

customary practice with respect to the valuation of assets of the kind held by the Investment Entities which may include, in the case of co-investments with a Bain Fund, valuations provided by such Bain Fund.

6. Each Investment Entity and its Managing Partner will maintain and preserve, for the life of each such Investment Entity and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of such Investment Entity to be provided to its Partners, and agree that all such records will be subject to examination by the SEC and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

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. 34-42787; File No. SR-Amex-00-14]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to Generic Listing Standards Applicable to Listing Portfolio Depository Receipts and Index Fund Shares Pursuant to Rule 19b-4(e) Under the Securities Exchange Act of 1934

#### I. Introduction

On March 6, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 to establish generic listing standards applicable to Portfolio Depository Receipts ("PDRs") and Index Fund Shares. By establishing generic listing standards, the Amex may permit the listing and trading of PDRs and Index Fund Shares pursuant to Rule 19b-4(e) under the Act<sup>3</sup> without submitting a

proposed rule change pursuant to Section 19(b) under the Act.<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on March 28, 2000.<sup>5</sup> No comments were received on the proposal. The proposal was amended on April 27, 2000.<sup>6</sup> In this notice and order, the Commission is seeking comment from interested persons on Amendment No. 1, and is approving the proposed rule change, including accelerated approval of Amendment No. 1.

#### II. Description of the Proposal

The proposal adds commentaries to Amex Rules 1000 and 1000A to provide standards to permit listing and trading of PDRs and Index Fund Shares pursuant to Rule 19b-4(e) under the Act.<sup>7</sup> The proposal requires that PDRs and Index Fund Shares listed pursuant to Rule 19b-4(e) be subject to specific generic criteria as set forth in proposed Amex Rule 1000, Commentary .03 (for PDRs) and Amex Rule 1000A, Commentary .02 and .03 (for Index Fund Shares). All other provisions of Amex Rules 1000 *et seq.* and 1000A *et seq.* will continue to apply to such securities.

The proposed implements generic listing criteria that are intended to ensure that a significant portion of the weight of an index or portfolio is accounted for by stocks with substantial market capitalization and trading volume. Proposed Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A both provide that, upon the initial listing of a series of PDRs or Index Fund Shares under Rule 19b-4(e), component stocks that in the aggregate account for at least 90% of the

weight of the index or portfolio must have a minimum market value of at least \$75 million. In addition, the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio.

The most heavily weighted component stock in an underlying index cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The underlying index or portfolio must include a minimum of 13 stocks, which is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code.<sup>8</sup> All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

Proposed Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A provide that the underlying index will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer must erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index must be calculated by a third party who is not a broker-dealer. The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The Reporting Authority will disseminate for each series of PDRs and Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities plus any cash amount to permit creation of new shares of the series or upon the index value.

A minimum of 100,000 shares of a series of PDRs or Index Fund Shares will be required to be outstanding as of the start of trading. The minimum trading increment for a series of PDRs

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

<sup>5</sup> Securities Exchange Act Release No. 42542 (March 17, 2000), 65 FR 16437.

<sup>6</sup> See letter from Michael J. Ryan, Chief of Staff, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, dated April 24, 2000 ("Amendment No. 1"). In Amendment No. 1, Amex proposed to add Commentary .03 to Amex Rule 1000A, creating a product description delivery requirement for series that have been granted relief by the SEC from the prospectus delivery requirements of Section 24(d) of the Investment Company Act of 1940 ("1940 Act"). Amex also clarified the timing for compliance with the eligibility criteria and verified that the Exchange will require issuers of a series of PDRs or Index Fund Shares listed under Rule 19b-4(e) to represent to the Exchange that the index or portfolio of securities underlying such series will comply with the applicable eligibility criteria as of the date of initial deposit of securities to the trust or fund in connection with the initial issuance of shares of such trust or fund.

<sup>7</sup> 17 CFR 240.19b-4(e). Rule 19b-4(e) permits self-regulatory organizations ("SROs") to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b).

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

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

<sup>3</sup> 17 CFR 240.19b-4(e).

<sup>8</sup> Under the Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of such fund's total assets.

will be  $\frac{1}{64}$  of \$1.00, and for Index Fund Shares will be  $\frac{1}{16}$ ,  $\frac{1}{32}$  or  $\frac{1}{64}$  of \$1.00, as determined by the Exchange for a specific series.

The original listing fee for each series of PDRs and Index Fund Shares will be \$5,000. The annual listing fee under Section 141 of the Amex *Company Guide* will be based upon the number of shares of a series of PDRs outstanding at the end of each calendar year. For funds with multiple series of Index Fund Shares, shares in all series outstanding at year end will be aggregated for purposes of the annual listing fee under Section 141 of the Amex *Company Guide*.

The Exchange will implement written surveillance procedures for PDRs and Index Fund Shares. In addition, the Exchange will comply with the recordkeeping requirements of Rule 19b-4(e), and will file Form 19b-4(e) for each series of PDRs or Index Fund Shares listed under the rule within five business days of commencement of trading.<sup>9</sup>

The provisions of Amex Rules 1000 *et seq.* or 1000A *et seq.* will apply to all series of PDRs and Index Fund Shares listed under Rule 19b-4(e). In addition to the requirements of proposed Commentary .03 to Amex Rule 1000 and Commentary .02 and .03 to Amex Rule 1000A, PDRs and Index Fund Shares will be subject to Exchange procedures and rules, discussed below, comparable to those applied to existing PDRs and Index Fund Shares.

#### Amex Rule 154

Commentary .04(c) to Amex Rule 154 provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto), the price of which is derivatively priced based upon another security or index of securities, may, with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i-v). PDRs and Index Fund Shares listed under Rule 19b-4(e) will be eligible for this treatment.<sup>10</sup>

#### Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in PDRs and Index Fund Shares. These factors would include: (1) The extent to which trading

is not occurring in stocks underlying the Index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in these Securities will also be halted in the event that market-wide "circuit breaker" parameters of Amex Rule 117 are triggered.

#### Amex Rule 190, Commentary .04

Commentary .04 to Amex Rule 190 will apply to PDRs and Index Fund Shares listed under 19b-4(e). This Commentary provides that the prohibition in Amex Rule 190(a) against a specialist or the specialist's member organization effecting any business transactions with a company in which stock the specialist is registered does not restrict a specialist registered in a series of PDRs or Index Fund Shares from purchasing and redeeming the applicable series from the issuer to facilitate the maintenance of a fair and orderly market.

#### Notice to Members

The Exchange will issue a Notice to Members for each series of PDRs or Index Fund Shares to be listed pursuant to Rule 19b-4(e). The Notice will describe the characteristics of the securities and inform members of any obligation to deliver a written product description or prospectus, applicable, to purchasers of PDRs or Index Fund Shares. In addition, the notice will inform members of their responsibilities under Amex Rule 411 (Duty to Know and Approve Customers) in connection with customer transactions in these securities.

The proposal also requires, in proposed Commentary .03 to Rule 1000A, members and member organizations to provide to purchasers of a series of Index Fund Shares a product description of the terms and characteristics of such securities in a form prepared by the open-end management investment company issuing such securities, not later than the time a conformation of the first transaction in such series is delivered to the purchaser. This requirement applies only if the particular series has been granted relief from the prospectus delivery requirements of Section 24(d) of the 1940 Act.<sup>11</sup> Additionally, members and member organizations are required to include the product description with any sales materials relating to a series of Index Fund Shares that is provided to the public. Any other written materials provided to customers by a member or member organization

referring to a series of Index Fund Shares must include a statement relating to the product description, in substantially the form set forth in the proposed Commentary .03. The proposal also provides that a member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such account will be deemed to constitute agreement by the non-member to make such product description available to its customers on the same terms as are directly applicable to members and member organizations under proposed Commentary .03. Finally, the proposal provides that a member or member organization must provide a prospectus for a particular series of Index Fund Shares upon the customer's request.

### III. Discussion

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, with the requirements of Section 6(b)(5).<sup>12</sup> Specifically, the Commission finds that the proposal to provide generic standards to permit listing and trading of PDRs and Index Fund Shares pursuant to Rule 19b-4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the Act. Thus, by establishing generic standards, the proposal should reduce the Exchange's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.<sup>13</sup>

On December 11, 1992, the Commission approved Amex Rules 1000 *et seq.* to accommodate trading on the Exchange of PDRs, which represent interests in a unit investment trust

<sup>9</sup> 17 CFR 240.19b-4(e).

<sup>10</sup> See Securities Exchange Act Release No. 29063, (April 10, 1991), 56 FR 15652 (April 17, 1991) note 9, regarding Exchange designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c).

<sup>11</sup> 15 U.S.C. 870a-24(d).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

("Trust") that operates on an open-end basis and holds a portfolio of securities.<sup>14</sup> Each Trust is intended to provide investors with an instrument that closely tracks the underlying securities portfolio, that trades like a share of common stock, and that pays to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. The Exchange currently trades PDRs based on: the Standard & Poor's 500 Index, known as Standard & Poor's Depository Receipts® ("SPDRs"™);<sup>15</sup> the Standard & Poor's MidCap 400 Index™ ("MidCap SPDRs"™);<sup>16</sup> the Dow Jones Industrial Average<sup>SM</sup> ("DIAMONDS"™);<sup>17</sup> and, the Nasdaq-100® (Index Nasdaq-100 Shares™).<sup>18</sup>

The Commission first approved Amex's listing and trading of Index Fund Shares under Amex Rules 1000A *et seq.* in 1996.<sup>19</sup> Index Fund Shares are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index. The Exchange currently lists under Amex Rules 1000A *et seq.* seventeen series of World Equity Benchmark Shares<sup>SM</sup> ("WEBS"™) based on Morgan Stanley Capital International foreign stock indices,<sup>20</sup> and nine series of Select Sector SPDRs® based on Select Sector Indexes comprised of stocks

representing various industry sectors and included in the S&P 500® Index.<sup>21</sup>

Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class.<sup>22</sup> As noted above, the Commission has previously approved Amex Rules 1000 *et seq.* and 1000A *et seq.* to permit the listing and trading of PDRs and Index Fund Shares. In approving these securities for Exchange trading, the Commission thoroughly considered the structure of these securities, their usefulness to investors and to the markets, and the Amex rules that govern their trading. Moreover, except for SPDRs and the initial WEBS series, the Exchange separately filed proposed rule changes pursuant to Rule 19b-4 for each series of PDRs or Index Fund Shares currently trading on the Exchange. The Commission believes that adopting generic listing standards for these securities and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those series of PDRs and Index Fund Shares that satisfy those standards to start trading, without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b-4(e) for these products potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's and the Commission's regulatory burden, the Commission will maintain regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission previously concluded that PDRs and Index Fund Shares it previously approved for listing under the existing rules governing those securities would allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for

trading a portfolio of securities. The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed generic standards for PDRs and Index Fund Shares and, therefore, can be listed under Rule 19b-4(e) without prior Commission approval, should produce the same benefits to the Exchange and to investors.

The Commission finds that the Amex's proposal contains adequate rules and procedures to govern the listing and trading of PDRs and Index Fund Shares Rule 19b-4(e). All series of PDRs and Index Fund Shares listed under the generic standards will be subject to the full panoply of Amex rules and procedures that now govern the trading of existing PDRs and Index Fund Shares on the Amex. Accordingly, any new series of PDRs and Index Fund Shares listed and traded under Rule 19b-4(e) will be subject to Amex rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

In addition, the Amex has developed specific listing criteria for series of PDRs or Index Fund Shares qualifying for Rule 19b-4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. Specifically, the Exchange has designated that a minimum of 100,000 shares of a series of PDRs or Index Fund Shares will be required to be outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid Exchange market at the commencement of trading. The Exchange has also established that upon initial listing: Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio must have minimum market value of at least \$75 million; the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio; the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio; the index or portfolio must include a minimum of 13 stocks; and all securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock

<sup>14</sup> Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992). "PDRs" is a service mark of PDR Services LLC, a wholly-owned subsidiary of the Exchange.

<sup>15</sup> Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992).

<sup>16</sup> Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995). "Standard & Poor's 500," "Standard & Poor's MidCap 400 Index," "Standard & Poor's Depository Receipts®," "SPDRs®," "Standard & Poor's MidCap 400 Depository Receipts" and "MidCap SPDRs" are trademarks of The McGraw-Hill Companies, Inc.

<sup>17</sup> Securities Exchange Act Release No. 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998). "Dow Jones Industrial Average<sup>SM</sup>," "DJIA<sup>SM</sup>," "Dow Jones<sup>SM</sup>" and "DIAMONDS" are each trademarks and service marks of Dow Jones & Company, Inc.

<sup>18</sup> Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999). The "Nasdaq-100 Index®," "Nasdaq-100®," "Nasdaq®," and "The Nasdaq Stock Market®" are trademarks of Nasdaq and have been licensed for use for certain purposes by Investment Product Services, Inc. pursuant to a License Agreement with Nasdaq.

<sup>19</sup> Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

<sup>20</sup> See Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999). "World Equity Benchmark Shares" and "WEBS" are service marks of Morgan Stanley Group, Inc.

<sup>21</sup> See Securities Exchange Act Release No. 40479 (December 4, 1998), 63 FR 68483 (December 11, 1998). "Select Sector SPDR" is a service mark of The McGraw-Hill Companies, Inc.

<sup>22</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

Market. Moreover, any series seeking to list under the generic standards must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust or fund.<sup>23</sup> The Commission believes that these criteria should serve to ensure that the underlying securities of these indexes and portfolios are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new series of PDRs and Index Fund Shares under rule 19b-4(e). These listing criteria also will make certain that new series of PDRs and Index Fund Shares do not contain features that are likely to impact adversely the U.S. securities markets. Accordingly, the Commission finds that these criteria are consistent with Section 6(b)(5) of the Act, because they serve to prevent fraudulent or manipulative acts; promote just and equitable principles of trade; 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 addition, as previously noted, all series of PDRs and Index Fund Shares listed under the generic standards will be subject to the existing continued listing criteria for these securities. This requirement allows the Amex to consider the suspension of trading and the delisting of a series if an event occurred that makes further dealings in such securities inadvisable. The Commission believes that this will give the Amex flexibility to delist PDRs or Index Fund Shares if circumstances warrant such action.

Furthermore, the Commission finds that the Exchange's proposal to trade PDRs in minimum fractional increments of  $\frac{1}{64}$  of \$1.00 and Index Fund Shares in increments of  $\frac{1}{16}$ ,  $\frac{1}{32}$ , or  $\frac{1}{64}$  of \$1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations, which are all mechanisms that benefit the investor. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the PDRs or Index Fund Shares, thereby protecting customers and the public interest consistent with Section 6(b)(5) of the Act.<sup>24</sup>

The Exchange represents that the Reporting Authority will disseminate for each series of PDRs or Index Fund

Shares an estimate, updated every 15 seconds, of the value of a share of each series. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series. Additionally, the Commission believes that the proposed original listing fee of \$5,000 is reasonable, as is the proposed method for calculating the annual fee.

The Amex has developed surveillance procedures for PDRs and Index Fund Shares listed under the generic standards that incorporate and rely upon existing Amex surveillance procedures governing PDRs, Index Fund Shares, and equities. The Exchange also will file Form 19b-4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b-4(e) recordkeeping requirements. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading PDRs and Index Fund Shares under the generic standards. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.<sup>25</sup>

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which a product such as PDRs or Index Fund Shares is based. The proposal would require that in such circumstances, the broker dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading PDRs and Index Fund Shares. PDRs listed under the generic standards will be subject to the existing Amex rules for PDRs which have a prospectus delivery requirement or, for series that have been granted relief from the prospectus delivery requirements of the

1940 Act, a product description delivery requirement. The proposal would implement a similar requirement for Index Fund Shares. The prospectus or product description will address the special terms and characteristics of a particular series, including a statement regarding their redeemability and method of creation, and a statement regarding the likelihood of whether such products will trade below, at, or above net asset value, based on the role of discount or premiums.<sup>26</sup> The requirement extends to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. Finally, a member or member organization must delivery a prospectus to a customer upon request.

The Commission also notes that upon the initial listing of any PDRs or Index Fund Shares under the generic standards, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases in a particular series of PDRs or Index Fund Shares.<sup>27</sup> The circular also will inform members of their responsibilities under Amex Rules 411 in connection with customer transactions in these securities. Accordingly, the Commission believes that the proposal governing the trading of PDRs and Index Fund Shares pursuant to the generic standards provides adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest consistent with Section 6(b)(5) of the Act.<sup>28</sup>

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. Specifically, the amendment adds Commentary .03 to Rule 1000A. Proposed Commentary .03 establishes a product description delivery requirement for series of Index Fund Shares that have been granted relief by the Commission from the prospectus delivery requirements of Section 24(d) of the 1940 Act. Proposed Commentary .03 is comparable to

<sup>26</sup> As per conversation between Mike Cavalier, Associate General Counsel, Amex, and Heather Traeger, Attorney, Division, SEC, on May 15, 2000.

<sup>27</sup> *Id.*

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> See *supra* Amendment No. 1, note 5.

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78f(b)(5)

Commentary .01 to Amex Rule 1000 which, under similar circumstances, requires delivery of a product description to purchasers of PDRs and was approved by the Commission in December 1992.<sup>29</sup> The Commission believes it is appropriate to approve this proposed provision at the same time as approving the generic standards because it establishes an important parallel requirement for Index Fund Shares that apply for listing under the proposed generic standards to that of PDRs. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to approve Amendment No. 1 to the proposal on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether this amendment 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-00-14 and should be submitted by June 14, 2000.

#### V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>30</sup> that the proposed rule change (SR-Amex-00-14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>31</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-13004 Filed 5-23-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42792; File No. SR-NASD-00-11]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Amending Its Mediation Fee Structure

May 17, 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 March 9, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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 NASD Regulation. 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

NASD Regulation proposes to amend the Code of Arbitration Procedure ("Code") of the NASD to encourage the use of mediation, increase revenue by adjusting mediation fee schedules, and permit parties to agree to stay arbitrations in order to mediate their claims. The text of the proposed rule change follows. Proposed new language appears in *italics*; proposed deletions appear in *brackets*.

\* \* \* \* \*

#### Rule 10205. Schedule of Fees for Industry and Clearing Controversies

(a)-(i) No change.

[(j) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of \$250. The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director

of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session: \$600 or four (4) times the mediator's hourly rate agreed by the parties and the mediator; and

(2) Additional Mediation Sessions: \$150 per hour, or such other hourly rate agreed by the parties and the mediator.]

\* \* \* \* \*

#### Rule 10332. Schedule of Fees for Customer Disputes

(a)-(h) No change.

[(i) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of \$150.]

[(j) The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session: \$600 or four (4) times the mediator's hourly rate agreed to by the parties and the mediator; and

(2) Additional Mediation Sessions: \$150 per hour, or such other hourly rate agreed to by the parties and the mediator.]

\* \* \* \* \*

#### Rule 10403. Arbitration Proceedings

(a) Unless the parties agree otherwise, the submission of a matter for mediation shall not stay or otherwise delay the arbitration of a matter pending under this Code. *When the parties agree to stay the arbitration in order to mediate the claim, the arbitration proceeding shall be stayed, notwithstanding any provision to the contrary in this Code.*

(b) *If mediation is conducted through NASD Regulation, no adjournment fees will be charged for staying the arbitration proceeding in order to mediate.*<sup>3</sup>

\* \* \* \* \*

<sup>3</sup> Note: the reference to NASD Regulation will be changed to NASD Dispute Resolution, Inc., when such new subsidiary becomes operational.

<sup>29</sup> See *supra*, note 15.

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</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.