

critical conditions and RPV hydrostatic and leak test conditions. Hence, the staff concludes that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of 10 CFR part 50, Appendix G will be achieved without the application of those requirements related to the application of Footnote 2 to Table 1 of 10 CFR part 50, Appendix G. Therefore, the staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate, and should be granted to TVA such that those requirements related to the application of Footnote 2 to Table 1 of 10 CFR part 50, Appendix G need not be applied to SQN Units 1 and 2.

#### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants TVA an exemption from those requirements related to the application of Footnote 2 to Table 1 of 10 CFR part 50, Appendix G, for SQN Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment (69 FR 32372).

This exemption is effective upon issuance.

Dated in Rockville, Maryland, this 7th day of July, 2004.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04-16532 Filed 7-20-04; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Renewal Notice

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** This notice is to announce the renewal of the Advisory Committee on Nuclear Waste (ACNW) for a period of two years.

**SUPPLEMENTARY INFORMATION:** The U.S. Nuclear Regulatory Commission (NRC) has determined that the renewal of the charter for the Advisory Committee on

Nuclear Waste for the two year period commencing on July 15, 2004, is in the public interest, in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the Advisory Committee on Nuclear Waste is to report to and advise the Nuclear Regulatory Commission (NRC) on nuclear waste management. The bases of ACNW reviews include 10 CFR Parts 20, 40, 50, 60, 61, 63, 70, 71 and 72, and other applicable regulations and legislative mandates. In performing its work, the Committee will examine and report on those areas of concern referred to it by the Commission and may undertake studies and activities on its own initiative, as appropriate. Emphasis will be on protecting the public health and safety in the disposal of nuclear waste. The Committee will undertake studies and activities related to nuclear waste management such as transportation, storage and disposal facilities, the effects of low levels of ionizing radiation, decommissioning, materials safety, application of risk-informed, performance-based regulations, and evaluation of licensing documents, rules and regulatory guidance. The Committee will interact with representatives of the public, NRC, ACRS, other Federal agencies, State and local agencies, Indian Tribes, and private, international and other organizations as appropriate to fulfill its responsibilities.

**FOR FURTHER INFORMATION CONTACT:** John T. Larkins, Executive Director of the Committee, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7360.

Dated July 15, 2004.

**Andrew L. Bates,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 04-16530 Filed 7-20-04; 8:45 am]

BILLING CODE 7590-01-P

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act; Public Hearing

July 22, 2004.

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 69, Number 127, Page 40421) on July 2, 2004. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public

hearing in conjunction with OPIC's July 29, 2004 Board of Directors meeting scheduled for 10 AM on July 29, 2004 has been cancelled.

#### FOR FURTHER INFORMATION CONTACT:

Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336-8438, via facsimile at (202) 218-0136, or via email at [cdown@opic.gov](mailto:cdown@opic.gov).

Dated: July 19, 2004.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 04-16674 Filed 7-19-04; 10:32 am]

BILLING CODE 3210-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50019; File No. SR-Amex-2004-48]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Standard and Poor's 500 Index

July 14, 2004.

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 June 14, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. On July 12, 2004, the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

<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 Burns, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 7, 2004 ("Amendment No. 1"). In Amendment No. 1, the Amex elaborated on the size of the initial issuance and clarified that the dissemination of the value of the S&P 500 would be over the Consolidated Tape Association's Network B. In addition, in Amendment No. 1, the Amex clarified certain adjustments that will be made to the methodology of calculating the value of the S&P 500.

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

The Exchange proposes to list and trade notes, the performance of which is linked to the Standard and Poor's 500 Index ("S&P 500" or "Index"). The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Amex and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, 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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

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>4</sup> The Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the S&P 500 (the "S&P 500 Notes" or "Notes").<sup>5</sup> Morgan Stanley will issue the Notes under the name "PLUS<sup>SM</sup>." The S&P 500 is determined, calculated and maintained solely by Standard and Poor's.<sup>6</sup> At maturity, the Notes will

<sup>4</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

<sup>5</sup> Morgan Stanley and Standard & Poor's, a division of the McGraw-Hill Companies, Inc. ("S&P") have entered into a non-exclusive license agreement providing for the use of the S&P 500 by Morgan Stanley and certain affiliates and subsidiaries in connection with certain securities including these Notes. S&P is not responsible for and will not participate in the issuance and creation of the Notes.

<sup>6</sup> The S&P 500 Index is a broad-based stock index, which provides an indication of the performance of the U.S. equity market. The Index is a capitalization-weighted index reflecting the total market value of 500 widely-held component stocks relative to a particular base period. The Index is computed by dividing the total market value of the 500 stocks by an Index divisor. The Index Divisor keeps the Index comparable over time to its base

provide for a multiplier of any positive performance of the S&P 500 (the "Upside Leverage Factor") during such term subject to a maximum payment amount or ceiling to be determined at the time of issuance (the "Capped Value").

The S&P 500 Notes will conform to the initial listing guidelines under Section 107A<sup>7</sup> and continued listing

period of 1941-1943 and is the reference point for all maintenance adjustments. The securities included in the Index are listed on the Amex, New York Stock Exchange, Inc. ("NYSE") or traded through NASDAQ. The Index reflects the price of the common stocks of 500 companies without taking into account the value of the dividend paid on such stocks.

The S&P indices are presently a "full" market-capitalization weighted index. That is, the value of the Index is calculated by, for each component, multiplying the total number of shares outstanding of the component by the price per share of the component. The result is then divided by the divisor. S&P announced on March 1, 2004 that it intends to shift its major indexes to "float-adjusted" market capitalization weights. That is, the value of the Index will be calculated by, for each component, multiplying the number of shares in the public float of the component by the price per share of the component. The result is then divided by the divisor. Thus, the "float adjusted" market capitalization methodology will exclude blocks of stocks that do not trade from the weighting determination for a stock in the index.

The transition from full market-cap weighting to float-adjusted weighting will be implemented over an 18 month period. In September 2004, S&P will publish procedures and float adjustment factors, and begin calculation of provisional float adjusted indexes. The float adjustment factors will include, among other things, information regarding the adjustments that will be made to each component in order to determine what each component's float will be. At that time, S&P will start calculating a provisional index alongside of the regular index. It is not expected that any securities or futures exchange will trade products on this or any provisional index during the transition period. S&P has stated that, notwithstanding the simultaneous calculation of provisional indexes, there will still be only one official set of S&P indexes. In March 2005, the non-provisional S&P indexes will shift to partial float adjustment, using float adjustment factors that represent half of the total adjustment, based on the information published in September 2004. In September 2005, the shift to float adjustment will be completed, the official indexes will be fully float-adjusted, and the provisional indexes will be discontinued. Float adjustment factors will be reviewed annually in September. During the transition period, S&P will adjust the divisor of the indexes in order to maintain continuity across the adjustments. Therefore, as a result of the divisor adjustments, the Index value will maintain continuity immediately following both adjustments (in March 2005 and September 2005). S&P does not expect any companies to be removed from the Index as a result of the adjustments. Also S&P does not expect a change in the value of the derivative based on the index, due to adjustments S&P can make to the index divisor; however, none of this is guaranteed.

<sup>7</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 has assets in excess of \$100 million, stockholder's equity of at least \$10 million, and pre-tax income of at least

guidelines under Sections 1001-1003<sup>8</sup> of the Company Guide. The Notes are senior non-convertible debt securities of Morgan Stanley. The Notes will have a term of no more than ten (10) years. Morgan Stanley will issue the Notes in denominations of whole units (a "Unit"), with each Unit representing a single Note. The original public offering price will be \$10 per Unit, and the size of the initial issuance will be \$77.18 million.<sup>9</sup> The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the S&P 500. The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes.<sup>10</sup> The Notes are also not callable by the issuer, Morgan Stanley, or redeemable by the holder.

The payment that a holder or investor of a Note will be entitled to receive (the "Redemption Amount") will depend on the relation of the level of the S&P 500 at the close of the market on the second scheduled trading day prior to maturity of the Notes (the "Final Level") and the closing value of the Index on the date the Notes are priced for initial sale to the public (the "Initial Level"). If there is a "market disruption event"<sup>11</sup> when

\$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 1010 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>8</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>9</sup> See Amendment No. 1.

<sup>10</sup> A negative return of the S&P 500 will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment amount.

<sup>11</sup> A "market disruption event" is defined as (i) the occurrence of a suspension, absence or material limitation of trading of 20% or more of the component stocks of the Index on the primary market for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such primary market; (ii) a breakdown or failure in the price and trade reporting systems of any primary market as a result of which the reported trading prices for 20% or more of the component stocks of the Index during the last one-half hour preceding the close of the

determining the Final Level of the Index, the Final Level will be determined on the next available trading

day during which no "market disruption event" occurs. If the percentage change of the Index is positive (*i.e.*, the Final Level is greater

than the Initial Level), the Redemption Amount per Unit will equal:

$$\$10 + \left[ \$10 \times \left( \frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}} \right) \times \text{Upside Leverage Factor} \right], \text{ not to exceed the Capped Value.}$$

The Upside Leverage Factor, determined at the time of issuance, is expected to be 200% of the percent increase in the Final Level of the S&P 500, which will be subject to the Capped Value of approximately \$11.80 or 118% of the issue price.

If the percentage change of the Index is zero or negative (*i.e.*, the Final Level is less than or equal to the Initial Level), the Redemption Amount per Unit will equal:

$$\$10 \times \left( \frac{\text{Final Level}}{\text{Initial Level}} \right)$$

Thus, if the Final Level of the S&P 500 is less than the Initial Level, an investor would receive less than his initial \$10 per share investment. However, the Notes are not leveraged on the downside; the return would be directly proportional to the decline in the S&P 500. The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the S&P 500. The Notes are designed for investors who want to participate in or gain enhanced upside exposure to the S&P 500, subject to the Capped Value, and who are willing to forego principal protection and market interest payments on the Notes during such term. The Commission has previously approved the listing of securities and related options linked to the performance of the S&P 500 Index.<sup>12</sup>

As of June 9, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of \$318 billion to a low of \$757 million.

principal trading session on such primary market are materially inaccurate; (iii) the suspension, material limitation or absence of trading on any major securities market for trading in futures or options contracts or exchange traded funds related to the Index for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such market, and (iv) a determination by Morgan Stanley & Co., Incorporated that any event described in clauses (i)–(iii) above materially interfered with the ability of Morgan Stanley or any of its affiliates to unwind or adjust all or a material portion of the hedge position with respect to the Notes.

<sup>12</sup> See *e.g.*, Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the

The average daily trading volume for these same securities for the last six (6) months ranged from a high of 62.4 million shares to a low of 130,000 shares. The Index value will be disseminated at least once every fifteen (15) seconds throughout the trading day.

Because the Notes are issued in \$10 denominations, 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>13</sup> Second, the Notes will be subject to the equity margin rules of the Exchange.<sup>14</sup> Third, 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, Morgan Stanley will deliver a prospectus in connection with initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to

S&P 500 Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depository Receipts based on the S&P 500 Index); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500 Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500 Index) (SPDR); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003)

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, as amended, is consistent with section 6<sup>15</sup> of the Act in general and furthers the objectives of section 6(b)(5)<sup>16</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

### 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

The Exchange did not receive any written comments on the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

(approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500) and 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protection Notes on the S&P 500).

<sup>13</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>14</sup> See Amex Rule 462 and Section 107B of the Company Guide.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-48 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-48 and should be submitted on or before August 11, 2004.

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

After careful consideration, the Commission finds that the proposed rule change, as amended, 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) of the

Act.<sup>17</sup> The Commission has approved the listing of securities with a structure similar to that of the Notes.<sup>18</sup> Accordingly, the Commission finds that the listing and trading of the Notes based on the Index is consistent with the Act and 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 securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.<sup>19</sup>

The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate or gain exposure to the Index, subject to the Capped Value. The Notes are non-convertible debt securities whose price will be derived and based upon the Initial Level. The Commission notes that the Notes will not have a minimum principal investment amount that will be repaid, and payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. At maturity, if the Final Value of the S&P 500 is greater than the Initial Value, the performance of the Note is leveraged on the "upside." In other words, the investor will receive, for each \$10 principal amount, a payment equal to \$10 plus 200% of the percent increase in the value of the S&P 500, subject to the Capped Value of approximately \$11.80 or 118% of the issue price. However, if the S&P 500 declines from the Initial Value, then the investors will receive proportionately less than the original issue price of the Notes. The return on the notes, however, is not leveraged on the downside.

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

<sup>18</sup> See Securities Exchange Act Release Nos. 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of the UBS Partial Protection Note linked to the Index); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to Index); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depository Receipts based on the Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the Index)(SPDR); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the Index); and 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the Index).

<sup>19</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).

Thus, the Notes are non-principal protected instruments, but are not leveraged on the downside. The level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final level of return of the Notes is derivatively priced and based upon the performance of an index of securities; because the Notes are debt instruments that do not guarantee a return of principal; and because investors' potential return is limited by the Capped Value, if the value of the Index has increased over the term of such Note, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes the Exchange's proposal adequately addresses the concerns raised by this type of product.

The Commission notes that the protections of Amex Rule 107A were designed to address the concerns attendant on the trading of hybrid securities like the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure and compliance requirements noted above, the Commission believes that Amex has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Amex will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Morgan Stanley will deliver a prospectus in connection with the initial sales of the notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing equities, which have been deemed adequate under the Act.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index<sup>20</sup> of 500 companies listed on Nasdaq, the NYSE, and the Amex. The Exchange represents that the Index will be determined, calculated, and maintained by S&P. As of June 9, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of \$757 billion to a low of \$318 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 62.4 million shares to a low of 130,000 shares.

Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and

<sup>20</sup> See *supra* note 6.

trading of the Notes that are linked to the Index should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns.<sup>21</sup> As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, Morgan Stanley. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least \$4 million.<sup>22</sup> In any event, financial information regarding Morgan Stanley in addition to the information on the 500 common stocks comprising the Index will be publicly available.<sup>23</sup>

The Commission also has a systemic concern, however, that a broker-dealer such as Morgan Stanley, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,<sup>24</sup> the Commission believes that

this concern is minimal given the size of the Notes issuance in relation to the net worth of Morgan Stanley.

Finally, the Commission notes that the value of the Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.<sup>25</sup> The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>26</sup> to approve the proposal on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-Amex-2004-48) and Amendment No. 1 thereto is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-16554 Filed 7-20-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50016; File No. SR-Amex-2004-43]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Nikkei 225 Index

July 14, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 3, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to list and trade notes linked to the performance of the Nikkei 225 ("Nikkei 225" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing

<sup>21</sup> The issuer Morgan Stanley disclosed in the prospectus that the original issue price of the notes includes commissions (and the secondary market prices are likely to exclude commissions) and Morgan Stanley's costs of hedging its obligations under the notes. These costs could increase the initial value of the Notes, thus affecting the payment investors receive at maturity. The Commission expects such hedging activity to be conducted in accordance with applicable regulatory requirements.

<sup>22</sup> See Company Guide Section 107A.

<sup>23</sup> The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

<sup>24</sup> See Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR-NASD-2001-73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR-Amex-2001-40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of

notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

<sup>25</sup> See *supra* note 18.

<sup>26</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>27</sup> 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

<sup>28</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.