

disclosure requirements of both the CEA and the Exchange Act and the rules thereunder. In particular, Notice BDs and Full FCM/Full BDs are required to meet the disclosure requirements of Exchange Act Rule 10b-10<sup>10</sup> and CEA Rule 1.33(b).<sup>11</sup> Also, unlike Notice BDs, Full FCM/Full BDs, are not automatically exempt from Exchange Act Section 11.<sup>12</sup> Accordingly, Full FCM/Full BDs are subject to the disclosure requirements of Exchange Act Section 11(d)(2).<sup>13</sup>

In an effort to avoid duplicative and conflicting regulation, the Commission has proposed amendments to Exchange Act Rule 10b-10<sup>14</sup> that, if adopted, would alter the disclosure requirements for Notice BDs and Full FCM/Full BDs effecting SFP transactions in customers' futures accounts. Similarly, the Commission has proposed Rule 11d2-1 that will grant an exemption from Exchange Act Section 11(d)(2)<sup>15</sup> for Full FCM/Full BDs effecting SFP transactions in customers' futures accounts. These proposed amendments and the proposed rule are designed to provide the least amount of disruption to the confirmation systems Notice BDs and Full FCM/Full BDs use when providing confirmations of transactions in customers' futures accounts while, at the same time, providing customers with adequate information about the SFP transactions effected in their futures accounts.

The proposed amendments and the proposed new rule, however, may not be acted on by the Commission at the time trading in SFPs begins. Therefore, the Commission, through this order, is providing a period of exemption from Exchange Act Rule 10b-10<sup>16</sup> for Notice BDs and Full FCM/Full BDs effecting SFP transactions in customers' futures accounts and a period of exemption from Exchange Act Section 11(d)(2)<sup>17</sup> for FCM/Full BDs effecting SFP

transactions in customers' futures accounts.

This exemptive period will allow the Commission to receive and consider comments and adopt appropriate amendments and rules while, at the same time, preventing any possible application of duplicative and conflicting regulation by the Commission or the CFTC regarding confirmations of SFP transactions effected in customers' futures accounts. In the absence of an exemptive period, the Commission believes that many Notice BDs and Full FCM/Full BDs would be precluded from commencing trading in SFPs only because their confirmation systems would be unable to process confirmations in accordance with the full disclosure requirements of Exchange Act Rule 10b-10.<sup>18</sup> We believe the absence of many potential market participants at this critical time could affect the liquidity, and perhaps even the viability, of this new market. The Commission, therefore, finds that it is in the public interest to assure that all potential market participants are able to participate at the start of this new market. Accordingly, the Commission believes that it is consistent with the public interest and the protection of investors to provide this temporary exemptive relief.

Accordingly, pursuant to Section 36(a)(1) of the Exchange Act,<sup>19</sup>

*It is hereby ordered that* Notice BDs and Full FCM/Full BDs are exempted from the requirements of Exchange Act Rule 10b-10<sup>20</sup> and Full FCM/Full BDs are exempted from the requirements of Exchange Act Section 11(d)(2)<sup>21</sup> with respect to any SFP transaction effected in a customer's futures account until amendments to Exchange Act Rule 10b-10 and a new Rule 11d2-1 become effective.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46021; File No. SR-Amex-2002-40]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and No. 2 thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Based on the Select European 50 Index

June 3, 2002.

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 24, 2002, 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 and II below, which Items have been prepared by the Exchange. On May 6, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On May 31, 2002, the Amex submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> 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 Amex proposes to approve for listing and trading notes, the return on which is based upon the performance of the Dow Jones EURO STOXX 50 Return Index in U.S. dollars (the "U.S. Dollar DJ EURO STOXX 50 Index"), as reduced by an adjustment factor as described below (the "Select European 50 Index" or "Index").

#### 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

<sup>10</sup> 17 CFR 240.10b-10.

<sup>11</sup> 17 CFR 1.33(b). Specifically, CEA Rule 1.33(b)(1) requires FCMs that effect futures transactions for customers to provide, no later than the next business day after the transaction, "a written confirmation of each commodity futures transaction caused to be executed by it \* \* \*."

<sup>12</sup> 15 U.S.C. 78k.

<sup>13</sup> 15 U.S.C. 78k(d)(2). Exchange Act Section 11(d)(2) generally prohibits a broker-dealer from effecting any securities transaction with a customer unless "he discloses to such customer in writing at or before the completion of the transaction whether he is acting as a dealer for his own account, as a broker for such customer, or as a broker for some other person."

<sup>14</sup> 17 CFR 240.10b-10.

<sup>15</sup> 15 U.S.C. 78k(d)(2).

<sup>16</sup> 17 CFR 240.10b-10.

<sup>17</sup> 15 U.S.C. 78k(d)(2).

<sup>18</sup> 17 CFR 240.10b-10.

<sup>19</sup> 15 U.S.C. 78mm(a)(1).

<sup>20</sup> 17 CFR 240.10b-10.

<sup>21</sup> 15 U.S.C. 78k(d)(2).

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

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

<sup>3</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 3, 2002. Amendment No. 1 replaced the original proposal in its entirety and clarified certain descriptive language used in the original proposal.

<sup>4</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 30, 2002. In Amendment No. 2, the Amex further modified the proposed rule change by adding language clarifying the calculation of the Dow Jones EURO STOXX 50 Index.

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 III below. The Exchange 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**

Under Section 107A of the Amex Company Guide ("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, or warrants.<sup>5</sup> The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Select European 50 Index (the "Notes"). The Index will be calculated and published by the Amex.

The Notes will conform to the initial listing guidelines under Section 107A<sup>6</sup> and continued listing guidelines under Sections 1001–1003<sup>7</sup> of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. ("Merrill Lynch"). The Notes will have a term of not less than one, no more than ten years. The Notes

will entitle the owner at maturity to receive an amount based upon the percentage change between the "Starting Index Value" and the "Ending Index Value" (the "Redemption Amount"). The "Starting Index Value" is the value of the Index on the date the issuer prices the Notes for the initial sale to the public. The "Ending Index Value" is the value of the Index over a period shortly prior to the expiration of the Notes. The Ending Index Value will be used in calculating the amount investors will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to, or at maturity, may be less than the original issue price of the Notes. During a two-week period in the designated month each year, investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Index at such repurchase date.

The Notes are cash-settled in U.S. dollars and may not be called by the issuer. The holder of a Note does not have any right to receive any of the underlying securities comprising the U.S. Dollar DJ EURO STOXX 50 Return Index or any other ownership right or interest in the Select European 50 Index. The Notes are designed for investors who want to participate or gain exposure to the stock market performance of highly-capitalized European companies and who are willing to forgo market interest payments on the Notes during such term. The Select European 50 Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the date the Notes are priced for initial sale to the public.

The value of the Select European 50 Index at any time will equal: (1) The value of the U.S. Dollar DJ EURO STOXX 50 Return Index, less (2) a pro rata portion of the annual index adjustment factor,<sup>8</sup> divided by (3) the index divisor used to establish a benchmark Index value of 100.00 at the close of trading on the date the Notes are priced for initial sale to the public. The Select European 50 Index will reflect payment of dividends, if any, on the underlying securities comprising the Index. The U.S. Dollar DJ EURO STOXX

50 Return Index<sup>9</sup> measures the total return of the Dow Jones EURO STOXX 50,<sup>10</sup> in U.S. dollars. Both indices are calculated by STOXX Ltd. ("STOXX"), a joint venture between Deutsche Börse AG, Dow Jones & Company ("Dow Jones"), Euronext Paris SA and the SWX Swiss Exchange. The U.S. Dollar DJ EURO STOXX 50 Return Index differs from the Dow Jones EURO STOXX 50 only in that (1) it reflects the reinvestment of dividends paid on the stocks underlying the index (subject to the withholding taxation laws of the various European countries applicable to those dividends) and (2) it is converted to U.S. dollar from Euros based on the exchange rate at 8:15 p.m. Central European Time.

The Commission has previously approved the listing and trading of securities linked to the value of the Dow Jones EURO STOXX 50 Index.<sup>11</sup> BRIDGES linked to the performance of the EURO STOXX 50 Index were issued by Morgan Stanley & Co., Inc., and are currently listed and traded on the New York Stock Exchange, Inc. ("NYSE"). The Dow Jones EURO STOXX 50 Index was constructed by STOXX to have an initial value of 1000 on December 31, 1991 and is designed to measure the stock market performance of highly-capitalized companies of countries that were expected to participate in the European Economic and Monetary Union (the "EMU"). The Dow Jones EURO STOXX 50 Index currently represents the performance of 50 companies representing the market sector leaders in Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain. The index is calculated and disseminated on a real time basis every 15 seconds and is published daily in *The Wall Street Journal*.

The Dow Jones EURO STOXX 50 Index consists of the common stocks of companies that are leaders in their

<sup>5</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. Amex-89-29) ("Hybrid Approval Order").

<sup>6</sup> The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least \$4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of \$100 million, stockholder's equity of at least \$10 million, and pretax income of at least \$750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (2) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

<sup>7</sup> The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than \$400,000.

<sup>8</sup> Each day, the Select European 50 Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to be 1.5% (i.e. 1.5%/365 days = 0.0041% daily). This reduction to the value of the Select European 50 Index will reduce the total return to investors upon exchange or at maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

<sup>9</sup> The prices of the securities underlying the U.S. Dollar DJ EURO STOXX 50 Return Index are quoted in Euros. Therefore, investments in notes linked to the value of non-U.S. securities may involve greater risks, subject to fluctuations of foreign currency exchange rates, future foreign political and economic developments, and the possible imposition of exchange controls or other foreign governmental laws or restrictions applicable to such investments.

<sup>10</sup> The Dow Jones EURO STOXX 50 Index is a capitalization-weighted index of 50 European blue-chip stocks from countries participating in the EMU that is quoted and priced in Euros. The Index developed with a base value of 1000 as of December 31, 1991.

<sup>11</sup> See Securities Exchange Act Release No. 40303 (August 4, 1998), 63 FR 42892 (August 11, 1998) (approving BRoad InDex Guarded Equity-linked Securities ("BRIDGES")) linked to the value of the Dow Jones EURO STOXX 50 Index.

industry sectors and are among the most liquid and highly-capitalized companies in the EMU. Each component company is a major factor in its industry and its securities are widely held by individuals and institutional investors. The Exchange represents that each of the components of the Dow Jones EURO STOXX 50 Index is a entity registered pursuant to section 12 of the Act.<sup>12</sup>

The Exchange believes that adequate surveillance exists for the component stocks of the Dow Jones EURO STOXX 50 Index as a result of "Surveillance Sharing Arrangements" with appropriate entities in the component stocks' home countries. Surveillance Information Sharing Arrangements include surveillance information-sharing agreements that the Exchange has entered into with foreign markets, memoranda of understanding that the SEC had entered into with foreign securities regulatory agencies and similar agreements and arrangements between the United States or the SEC and their counterparts in the home countries for the companies whose securities are components of the Dow Jones EURO STOXX 50 Index. At present, in excess of 90% of the capitalization of the Dow Jones EURO STOXX 50 is subject to Surveillance Information Sharing Arrangements.

The Exchange will not list a new issue of Notes linked to the Select European 50 Index if either: (i) The home countries of the component securities representing more than 50% of the capitalization of the Index are not subject to Surveillance Information Sharing Arrangements; (ii) a home country of the component securities representing more than 20% of the capitalization of the Index is not subject to Surveillance Information Sharing Arrangements; or (iii) two (2) home countries of component securities representing more than 33 1/3 percent of the capitalization of the Index are not subject to Surveillance Information Sharing Arrangements.

Companies are selected for inclusion in the calculation of the Dow Jones EURO STOXX 50 Index by STOXX. The companies that are included in the Dow Jones EURO STOXX 50 Index are representative of the broad market in the EMU and of a wide array of European industries including the following: automobile; food and beverage; banking; industrial; chemical; insurance conglomerates; media; consumer goods; cyclical; pharmaceutical; non-cyclical;

retail; construction; technology; energy; telecommunications; financial services and utility. The Supervisory Board of STOXX is responsible for adding and deleting companies from the Dow Jones EURO STOXX 50.

STOXX reviews the Dow Jones EURO STOXX 50 Index annually, and accordingly, will add or delete stocks pursuant to its review procedures.

The number of shares outstanding and the share price for each class of stock are used to determine each component company's market capitalization. No company is permitted to comprise more than 10 percent of the value of the Index. If any company exceeds 10 percent of the value of the index, STOXX will cap that company's representation in the index at 10 percent and adjust the relative representation of the remaining component stocks so that they represent 90 percent. In order to avoid distortions, changes in the index for dividends, stock splits, rights offerings, spin-offs, repurchases and the like are made on a quarterly basis, unless the number of outstanding shares of a component company changes by more than 10 percent, in which case the adjustment is made immediately.

As of May 1, 2002, the market capitalization of the 50 companies that currently represent the Dow Jones EURO STOXX 50 Index ranged from a high of \$115.32 billion (Royal Dutch Petroleum) to a low of \$13.40 billion (Air Liquide). In addition, the market prices of the common stock of companies comprising the Index ranged from a high of \$257.77 (Muenchener Rueckver AG) to a low of \$4.57 (Unicredito Italiano SPA).<sup>13</sup> The ten companies with the highest weighting in the Dow Jones EURO STOXX 50 Index represented 40.66 percent of the Index while the ten companies with the smallest weighting represented 7.57 percent of the Index.

As of May 1, 2002, the seven (7) countries that are represented in the Dow Jones Euro Stoxx 50 Index account for the following percentages: (1) Belgium, 1.78%; (2) Finland, 5.06%; (3) France, 31.74%; (4) Germany, 22.21%; (5) Italy, 9.22%; (6) Netherlands, 19.73%; (7) Spain, 10.25%.

The US Dollar DJ EURO STOXX 50 Return Index is updated once daily after 8:15 p.m. Central European time. The prior days' US Dollar DJ EURO STOXX 50 Return Index value will be used in the calculation of the Select European 50 Index until the new value is published. The Exchange will calculate the Select European 50 Index and, similar to other stock index values

published by the Exchange, the value of the Index will be calculated continuously and disseminated over the Consolidated Tape Association's Network B.

Because the Notes are linked to an equity index, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.<sup>14</sup> Second, the Notes will be subject to the equity margin rules of the Exchange.<sup>15</sup> Third, in conjunction with the Amex's Hybrid Approval Order, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act,<sup>16</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>17</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to

<sup>14</sup> Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

<sup>15</sup> See Amex Rule 462 and Section 107B of the Company Guide.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, Florence Harmon, Senior Special Counsel, and Geoffrey Pemble, Attorney, Division, Commission (May 30, 2002).

<sup>13</sup> These values are as of April 17, 2002.

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*

Written comments 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-40 and should be submitted by July 1, 2002.

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

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of section 6 of the Act<sup>18</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>19</sup> Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the

Act.<sup>20</sup> The Commission believes that the availability of the Notes will provide an instrument for investors to achieve desired investment objectives through the purchase of an exchange-traded debt product linked to the Select European 50 Index. These objectives include participating in or gaining exposure to the Index while limiting somewhat downside risk. However, the Commission notes that the Notes are index-linked debt securities whose value in whole or in part will be based upon the performance of the Select European 50 Index. In addition, the Notes are non-principal protected: they do not have a minimum principal amount that will be repaid, and payments on the Notes at maturity may be less than their original issue price. For the reasons discussed below, the Commission has concluded that the Amex listing standards applicable to the Notes are consistent with the Act.

The Notes are non-convertible and will conform to the Amex initial listing guidelines under Section 107A of the Company Guide and continued listing guidelines under Sections 1001-1003 of the Company Guide. The specific maturity date will not be established until the time of the offering, but will be not less than one, nor more than ten years from the date of issue. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the Starting Index Value (the value of the Index on the date the issuer prices the Notes for the initial sale to the public) and the Ending Index Value (the value of the Index over a period shortly prior to the expiration of the Notes). The Ending Index Value will be used in calculating the amount investors will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to, or at maturity, may be less than the original issue price of the Notes. During a two week period in the designated month each year, investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Index at such repurchase date. The Notes are cash-settled in U.S. dollars and may not be called by the issuer. The Select European 50 Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the date the Notes are priced for initial sale to the public.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will

be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer, and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics, and bear the financial risks, of such transaction.

In addition, the Amex equity margin rules and debt trading rules will apply to the Notes. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Notes, the Commission believes that the potential for manipulation of the Notes is minimal, thereby protecting investors and the public interest. The Commission further notes that the underlying Index on which the Select European 50 Index is based (the Dow Jones EURO STOXX 50 Return Index), is calculated by STOXX, a joint venture between Deutsche Börse AG, Dow Jones, Euronext Paris SA and the SWX Swiss Exchange, an entity independent of both the Exchange and the Issuer, and thus, a factor which the Commission believes should act to minimize the possibility of manipulation. The Dow Jones EURO STOXX 50 Index is calculated and disseminated every 15 seconds to market information vendors, and is converted to U.S. dollar from Euros based on the exchange rate daily at 8:15 p.m. Central European Time.

The Commission also notes that the Amex will issue a circular on the Notes. The circular should include, among other things, a discussion of the risks that may be associated with the Notes in addition to details on the composition of the Index and how the rates of return will be computed. Further, pursuant to Exchange Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes. Based on these factors, the Commission finds that the proposal to trade the Notes is consistent with section 6(b)(5) of the Act.<sup>21</sup>

<sup>18</sup> 15 U.S.C. 78f.

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> *Id.*

<sup>21</sup> 15 U.S.C. 78f(b)(5).

Amex has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently traded on the Amex. In determining to grant the accelerated approval for good cause, the Commission notes that the underlying Index on which the Select European 50 Index is based (the Dow Jones EURO STOXX 50 Return Index) is a portfolio of highly capitalized and actively traded securities similar to component securities in hybrid securities products that have been approved by the Commission for U.S. exchange trading. Additionally, the Notes will be listed pursuant to existing hybrid security listing standards as described above. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change, as amended (SR-Amex-2002-40) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

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

[FR Doc. 02-14432 Filed 6-7-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46007; File No. SR-BSE-2001-08]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Competing Specialists and the Execution of Directed Agency Orders

May 30, 2002.

#### I. Introduction

On December 21, 2001, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change

related to competing specialists and the execution of directed agency orders. On April 19, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, together with Amendment No. 1, was published for comment in the **Federal Register** on April 26, 2002.<sup>4</sup> No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1.

#### II. Description of the Proposal

The Exchange proposes to amend certain sections of its rules related to Competing Specialist Initiative Rules (see BSE Rules, Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*) to allow, under certain conditions, for the altering of priority of specialist/competing specialist principal quotations when orders are directed by a customer to another specialist/competing specialist.<sup>5</sup> Specifically, the Exchange seeks to add an exception for orders directed to a specialist/competing specialist. The exception will allow the specialist/competing specialist who receives such an order to elect to execute the order for his own account at the same national best bid and offer ("NBBO") price or better than the quotation on the book, if the quotation on the book is for the account of another specialist/competing specialist, or to permit the directed order to execute against the prevailing specialist/competing specialist's quotation.<sup>6</sup>

Furthermore, the Exchange proposes to amend certain other paragraphs of Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*, in order to remain consistent. Namely, the Exchange proposes to amend Paragraph 6 to reflect that all specialist/competing specialists will be responsible for orders directed to him/her. Likewise, the exchange seeks to amend Paragraph 9 to reflect certain Boston Exchange

Automated Communication and Order Routing Network ("BEACON") system changes, which will update quotations more efficiently, removing the burden from the regular specialist.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of section 6(b) of the Act,<sup>7</sup> in general, and section 6(b)(5) of the Act,<sup>8</sup> in particular, which requires, among other things, that the rules of an exchange be designed 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 not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

In today's BEACON system, an agency order is automatically routed to the specialist quote in accordance with price/time priority amongst competing specialists if such quote is at the NBBO. This will continue to be the case for all customer orders. However, this rule will now allow the specialist/competing specialist who receives such an order to elect to execute the order for his own account at the NBBO price or better than the quotation on the book, if the quotation is for the account of another specialist/competing specialist, or to permit the directed order to execute against the prevailing specialist/competing specialist's quotation.

Implementation of the proposed rule will enable the order to be routed to the designated specialist and will enable competing specialists to exercise greater control over more of their firm's orderflow and provide price improvement opportunities to their customers over existing specialist proprietary quotations. All ITS transactions and non-directed orders will continue to be routed according to price/time priority, and available for price improvement by exposure to the specialists/competing specialists.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-BSE-2001-08), as amended, is hereby approved.

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Belinda Blaine, Associate Director, Division of Market Regulation, Commission, dated April 18, 2002 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 45791 (April 19, 2002), 67 FR 20852.

<sup>5</sup> Under this proposal, all non-directed and Intermarket Trading System ("ITS") orders will continue to be routed according to existing competing specialist rules.

<sup>6</sup> Where an agency order resides on the book of a specialist/competing specialist and a specialist/competing specialist then receives an executable order routed to him/her, the subsequent agency orders may be price improved by the specialist/competing specialist receiving such order, or permitted to match the resident agency order at the limit price (without price improvement).

<sup>7</sup> 15 U.S.C. 78f(b).

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

<sup>9</sup> *Id.*