minimum U.S. market share trading test intended to permit the listing of ELNs only on non-U.S. securities that have active and liquid markets in the U.S.

the issuance will be limited to 2% of the total outstanding shares of the underlying security. The 20% minimum U.S. trading volume requirement should continue to ensure that the U.S. market is significant enough to accommodate ELNs trading. In this regard, the Commission believes that these restrictions will minimize the possibility that trading in such issuances will adversely impact the market for the security to which it is linked.

The Commission notes that other existing ELNs listing requirements relating to the protection of investors will continue to apply. Among other things, these rules set forth issuer standards as well as minimum market capitalization and trading volume requirements that must be met prior to listing an ELN.¹⁶

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, Amendment No. 1 to the proposal makes certain technical clarifications, and revises paragraph (f) of Section 107B of the Amex Company Guide to reflect the amendments to the listing criteria in paragraph (e) as set forth herein. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission 450 Fifth Street, N.W., Washington, D.C. 20549. 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

¹⁶ The Commission recently approved the Exchange's proposed rule change amending some of the initial listing standards regarding such structured notes. The Exchange's amended initial listing standards require, among other things, that the linked stock underlying the Exchange-listed ELNs either: (i) has a minimum market capitalization of \$3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares; (ii) has a minimum market capitalization of \$1.5 billion and during the 12 months preceding listing is shown to have traded at least 10 million shares; or (iii) has a minimum market capitalization of \$500 million and during the 12 months preceding listing is shown to have traded at least 15 million shares. See Securities Exchange Act Release No. 36989 (March 20, 1996).

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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to SR-Amex-95-44 and should be submitted by April 17, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (File No. SR-Amex-95-44), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.
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[Release No. 34-36989; File No. AR-Amex-95-48]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Revised Listing Standards for Equity Linked Notes

March 20, 1996.

On December 5, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to revise the trading volume requirement for securities underlying Equity Linked Notes ("ELNs").

Notice of the proposed rule change was published for comment and appeared in the Federal Register on December 20, 1995.³ No comments were received on the proposal. This order approves the proposal.

I. Description of the Proposal

On May 20, 1993 and December 13, 1993, the SEC approved amendments to Section 107 of the Amex Company Guide ("Section 107") to provide for the

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

² 17 CFR § 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 36578 (Dec. 13, 1995).