

set forth in section 17(b). Applicants note that the Boards, including a majority of the Disinterested Members, found that participation in the Reorganization is in the best interests of each Fund and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants also that the Reorganization will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43162; File No. SR-Amex 00-37]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange LLC Relating to Trading of Convertible Bond Linked Medium Term Notes

August 16, 2000.

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 July 17, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 14, 2000, the Exchange filed 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 from interested persons and to grant accelerated approval of the proposed rule change.

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

The Exchange proposes to list and trade convertible bond linked notes ("Notes") and revise Section 107B of the Amex Company Guide ("Company Guide") concerning the listing standards

for the listing of equity linked notes. The revision permits the Exchange to list and trade Notes linked to securities that are convertible into common stock satisfying the criteria set forth in Section 107B of the Company Guide. Additions to the rule are in italics. Bracketing indicates text to be deleted.

\* \* \* \* \*

#### Other Securities

##### Section 107

The Exchange will consider listing any security not otherwise covered by the criteria of Sections 101 through 106, provided the issue is otherwise suited for auction market trading. Such issues will be evaluated for listing against the following criteria:

##### A. General Criteria

(a)-(c) No change.

##### B. Equity Linked Term Notes

Income instruments which are linked, in whole or in part, to the market performance of one or more common stock, [or] non-convertible preferred stocks, *or other equity security(ies), as defined by Section 3(a)(11) of the Securities Exchange Act of 1934 ("equity security")*, will be considered for listing provided:

(a)-(d) No change.

(e) Each underlying linked stock to which the instrument relates, *or stock into which an equity security(ies) is convertible, (each hereinafter referred to as an "underlying linked security")*, may not exceed 5% of the total outstanding common shares of such entity, provided however, if any underlying linked [stock] *security* is a non-U.S. *underlying linked* security represented by ADSs, common shares, or otherwise, then for each such *underlying linked* security the instrument may not exceed (i) 2% of the total shares outstanding worldwide provided at least 20% of the worldwide trading volume in each non-U.S. *underlying linked* security and related non-U.S. *underlying linked* security during the six month period preceding the date of listing occurs in the U.S. market; (ii) 3% of the total worldwide shares outstanding provided at least 50% of the worldwide trading volume in each non-U.S. *underlying linked* security and related non-U.S. *underlying linked* securities during the six month period preceding the date of listing occurs in the U.S. market; and (iii) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in each non-U.S. *underlying linked* security and related non-U.S. securities during the

six month period preceding the date of listing occurs in the U.S. market. If any non-U.S. *underlying linked* security and related securities has less than 20% of the worldwide trading volume occurring in the U.S. market during the six month period preceding the date of listing, then the instrument may not be linked to that non-U.S. *underlying linked* security.

If an issuer proposes to list an Equity Linked Term Note that relates to more than the allowable percentages set forth above, the Exchange, with the concurrence of the staff of the Division of Market Regulation of the Securities and Exchange Commission, will evaluate the maximum percentage of Equity Linked Term Notes that may be issued on a case-by-case basis.

(f) Equity Linked Term Notes will be treated as equity instruments.

(g) If any underlying *linked* security [to which the instrument is to be linked] is [the stock] *an equity security* of a non-U.S. company which is traded in the U.S. market as a sponsored ADS, ordinary shares or otherwise, then the minimum number of holders of such underlying linked *equity* security shall be 2,000.

\* \* \* \* \*

#### 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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV 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

The Exchange proposes to list and trade Notes linked to securities that are convertible not common stock satisfying the criteria set forth in Section 107B of the Company Guide. Under Section 107 of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures and warrants. The Amex now proposes to list for trading under Section 107B of the Company Guide

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

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

<sup>3</sup> In Amendment No. 1, the Exchange modified its proposed change to Section 107B of the Amex Company Guide. The modification clarified certain matters relating to the application of the listing standards in Section 107B to underlying linked securities.

convertible bond linked medium term Notes. The proposed issue will meet the size and distribution requirements of Section 107A. The issuer of such securities also will be qualified under Section 107A.

Holders of the Notes generally will receive interest on the face value of their Notes in an amount to be determined at the time of issuance of the Notes. The amount of interest will be disclosed to investors and reflective of prevailing interest rates and other factors. It is anticipated that the Notes will make coupon payments on a quarterly or semi-annual basis. At maturity, each Note will automatically exchange for a number of underlying convertible linked bonds based on an Exchange Factor set forth in the prospectus to investors. The Notes are not principal protected; accordingly, the value of the linked convertible bonds at maturity of the Notes may be more or less than the original principal amount of the Notes.

Values for the purpose of determining the payment to holders at maturity will be determined by an Exchange Factor with reference to prices for the linked convertible bonds and/or the common stock underlying the linked convertible bonds on a business day shortly prior to maturity. The Notes will have a term of not less than one year and will be subject to the equity margin and trading rules of the Exchange except that, where the Notes are traded in thousand dollar denominations as debt, they will be traded subject to the Exchange's debt trading rules.

In structure, the proposed bond indexed debt securities are in part similar to previously approved commodity preferred securities,<sup>4</sup> stock index linked term notes,<sup>5</sup> as well as ordinary equity linked notes<sup>6</sup> and basket linked notes,<sup>7</sup> however, the proposed Notes are linked to convertible bonds as opposed to commodity futures, equity securities indices, an individual

stock or a basket of stocks. Accordingly, the Exchange proposes to provide for the listing and trading of the convertible bond linked term Notes provided the linked convertible bonds convert into common stock satisfying the criteria set forth in Section 107B of the Company Guide.

Section 107B of the Company Guide details the Exchange's listing standards for equity linked notes ("ELNs"). Specifically, Section 107B requires, among other things, that securities linked to ELNs (i) have a minimum market capitalization of \$3 billion and during the 12 months preceding listing are shown to have traded at least 2.5 million shares; (ii) have a minimum market capitalization of \$1.5 billion and during the 12 months preceding listing are shown to have traded at least 10 million shares; or (iii) have a minimum market capitalization of \$500 million and during the 12 months preceding listing are shown to have traded at least 15 million shares.

The Exchange believes that linking to securities which are convertible into shares of common stock is appropriate provided that the common stock into which the security is convertible meets the standards for linked securities set forth in Section 107B. The Exchange represents that the common stock into which the securities linked to the Notes is convertible exceeds all of the ELN listing standards set forth in Section 107B. Accordingly, the Exchange also proposes to amend the text of Section 107B to clarify that ELNs may be linked to equity securities, which includes convertible securities, as defined by Section 3(a)(11) of the Act.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>9</sup> 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.

### 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

No written comments were solicited or received with respect to the proposed rule change.

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

The Amex requests that the proposed rule change be given expedited review and accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>10</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act<sup>11</sup> because it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In this regard, the Commission notes that the Amex has represented that the common stock into which the convertible bonds may be converted will satisfy the listing criteria set forth in Section 107B of the Company Guide. The Commission believes that this requirement will strengthen the integrity of both the Notes and the underlying convertible bonds, and will decrease the possibility of market manipulation, thereby protecting investors and the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register** as the proposal raises no new regulatory issues, is substantially similar to proposals to list and trade equity linked notes and basket linked notes previously reviewed and approved by the Commission, and will permit the timely issuance of the proposed Notes. Because of the safeguards built into this proposal (noted above), the Commission believes that investors should be permitted to trade this new product as expeditiously as possible. Accordingly,

<sup>10</sup> In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> See Securities Exchange Act Release No. 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (granting immediate effectiveness to an Exchange proposal to list and trade commodity preferred securities (ComPS)).

<sup>5</sup> See Securities Exchange Act Release No. 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997) (approving an Exchange proposal to list and trade indexed term notes linked to the Major 11 International Index).

<sup>6</sup> See Securities and Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (approving an Exchange proposal to list and trade notes linked to a single equity security).

<sup>7</sup> See Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (granting accelerated approval of an Exchange proposal to list and trade notes linked to a basket of equity securities). The Commission's approval order capped at 20 the number of equity securities that may be contained in a basket.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

the Commission finds that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposal on an accelerated basis.

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act<sup>12</sup> that the proposed rule change (SR-Amex 00-37) is hereby 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43152; File No. SR-Amex-00-39]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, LLC in Option Transaction Fees for Options on Nasdaq-100 Index Shares

August 14, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 28, 2000, 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 Amex. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The American Stock Exchange LLC proposes to revise specialist and Registered Options Trader Fees for transactions in Nasdaq-100 Index Share options. The text of the proposed rule change is available upon request at the Exchange or the Commission.

#### 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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Amex currently imposes a transaction charge on options trades executed on the Exchange. Transaction charges vary, depending on whether they involve an equity or index option. They also vary depending upon whether a charged transaction is executed for a specialist or market maker account; a member firm's proprietary account; a non-member broker-dealer account; or a customer account. In addition, the Amex imposes a charge for clearance of options trades as well as an options floor brokerage charge. These charges also depend upon the type of account for which a trade is executed. All three types of charges—transaction, options clearance and options floor brokerage—are subject to caps<sup>4</sup> based on the number of options contracts traded on a given day. Currently, no transaction, comparison or floor brokerage fees are charged for customer equity option transactions.

To offset the costs of providing for the trading of, and to enhance the marketing of options on, Nasdaq-100 Index Shares, the Exchange proposes to raise fees charged to specialists and Registered Options Traders ("ROTs") for transactions in which a public customer<sup>5</sup> is a party to the trade. Specifically, the transaction fee charged the specialist and ROTs, currently \$0.17 per contract side, would increase by \$0.30 per contract side to \$0.47, but only for transactions in which a public customer is a party. Options comparison

and floor brokerage fees for the specialist and ROTs will remain unchanged at \$0.04 and \$0.03 per contract side, respectively. The Exchange represents that the proposed increases are necessary to allow the Exchange to better provide for the costs associated with trading and enhancing the marketing of options on Nasdaq-100 Index Shares.

###### 2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>7</sup> because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

##### B. Self-Regulatory Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 and Rule 19b-4(f)(2) thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Securities Exchange Act of 1934.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of

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

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

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> Current caps are set at 2000 contracts for customer trades and 3000 contracts for member firm proprietary, non-member broker-dealer, specialist, and market maker trades.

<sup>5</sup> Under the proposed rule change, "public customer" would mean a non-broker-dealer. This is the same meaning the term has under Amex rule 958a.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 17 CFR 240.19b-4.