

will hold the following meetings during the week of September 22, 2003: Closed Meetings will be held on Tuesday, September 23, 2003 at 2 p.m., Wednesday, September 24, 2003 at 11 a.m., and Thursday, September 25, 2003 at 10 a.m., and an Open Meeting will be held on Wednesday, September 24, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a) (3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, September 23, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Formal orders of investigation.

The subject matter of the Open Meeting scheduled for Wednesday, September 24, 2003 will be:

*Item 1:* The Commission will consider whether to propose for public comment new rules 12d1-1, 12d1-2, and 12d1-3 under the Investment Company Act of 1940. The recommended rules would broaden the ability of an investment company ("fund") to acquire shares of another fund consistent with the protection of investors and the purposes of the Act. The Commission also will consider a recommendation to amend forms N-1A, N-2, N-3, N-4, and N-6, which are used by investment companies to register under the Investment Company Act and to offer their shares under the Securities Act of 1933. The recommended amendments would improve the transparency of the expenses of funds that invest in other funds by requiring that the expenses of the acquired funds be aggregated and shown as an additional expense in the fee table of the acquiring funds.

For further information, please contact Penelope Saltzman at (202) 942-0690.

*Item 2:* The Commission will consider whether to adopt amendments to Rules 134, 156, and 482 under the Securities Act of 1933; Rule 34b-1 under the Investment Company Act of 1940; and four investment company registrations

(Forms N-1A, N-3, N-4, and N-6). The amendments would require enhanced disclosure in mutual fund advertisements and are designed to encourage advertisements that convey balanced information to prospective investors, particularly with respect to past performance. The amendments also would implement a provision of the National Securities Markets Improvement Act of 1996 by eliminating the requirement that Rule 482 advertisements for an investment company contain only information the substance of which is included in the investment company's statutory prospectus.

For further information, please contact Christopher P. Kaiser at (202) 942-0721.

*Item 3:* The Commission will hear oral argument on an appeal by the Rockies Fund, Inc. (the "Fund"), a closed end investment company, Stephen G. Calandrella, president and director of the Fund, Charles M. Powell and Clifford C. Thygesen, independent directors of the Fund, and John C. Power, from the decision of an administrative law judge.

The law judge found that:

a. Calandrella and Power violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder by manipulating the price of securities;

b. The Fund, Calandrella, Powell, and Thygesen violated Exchange Act Section 10(b) and Rule 10b-5 by making untrue statements of material facts in the Fund's annual and quarterly reports by misclassifying restricted shares and overvaluing such shares, and that the Fund and Calandrella violated those provisions by overstating the number of shares in the Fund's portfolio;

c. The Fund violated, and Calandrella, Powell, and Thygesen, aided and abetted the Fund's violations, of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 by filing reports that made untrue statements of material facts and that did not comply with GAAP and Regulation S-X.

d. Calandrella violated Section 57(k)(1) of the Investment Company Act of 1940 by causing the Fund to purchase stock to settle a legal claim threatened against Calandrella personally, and Calandrella violated Exchange Act Section 10(b) and Rule 10b-5 by failing to disclose this settlement to the independent board members of the Fund.

The law judge ordered all of the respondents to cease and desist from committing or causing any further violations of the provisions that they were found to have violated. The law judge further ordered Calandrella to pay

a civil money penalty of \$500,000 and Thygesen and Powell each to pay a civil money penalty of \$160,000. The law judge permanently barred Calandrella and, for a period of three years, barred Thygesen and Powell, from associating with or acting as an affiliated person of an investment company.

Among the issues likely to be argued are:

a. Whether the evidence supports the allegations; and

b. Whether and to what extent sanctions should be imposed in the public interest.

For further information, please contact the Office of the Secretary at (202) 942-7070.

The subject matter of the Closed Meeting scheduled for Wednesday, September 24, 2003 will be: Post-argument discussion.

The subject matter of the Closed Meeting scheduled for Thursday, September 25, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Adjudication matter; and

Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: September 12, 2003.

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48484; File No. SR-Amex-2003-72]

### Self-Regulatory Organizations; Notice of Filing and Order Accelerating Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Trust Certificates Linked to a Basket of Investment Grade Fixed Income Securities

September 11, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 29, 2003, the American Stock Exchange LLC

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

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

("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 under Section 107A of the Amex Company Guide ("Company Guide"), trust certificates linked to a basket of investment grade fixed income debt instruments.

### **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 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>3</sup> The Amex proposes to list for trading under Section 107A of the Company Guide, asset-backed securities (the "ABS Securities") representing ownership interests in the "Long-Term Certificate Trust 2003-(#)" (the "Trust"),<sup>4</sup> a special purpose entity to be formed by Structured Obligations Corporation ("SOC"),<sup>5</sup> and the trustee of

the Trust pursuant to a trust agreement, which will be entered into on the date that the ABS Securities are issued. The assets of the Trust will consist primarily of a basket or portfolio of up to five investment-grade fixed-income securities (the "Underlying Corporate Bonds") and United States Department of Treasury STRIPS or securities issued by the United States Department of the Treasury (the "Treasury Securities"). In the aggregate, the component securities of the basket or portfolio will be referred to as the "Underlying Securities."

The ABS Securities will conform to the initial listing guidelines under Section 107A<sup>6</sup> and continued listing guidelines under Sections 1001-1003<sup>7</sup> of the Company Guide. At the time of issuance, the ABS Securities will receive an investment grade rating from a nationally recognized securities rating organization (an "NRSRO"). The issuance of the ABS Securities will be a repackaging of the Underlying Corporate Bonds together with the addition of Treasury Securities, with the obligation of the Trust to make distributions to holders of the ABS Securities depending on the amount of distributions received by the Trust on the Underlying Securities. However, due to the pass-through and passive nature of the ABS Securities, the Exchange intends to rely on the assets and stockholder equity of the issuers of

Securities Holdings Inc. and the registrant under the Form S-3 Registration Statement (No. 333-70730) under which the securities will be issued.

<sup>6</sup> The initial listing standards for the ABS Securities 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. However, if traded in thousand dollar denominations, then there is no minimum holder requirement. In addition, the listing guidelines provide that the issuer have assets in excess of \$100 million, stockholder's equity of at least \$10 million, and 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.

<sup>7</sup> The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the ABS Securities, the Exchange will rely 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.

the Underlying Corporate Bonds, rather than the Trust to meet the requirements in Section 107A of the Company Guide. The corporate issuers of the Underlying Corporate Bonds will meet or exceed the requirements of Section 107A of the Company Guide. In addition, the Exchange for purposes of including Treasury Securities, will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A.

The basket of Underlying Securities will not be managed and will generally remain static over the term of the ABS Securities. Each of the Underlying Securities provide for the payment of interest on a semi-annual, quarterly or monthly basis, but the ABS Securities will provide for semi-annual or quarterly distributions of interest. The Treasury Securities will not make periodic payments of interest.<sup>8</sup> The Exchange represents that, to alleviate any cash flow timing issue, the Trust may enter into an interest distribution agreement (the "Interest Distribution Agreement") that will be described in any prospectus supplement related to the ABS Securities (the "Prospectus Supplement").<sup>9</sup> Whether an Interest Distribution Agreement is required will depend upon the timing of the interest coupon payments of the Underlying Securities.

Principal distributions on the ABS Securities are expected to be made on dates that correspond to the maturity dates of the Underlying Securities (*i.e.*, the Underlying Corporate Bonds and Treasury Securities). However, some of the Underlying Securities may have redemption provisions and in the event of an early redemption or other liquidation (*e.g.*, upon an event of default) of the Underlying Securities, the proceeds from such redemption (including any make-whole premium associated with such redemption) or liquidation will be distributed pro rata to the holders of the ABS Securities. Each Underlying Corporate Bond will be issued by a corporate issuer and purchased in the secondary market. In the case of Treasury Securities, the

<sup>8</sup> A stripped fixed income security, such as certain Treasury Securities, is a security that is separated into its periodic interest payments and principal repayment. The separate strips are then sold individually as zero coupon securities providing investors with a wide choice of alternative maturities.

<sup>9</sup> Pursuant to any Interest Distribution Agreement that may be entered into by the Trust, shortfalls in the amounts available to pay monthly or quarterly interest to holders of the ABS Securities due to the Underlying Securities paying interest semi-annually will be made to the Trust by JP Morgan Chase Bank or one of its affiliates and will be repaid out of future cash flow received by the Trust from the Underlying Securities.

<sup>3</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>4</sup> The trust name will be completed with sequential numbering. See e-mail from Jeffrey P. Burns, Assistant General Counsel, Amex, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated September 5, 2003.

<sup>5</sup> Structured Obligations Corporation is a wholly-owned special purpose entity of J.P. Morgan

Trust will either purchase the securities directly from primary dealers or in the secondary market, which consists of secondary dealers, non-primary dealers, customers, financial institutions, non-financial institutions and individuals.

Holders of the ABS Securities generally will receive interest on the face value in an amount to be determined at the time of issuance of the ABS Securities and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent that coupon payments are received from the Underlying Securities. Distributions of interest will be made monthly or quarterly. Investors will also be entitled to be repaid the principal of their ABS Securities from the proceeds of the principal payments on the Underlying Securities.<sup>10</sup> The payout or return to investors on the ABS Securities will not be leveraged.

The ABS Securities will mature on the latest maturity date of the Underlying Securities. Holders of the ABS Securities will have no direct ability to exercise any of the rights of a holder of an Underlying Corporate Bond, however, holders of the ABS Securities as a group will have the right to direct the Trust in its exercise of its rights as holder of the Underlying Securities.

The proposed ABS Securities are substantially similar to several Select Term Notes currently listed and traded on the Exchange,<sup>11</sup> with the only difference being the number and identity of the Underlying Securities in the basket of investment grade fixed-income securities. In addition, the instant proposal may or may not require the use of an Interest Distribution Agreement to "smooth" out any shortfall in interest payable to investors not yet received by the Trust from the Underlying Securities. Accordingly, the Exchange proposes to provide for the listing and trading of the ABS Securities where the Underlying Securities meet the Exchange's Bond and Debenture

<sup>10</sup> The Underlying Securities may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. See Prospectus Supplement for a schedule of the distribution of interest and of the principal upon maturity of each Underlying Security and for a description of payment default and acceleration of the maturity date.

<sup>11</sup> See Securities Exchange Act Release Nos. 47730 (April 24, 2003), 68 FR 23340 (May 1, 2003) (File No. Amex-2003-25); 47884 (May 16, 2003), 68 FR 28305 (May 23, 2003) (File No. Amex-2003-37). See also Securities Exchange Act Release Nos. 46835 (November 14, 2002), 67 FR 70271 (November 21, 2002) (File No. Amex-2002-70); 46923 (November 27, 2002), 67 FR 72247 (December 4, 2002) (File No. Amex-2002-92).

Listing Standards set forth in Section 104 of the Amex Company Guide. The Exchange represents that all of the Underlying Securities in the proposed basket will meet or exceed these listing standards.

The Exchange's Bond and Debenture Listing Standards in Section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least \$5 million and any of: (1) The issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange ("NYSE") or on the Nasdaq National Market ("Nasdaq")); (2) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq) has guaranteed the debt security; (4) an NRSRO has assigned a current rating to the debt security no lower than a Standard & Poor's Corporation ("S&P") "B" rating or equivalent rating by another NRSRO; or (5) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than a S&P "B" rating or an equivalent rating by another NRSRO to a *pari passu* or junior issue.

In addition to the Exchange's Bond and Debenture Listing Standards, an Underlying Security must also be of investment grade quality as rated by a NRSRO and at least 75% of the underlying basket is required to contain Underlying Securities from issuances of \$100 million or more. The maturity of each Underlying Security is expected to match the payment of principal of the ABS Securities with the maturity date of the ABS Securities being the latest maturity date of the Underlying Securities. Amortization of the ABS Securities will be based on (1) the respective maturities of the Underlying Securities, (2) principal payout amounts reflecting the pro-rata principal amount of maturing Underlying Securities and (3) any early redemption or liquidation of the Underlying Securities.

Investors will be able to obtain the prices for the Underlying Securities through Bloomberg L.P. or other market vendors, including the broker-dealer through whom the investor purchased the ABS Securities. In addition, The Bond Market Association provides links to price and other bond information sources on its investor Web site at <http://www.investinginbonds.com>.

Transaction prices and volume data for the most actively traded bonds on the exchanges are also published daily in newspapers and on a variety of financial Web sites. The National Association of Securities Dealers' Trade Reporting and Compliance Engine ("TRACE") will also help investors obtain transaction information for most corporate debt securities, such as investment grade corporate bonds.<sup>12</sup> For a fee, investors can have access to intra-day bellwether quotes.<sup>13</sup>

Price and transaction information for Treasury Securities may also be obtained at <http://publicdebt.treas.gov> and <http://www.govpx.com>, respectively. Price quotes are also available to investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Valuation prices<sup>14</sup> and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The ABS Securities will be listed in \$1,000 denominations with the Exchange's existing debt floor trading rules applying to trading. 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 ABS Securities.<sup>15</sup> Second, the ABS Securities will be subject to the debt margin rules of the Exchange.<sup>16</sup> Third, the Exchange will, prior to trading the ABS Securities, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the ABS Securities and highlighting the special risks and characteristics of the ABS Securities. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees

<sup>12</sup> See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at <http://www.nasdbondinfo.com/>.

<sup>13</sup> Corporate prices are available at 20-minute intervals from Capital Management Services at <http://www.bondvu.com/>.

<sup>14</sup> "Valuation Prices" refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

<sup>15</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>16</sup> See Amex Rule 462.

thereof recommending a transaction in the ABS Securities: (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.

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

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act<sup>17</sup> in general and furthers the objectives of Section 6(b)(5)<sup>18</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 change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 the File No. SR-Amex-2003-72 and should be submitted by October 8, 2003.

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

After careful consideration, 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) of the Act.<sup>19</sup> The Commission finds that this proposal is similar to several approved certificates linked to a portfolio of investment grade debt currently listed and traded on the Amex.<sup>20</sup> Accordingly, the Commission finds that the listing and trading of the ABS Securities 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 in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.<sup>21</sup>

As described more fully above, the ABS securities are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds together with the addition of the Treasury Securities, subject to certain distribution of interest obligations of the Trust. The ABS Securities are not leveraged instruments. The ABS Securities are debt instruments whose price will still be derived and based upon the value of the Underlying Securities. Investors are guaranteed at

<sup>19</sup> *Id.*

<sup>20</sup> See Securities Exchange Act Release Nos. 48312 (August 8, 2003), 68 FR 48970 (August 15, 2003) (File No. SR-Amex-2003-69); 47730 (April 24, 2003), 68 FR 23340 (May 1, 2003) (File No. SR-Amex-2003-25) (approving the listing and trading of trust certificates linked to a basket of investment grade fixed income securities); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR-Amex-2001-28).

<sup>21</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).

least the principal amount that they paid for the Underlying Securities. In addition, each of the Underlying Corporate Bonds may provide for payment of interest on a semi-annual, quarterly or monthly basis, while the ABS securities themselves will provide for semi-annual or quarterly distribution of interest, pursuant to any Interest Distribution Agreement. The Treasury Securities will not make periodic payments of interest.<sup>22</sup> In addition, the ABS securities will mature on the latest maturity date of the Underlying Securities.<sup>23</sup> However, due to the pass-through and passive nature of the ABS Securities, the level of risk involved in the purchase or sale of the ABS Securities is similar to the risk involved in the purchase or sale of traditional common stock.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the ABS Securities. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the ABS Securities. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the ABS Securities.

The Commission notes that the ABS Securities are dependent upon the individual credit of the issuers of the Underlying Securities. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the ABS Securities. In addition, the Exchange's "Other Securities" listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.<sup>24</sup> The Commission notes that the Exchange has represented that the ABS Securities will be listed in \$1000 denominations with its existing debt floor trading rules applying to the

<sup>22</sup> See *supra* note 8.

<sup>23</sup> The Commission notes, however, that the Exchange has represented that the Underlying Securities may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. See Prospectus for a schedule of the distribution of interest and of the principal upon maturity of each Underlying Security and for a description of payment default and acceleration of the maturity date.

<sup>24</sup> See Company Guide Section 107A.

<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

trading. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.<sup>25</sup>

Due to the pass-through and passive nature of the ABS Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in Section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in Sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. Thus, the ABS Securities will conform to the initial listing guidelines under Section 107A and continued listing guidelines under Sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the ABS Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the ABS Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Securities to meet the Exchange's Section 107A listing requirements (in the case of Treasury securities, the Exchange will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A), the Underlying Securities will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to Section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of "B" or equivalent from an NRSRO.

Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of \$100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market vendors such as Bloomberg, L.P., or

though Web sites such as <http://www.investinbonds.com> (for Underlying Corporate Bonds) and <http://publicdebt.treas.gov> and <http://www.govpx.com> (for Treasury Securities).

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.<sup>26</sup> The Commission believes that the ABS Securities will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the ABS Securities promptly. Additionally, the ABS Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act<sup>27</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>28</sup> that the proposed rule change (SR-Amex-2003-72) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-23738 Filed 9-16-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48465; File No. SR-EMCC-2003-01]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to EMCC's Capital Requirements for Members

September 9, 2003.

#### I. Introduction

On April 8, 2003, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the

proposed rule change SR-EMCC-2003-01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on July 29, 2003.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

EMCC's Rule 2 ("Members"), Section 6 ("Admission Criteria for Members"), provides that if an applicant does not meet the minimum capital requirements set forth in Section 6, EMCC's Board of Directors may include for such purposes the capital of an affiliate of the applicant if the affiliate delivers to EMCC a satisfactory guaranty. The purpose of the proposed rule change is to permit any existing member of EMCC that no longer meets the capital requirements set forth in Section 6 to also have the capital of an affiliate be included in calculating the member's continuance requirements provided that the affiliate enters in a similar form of guaranty.

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safekeeping of securities and funds which are in its possession or control or for which it is responsible.<sup>3</sup> The proposed rule change eliminates an inconsistency in EMCC's rules that prevented an existing member who did not use the guaranty of an affiliate as an applicant from using such a guaranty, but an existing member who did use the guaranty of an affiliate as an applicant could continue to include the affiliate's capital for purposes of satisfying its capital requirement as a continuing EMCC member. Allowing an existing member that was admitted to EMCC membership without using an affiliate's capital to include the capital of an affiliate to satisfy its EMCC capital requirement with an appropriate guaranty, similarly as can other members, should not adversely affect EMCC's ability to safeguard securities and funds. As such the Commission finds the proposed rule change is consistent with EMCC's requirements under Section 17A(b)(3)(F) of the Act.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the

<sup>25</sup> The ABS Securities will be registered under Section 12 of the Act.

<sup>26</sup> See *supra* note 20.

<sup>27</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>28</sup> 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 48209 (July 22, 2003), 68 FR 44554.

<sup>3</sup> 15 U.S.C. 78q-1(b)(3)(F).