scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Wendesday, November 5, 2003 will be:

Formal orders of investigation;
Institution and settlement of administrative proceedings of an enforcement nature;
Institution and settlement of injunctive actions; and
Opinions.

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

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: October 28, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–27616 Filed 10–31–03; 4:14 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48708; File No. SR–Amex–2003–91]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Notes Based on the Morgan Stanley Technology Index

October 28, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2003, the American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which the Amex has prepared. 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 Amex proposes to list and trade, under Section 107A of the Amex Company Guide, senior non-convertible debt securities (''Notes'') of Morgan Stanley, the return on which is based on the performance of the Morgan Stanley Technology Index.

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

In its filing with the Commission, the 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, the Amex may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading Notes based on the Morgan Stanley Technology Index.[4] The Technology Index will be determined, calculated and maintained solely by the Amex.[5] The Notes will conform to the listing guidelines under Section 107A of the Amex Company Guide[6] and the continued listing guidelines under Sections 1001–1003 of the Amex Company Guide.[7]

The Notes are senior non-convertible debt securities of Morgan Stanley that will have a term of not less than one year nor more than ten years. The ''Initial Index Value'' is the value of the Technology Index on the date the Notes are priced for the initial sale to the public. At maturity the holder of Notes will be entitled to receive an amount based upon an ''Average Index Value,'' which will be determined by calculating the arithmetic average of the ''Closing Index Value'' on each of three (3) trading days on which no market disruption event occurs, beginning on or after December 23, 2004. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. The Notes are not callable by the issuer.

The ''Redemption Amount,'' which is the payment that a holder or investor will receive at maturity of the Note, will be based on whether the Average Index Value is greater or less than the Initial Index Value. If the Average Index Value is greater than the Initial Index Value, a holder of the Notes will receive a Redemption Amount in cash equal to $10 plus the ''Leveraged Upside Payment.'' The Leveraged Upside Payment is equal to $10 multiplied by

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] The Morgan Stanley Technology Index is an equal-dollar weighted index consisting of thirty-five (35) securities designed to measure the performance of a cross-section of highly capitalized U.S. companies that are active in nine technology subsectors: (i) computer services; (ii) design software; (iii) server software; (iv) PC software and new media; (v) networking and telecommunications equipment; (vi) server hardware; (vii) server hardware; (viii) PC hardware and peripherals; and (ix) specialized systems and semi-conductors.

[5] As further described in the prospectus, the Amex is solely responsible for calculating and maintaining the Technology Index in consultation with Morgan Stanley & Co., Inc. These duties, among others, include changes to the Index due to annual reconstitutions and adjustments. The Amex has re-submitted a letter dated August 29, 1995 from Morgan Stanley to the Commission that describes the role of the Amex with respect to the calculation and maintenance of the Technology Index, and has further represented that the same methodology will apply with respect to the Notes that are the subject of this proposed rule change. See Memorandum from Jeffrey P. Burns, Associate General Counsel, Amex, to Patrick M. Joyce, Special Counsel, Commission, dated October 21, 2003.

[6] The initial listing standards for the Notes require: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and 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 Amex Company Guide, the Amex will require the issuer to have the following: (1) assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Amex's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Amex Company Guide. Section 1002(b) of the Amex Company Guide states that the Amex will consider removing from listing any security where, in the opinion of the Amex, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Amex inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Amex will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Amex 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.

200% of the percentage increase in the value of the Technology Index Notes, subject to a maximum payment amount (or ''Capped Amount'') determined at the time of issuance. The calculation of this Redemption Amount is set forth below:

$$\$10 + \left[\$10 \times 200\% \times \left(\frac{\text{Average Index Value} - \text{Initial Index Value}}{\text{Initial Index Value}}\right)\right], \text{ subject to Capped Amount}$$

If the Average Index Value is less than or equal to the Initial Index Value, a holder of the Notes will receive a Redemption Amount in cash equal to the principal amount multiplied by an ''Index Performance Factor.'' This Index Performance Factor is the relationship between the Average Index Value and the Initial Index Value, and will be a number equal or less than 1.0. The calculation of this Redemption Amount is set forth below:

$$\$10 \times \left(\frac{\text{Average Index Value}}{\text{Initial Index Value}}\right)$$

The Redemption Amount in this case would accordingly be less than or equal to $10 for each $10 principal amount of the Notes.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio of securities comprising the Technology Index. The Notes are designed for investors who want to participate in or gain exposure to the companies involved in various technology subsectors and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of options on the Technology Index.[8]

As of October 14, 2003, the market capitalization of the securities that would represent the Technology Index would range from a high of $314.4 billion to a low of $3.14 billion. The average monthly trading volume of the securities comprising the Index for the last six months, as of the same date, ranged from a high of 742.5 million shares to a low of 36.02 million shares. The aggregate market capitalization of all securities in the Index was approximately $1.714 trillion. The Amex would continue to calculate and disseminate the value of the Notes every fifteen seconds over the Consolidated Tape Association's Network B.

Because the Notes are linked to an equity index, the Amex's existing equity floor trading rules would apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Amex would 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.[9] Second, the Notes would be subject to the equity margin rules of the Amex.[10] Third, the Amex would, 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 Amex would 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 the initial purchase of the Notes.

The Amex represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. Because the Index is maintained by a broker-dealer or an affiliate of a broker-dealer, it is imperative that there be a functional separation, such as a firewall, between the trading desk of the broker-dealer and the research persons responsible for maintaining the Index. Morgan Stanley has represented to the Commission that such a firewall exists. Moreover, because Morgan Stanley presents Amex with a list of potential component replacements, it is imperative that both Morgan Stanley and Amex have policies that prohibit the distribution of material, non-public information by its employees. Morgan Stanley and Amex have represented that they have policies that prohibit the distribution of material, non-public information by their employees.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act[11] and furthers the objectives of Section 6(b)(5) of the Act[12] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Amex 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

[8] *See* Securities Exchange Act Release Nos. 36283 (September 26, 1995), 60 FR 51825 (October 3, 1995) (approving the listing of options on the Morgan Stanley High Technology 35 Index); and 41472 (June 2, 1999), 64 FR 31331 (June 10, 1999) (approving a reduction in the Morgan Stanley High Technology Index Value).

[9] 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.

[10] *See* Amex Rule 462 and Section 107B of the Amex Company Guide.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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 Amex. All submissions should refer to the File No. SR–Amex–2003–91 and should be submitted by November 24, 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.[13] The Commission finds that this proposal is similar to several approved notes whose value is linked to an equity index currently listed and traded on the Amex.[14] Accordingly, the Commission finds that the listing and trading of the Notes based on the Technology Index are 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.[15]

As described more fully above, at maturity, the holder of a Note will receive an amount based upon the Average Index Value of the Technology Index. Specifically, at maturity, the holder of a Note will be entitled to receive a payment based on whether the Average Index Value is greater or less than the Initial Index Value. If the Average Index Value is greater than the Initial Index Value, the holder of the Notes will receive an amount in cash equal to $10 plus the Leveraged Upside Payment. The Leveraged Upside Payment is equal to $10 multiplied by 200% of the percentage increase in the value of the Technology Index, subject to the Capped Amount. If the Average Index Value is less than or equal to the Initial Index Value, a holder of the Notes will receive a Redemption Amount in cash equal to the principal amount multiplied by the Index Performance Factor. The Index Performance Factor is the relationship between the Average Index Value and the Initial Index Value and will be a number equal or less than 1.0, and accordingly will be less than or equal to $10 for each $10 principal amount of the Notes.

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 Technology Index, subject to a cap.

The Commission notes that the Notes are not leveraged on the downside, non-principal protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the Technology Index. The Notes do not have a minimum principal amount that will be repaid at maturity, and the payments of the Notes prior to or at maturity may be less than the original issue price of the Notes. Thus, if the value of the Technology Index has declined at maturity, the holder of the Note will receive less than the original public offering price of the Note. Accordingly, 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 rate of return of the Notes is derivatively priced, based on the performance of the 35 common stocks underlying the Technology Index, and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes that the Amex's proposal adequately addresses the concerns raised by this type of product.

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

Moreover, the Commission notes that the 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. The Commission believes that the Exchange has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products.

Because Morgan Stanley presents Amex with a list of potential component replacements, it is imperative that Morgan Stanley and Amex have policies that prohibit the distribution of material, non-public information by their employees. Morgan Stanley and Amex have represented that they have policies that prohibit the distribution of material, non-public information by their employees. Moreover, because the Index is maintained by a broker-dealer or an affiliate of a broker-dealer, it is imperative that there be a functional separation, such as a firewall, between the trading desk of the broker-dealer and the research persons responsible for maintaining the Index. Morgan Stanley has represented to the Commission that such a firewall exists.

In approving the product, the Commission recognizes that the Technology Index is an equal-dollar index comprised of 35 component stocks designed to measure the performance of a cross-section of highly capitalized U.S. companies that are active in nine technology subsectors: (i) Computer services; (ii) design software; (iii) server software; (iv) PC software and new media; (v) networking and telecommunications equipment; (vi) server hardware; (vii) server hardware; (viii) PC hardware and peripherals; and (ix) specialized systems and semi-conductors. As of October 14, 2003, the market capitalization of the securities that would represent the Technology Index would range from a high of $314.4 billion to a low of $3.14 billion. The average monthly trading volume of the securities comprising the Index for the

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release Nos. 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) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500); 48151 (July 10, 2003), 68 FR 42438 (July 17, 2003) (approving the listing and trading of Merrill Lynch Accelerated Return Notes linked to the performance of the Amex Biotechnology Index); and 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB contingent principal protection notes linked to the S&P 500).

[15] 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).

last six months, as of the same date, ranged from a high of 742.5 million shares to a low of 36.02 million shares. The aggregate market capitalization of all securities in the Index was approximately $1.714 trillion. Given the compositions of the stocks underlying the Technology Index, the Commission believes that the listing and trading of the Notes that are based on the performance of the Technology Index should not unduly impact the market for the underlying securities comprising the Technology Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Technology Index are highly capitalized U.S. securities.

Furthermore, the Commission notes that the Notes depend upon the individual credit of the issuer, Morgan Stanley. To some extent this credit risk is minimized by the listing standards in Section 107A of the Amex Company Guide, which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Amex's ''Other Securities'' listing standards further require that the Notes have a market value of at least $4 million.[16] In any event, financial information regarding Morgan Stanley, in addition to the information on the 35 component stocks comprising the Technology Index, will be publicly available.[17]

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,[18] 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 Technology Index will be disseminated at least once every fifteen seconds throughout the trading day over the Consolidated Tape Association's Network B. The Commission believes that providing access to the value of the Technology 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 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.[19] 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. 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,[20] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Amex–2003–91), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27593 Filed 10–31–03; 8:45 am]

BILLING CODE 8010–01–P

[16] *See* Amex Company Guide Section 107A.

[17] The Commission notes that the 35 component stocks that make up the Technology Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[18] *See, e.g.*, 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).

[19] *See* note 14, *supra.*

[20] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48681; File No. SR–CBOE–2003–14]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Options on a Reduced Value NYSE Composite Index

October 22, 2003.

I. Introduction

On March 25, 2003, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the trading of options on the reduced value, Revised NYSE Composite Index. On August 6, 2003, the CBOE submitted Amendment No.1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on September 5, 2003.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

In January 2003, the New York Stock Exchange, Inc. (''NYSE'') announced that it would replace the NYSE Composite Index (''Old Index''), which was designed to measure the performance of securities listed on the NYSE (with the exception of preferred securities), with a Revised NYSE Composite Index.[5] The Revised NYSE Composite Index has 700 fewer components than the Old Index and, according to the NYSE, should create an index that is more representative of investable equity securities tracked on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jim Flynn, Attorney II, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission dated August 5, 2003 (''Amendment No. 1''). In Amendment No. 1, CBOE replaced its proposed rule change in its entirety.

[4] *See* Securities Exchange Act Release No. 48416 (August 27, 2003), 68 FR 52804.

[5] The Revised NYSE Composite Index would continue to measure the performance of all NYSE-listed common stock, American Depository Receipts (''ADRs''), tracking stocks and real estate investment trusts (''REITs''), but would exclude closed-end investment companies, exchange traded funds (''ETFs''), derivatives, preferred stocks, shares of beneficial interest, trust units and limited partnerships.