

provided that in no event will the interest rate on any debt securities exceed an interest rate per annum equal to the sum of 12% plus the prime rate as announced by a nationally recognized money center bank;

3. the underwriting fees, commissions and other similar remuneration paid in connection with the non-competitive issuance of any security will not exceed the greater of (a) 5% of the principal or total amount of the securities being issued or (b) issuances expenses that are paid at the time in respect of the issuance of securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality;

4. the maturity of long-term debt will be not less than one year and will not exceed thirty years; and

5. short-term debt will have a maturity of not less than one day and not more than 364 days.

Applicants request that the financing authorizations granted in the Financing Order not be subject to the requirement that Allegheny and/or AE Supply maintain a common stock equity ratio above 30%, or above the levels stated in B.1. above. Rather, Applicants request that the financing authorizations granted in the Financing Order remain effective without regard to the common stock equity levels of Allegheny and/or AE Supply. Applicants request that the Commission reserve jurisdiction over the common stock equity ratio level to be maintained as a condition to the financing authorization for Allegheny and AE Supply below 28% in the case of Allegheny and 20% in the case of AE Supply.

Applicants request authorization to issue debt securities at an interest rate in excess of an interest rate per annum equal to the sum of 12% plus the prime rate as announced by a nationally recognized money center bank. Applicants request that the Commission reserve jurisdiction over any higher interest rate to be applicable to any debt securities to be issued under the Financing Order.

Applicants request that the financing authorizations granted in the Financing Order not be subject to the requirement that Allegheny maintain its senior unsecured long-term debt ratings, and the rating of any commercial paper that may be issued, at investment grade level, as established by a nationally recognized statistical rating organization. Applicants further request that Allegheny and AE Supply be authorized to issue short-term debt and/or long-term debt under those circumstances when the debt, upon

issuance, is unrated or is rated below investment grade.

Applicants commit to file in a timely manner an application with the Commission if, or to the extent that, Applicants will seek relief from the requirement that they maintain a common stock equity ratio of at least 30% after December 31, 2003.

C. Payment of Dividends Out of Capital Surplus

Applicants also request authorization for AE Supply to pay dividends out of capital surplus of up to \$500 million during the period ending December 31, 2003. Specifically, AE Supply proposes to declare and pay dividends to Allegheny only to the extent required by Allegheny to repay outstanding indebtedness in an aggregate principal amount of up to \$365 million and to pay AE Supply's approximate proportionate share of interest on the outstanding notes of Allegheny in the amount of \$11.625 million. To the extent that Allegheny does not require proceeds of dividends from AE Supply to repay these obligations, Applicants request that the Commission reserve jurisdiction over the declaration and payment of dividends by AE Supply out of capital surplus up to an aggregate amount of \$500 million.

Applicants anticipate that, to meet the liquidity needs of Allegheny, AE Supply will be required to pay dividends in excess of its current and retained earnings. Allegheny and AE Supply represent that AE Supply will not declare or pay any dividend out of capital surplus in contravention of any law restricting the payment of dividends. In addition, AE Supply will comply with the terms of any credit agreements and indentures that restrict the amount and timing of distributions by AE Supply to its members.

D. Sale of Utility Assets

Applicants request authorization to sell securities of the public utility subsidiaries, other than the Operating Companies, held directly or indirectly by Applicants and to sell utility assets of Applicants and/or their subsidiaries, other than the Operating Companies. At this time Applicants cannot identify the specific assets to be sold. The identity of the assets to be sold will depend upon, among other things, market conditions.² As a result of the extraordinary circumstances existing in the merchant power market at this time, Allegheny and AE Supply need

² Applicants have included as an exhibit to SEC File No. 70-10100 a list of all of AE Supply's utility assets and securities of public utility companies.

flexibility as they proceed with the asset sale program. Thus, Applicants request that the Commission reserve jurisdiction over the authorization to sell the securities of public utility companies, other than the Operating Companies, held directly or indirectly by Applicants, and to sell utility assets of Applicants and their subsidiaries, other than the Operating Companies. Applicants commit to submit an amendment to the Application in this matter seeking authorization of the Commission for any asset disposition subject to Commission jurisdiction.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46764; File No. SR-Amex-2002-81]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Member Transaction Charges for Exchange-Traded Funds

November 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on October 3, 2002, the American Stock Exchange LLC ("Exchange" or "Amex") 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 Amex. 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 amend the Exchange Equity Fee Schedule relating to transaction charges imposed on Exchange specialists and Registered Traders for transactions in Exchange-Traded Funds ("ETFs") for which the Exchange pays non-reimbursed fees to third parties.

The text of the proposed rule change is available at the Amex and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 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 Amex 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

I. Purpose

In connection with the formation and listing of ETFs, the Exchange has entered into a number of agreements with third parties (e.g., issuers and owners of indexes underlying certain ETFs). ETFs include Portfolio Depositary Receipts (e.g., Nasdaq 100® Index Tracking Stock or "QQQ," and Standard and Poor's Depositary Receipts™ or "SPDRs(TM)") and Index Fund Shares (e.g., iShares™, VIPERs™). For those ETFs for which an Amex subsidiary (PDR Services LLC) is Sponsor—SPDRs (based on the S&P 500® Index), MidCap SPDRs™ (based on the S&P MidCap 400™ Index), and DIAMONDS® (based on the Dow Jones Industrial Average)—the licensing and certain other expenses are permitted to be passed on to the respective trusts for those securities pursuant to the terms of Commission orders for the respective trusts issued pursuant to the Investment Company Act of 1940.³ For other ETFs, however, the Exchange represents that it is required to pay significant licensing or other fees to third parties, including issuers or index owners, which are not reimbursed.⁴

The Exchange proposes to recoup a portion of these fees by imposing an additional fee on all Amex specialists and Registered Traders for transactions in specified ETFs. An additional fee of \$.07 per 100 shares for specialists and \$.03 per 100 shares for Registered Traders would be applied only for transactions in ETFs for which the

Exchange pays a non-reimbursed fee. The ETFs subject to the additional fee will be included in proposed Note 4 to the Exchange Equity Fee Schedule.

The ETF transaction charge for specialists is currently \$.63 per 100 shares, subject to a per trade maximum of \$300. For transactions in ETFs listed in proposed Note 4 to the Equity Fee Schedule, the transaction charge would be \$.70 per 100 shares, with a per trade maximum of \$300. ETF transaction charges for Registered Traders currently are \$.73 per 100 shares, subject to a per trade maximum of \$350. For ETFs listed in proposed Note 4, the transaction charge would be \$.76 per 100 shares, with a \$350 per trade maximum.

The Exchange would discontinue charging the additional \$.07 or \$.03 per 100 shares transaction charge for any ETF series for which the Exchange no longer pays a non-reimbursed fee. Such deletions would be filed with the Commission pursuant to Rule 19b-4 under the Act.⁵ Any additional ETFs for which the Exchange pays non-reimbursed fees in the future will be added to the list in proposed Note 4 and filed with the Commission pursuant to Rule 19b-4 under the Act.⁶

2. Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act,⁷ in general, and with section 6(b)(4) of the Act,⁸ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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

The Amex 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

The Exchange received a letter relating to the proposed increase in transaction charges for specialists and Registered Traders for transactions in certain ETFs.⁹ Susquehanna states that the proposal does not make competitive sense when other markets assess no fees and/or provide rebates to their members

for trading certain ETFs, including the QQQ. Susquehanna states that the type of markets made by Susquehanna and other liquidity providers cannot, in the long run, be as competitive as those on markets where there are no charges or where there are subsidies. Susquehanna believes that the fees on specialists and Registered Traders should be reduced to zero and, instead, Amex should impose a fee on each membership. Susquehanna's letter also refers to other suggestions made to Amex officials relating to maintaining and enhancing Amex's market share.

The Exchange has determined to impose a modest fee increase on those Exchange members that have responsibility for trading specified ETFs in accordance with Amex rules, and that have the potential to achieve greatest financial benefit from trading these securities. The Exchange, of course, recognizes that increases in any fees can have an adverse impact on the Exchange's competitive position compared to other markets. Those markets may provide member subsidies and payment for order flow, or waive all member ETF transaction charges, thereby subsidizing costs incurred by those markets in overseeing their members' ETF trading through other charges levied by those markets on their members. The Exchange has concluded that it is most prudent and equitable at this time to partially recoup non-reimbursed fees paid to third parties through increased transaction charges imposed on all specialists and Registered Traders actually trading these securities.

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

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of October 3, 2002, 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 furtherance of the purposes of the Act.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

³ 15 U.S.C. 80a.

⁴ The Exchange represents that it will not impose the proposed fee on any portion of a non-reimbursed licensing or other third-party fee that it recoups via another Exchange fee or assessment. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on October 30, 2002.

⁵ 17 CFR 240.19b-4.

⁶ Id.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁹ See Letter from Jeffrey Yass, Managing Director, Susquehanna International Group, LLP ("Susquehanna"), to Anthony J. Boglioli, Amex, dated September 23, 2002.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² See 15 U.S.C. 78s(b)(3)(C).

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, as amended, 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 will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2002-81 and should be submitted by December 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46769; File No. SR-Amex-2002-80]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Principal Protected Sector Selector Notes

November 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 30, 2002, the American Stock Exchange LLC (the "Exchange" or "Amex"), 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 the Exchange.³

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

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

The Exchange proposes to approve for listing and trading principal protected notes the return on which is based upon the performance of a basket of ten (10) specified U.S. sector exchange-traded funds⁴ pursuant to the methodology set forth below.

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. The text of these statements may be examined at the places specified in Item IV 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.⁵

and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission (October 22, 2002).

⁴ The U.S. sector exchange-traded funds ("Sector ETFs") that will be included in the basket (the "ETF Basket") are as follows: (1) iShares Dow Jones U.S. Basic Materials Index Fund; (2) iShares Dow Jones U.S. Consumer Cyclical Sector Index Fund; (3) iShares Dow Jones U.S. Consumer Non-Cyclical Sector Index Fund; (4) iShares Dow Jones U.S. Energy Sector Index Fund; (5) iShares Dow Jones U.S. Financial Sector Index Fund; (6) iShares Dow Jones U.S. Healthcare Sector Index Fund; (7) iShares Dow Jones U.S. Industrial Sector Index Fund; (8) iShares Dow Jones U.S. Technology Sector Index Fund; (9) iShares Dow Jones U.S. Telecommunications Sector Index Fund; and (10) iShares Dow Jones U.S. Utilities Sector Index Fund. The ETFs are trademarks of Dow Jones & Company and have been licensed for use by The Bear Stearns Companies Inc.

⁵ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29) ("Hybrid Approval Order"). See also Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (approving the listing and trading of

The Amex proposes to list for trading under Section 107A of the Company Guide principal protected sector selector notes (the "Notes"), the return on which is based upon the performance of the ETF Basket.

The Notes will conform to the initial listing guidelines under section 107A⁶ and continued listing guidelines under sections 1001-1003⁷ of the Company Guide. The Notes are senior non-convertible debt securities of The Bear Stearns Companies Inc. ("the Issuer"). The Notes will have a term of five (5) years. The Notes, at maturity, will provide for a minimum principal amount that will be repaid plus a variable return amount (the "Variable Return") based on the performance of the ETF Basket. The Notes will not be subject to redemption prior to maturity and are not callable by the issuer.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio of securities comprising the ETF Basket. The Notes are designed for investors who want to participate or gain exposure to a variety of U.S. market sectors and who are willing to forego market interest payments on the Notes during such term. The calculation agent for the Notes will be Bear Stearns & Co., Inc., an affiliate of the Issuer ("Bear Stearns").

notes linked to a basket of no more than twenty equity securities).

⁶ The initial listing standards for the Notes require: (1) A market value of at least \$4 million; and (2) a term of at least one year. Because the Notes will be issued in \$1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 holders do not apply. In addition, the listing guidelines provide that the issuer has assets in excess of \$100 million, stockholder's equity of at least \$10 million, and pre-tax 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.

⁷ 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.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission corrected a typographical error in the description of the proposed rule change, with the consent of the Exchange, to reflect the proper term of the Notes. Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex,