Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Room T–6D59, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *PointBeachEIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and from the PARS component of ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on March 3, 2005, at the Fox Hills Convention Center, 250 West Church Street in Mishicot, Wisconsin. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may pre-register to attend or present oral comments at the meeting by contacting Ms. Stacey Imboden, by telephone at 1–800–368–5642, extension 2462, or by e-mail at *PointBeachEIS@nrc.gov* no later than March 1, 2005. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Imboden's attention no later than February 23, 2005, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stacey Imboden, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Ms. Imboden may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 13th day of January, 2005.

For the Nuclear Regulatory Commission.

**Samson S. Lee,**

*Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 05–1353 Filed 1–25–05; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51055; File No. SR–Amex–2004–99]**

### Self Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 thereto Relating to the Listing and Trading of Contingent Principal Protected Notes Linked to the Performance of the Russell 2000

January 18, 2005.

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 December 9, 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. On January 6, 2005, Amex amended the proposed rule change.[3] 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.

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex defined the term ''market disruption event'' for purposes of the proposed rule change and specified the market capitalization of the Russell 2000 Index as of January 5, 2005.

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

The Exchange proposes to list and trade contingent principal protected notes, the performance of which is linked to the Russell 2000 Index (''Russell 2000'' or ''Index''). The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at the Office of the Secretary, the Amex, and at the Commission's Public Reference Room.

**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

Introduction

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.[4] The Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the Russell 2000 that provide for contingent principal protection (the ''Contingent Principal Protected Notes'' or ''Notes'').[5] The Russell 2000 is determined, calculated, and maintained solely by Frank Russell. The Notes will provide for an uncapped participation in the positive performance of the Russell 2000 during their term while also reducing the risk exposure to the principal investment amount as long as

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

[5] Lehman Brothers Holdings Inc. (''Lehman'') and Frank Russell Company (''Frank Russell'') have entered into a non-exclusive license agreement providing for the use of the Russell 2000 by Lehman and certain affiliates and subsidiaries in connection with certain securities including these Notes. Frank Russell is not responsible and will not participate in the issuance and creation of the Notes.

the Index does not at any time decline below a pre-established level to be determined at the time of issuance (''Threshold Level''). This Threshold Level will be a pre-determined percentage decline from the level of the Index at the close of the market on the date the Notes are priced for initial sale to the public (''Initial Index Level''). The Issuer expects that the Threshold Level will be approximately 70% of the Initial Index Level. A decline of the Index below the Threshold Level is referred to as a ''Contingent Event.''

The Contingent Principal Protected Notes will conform to the initial listing guidelines under Section 107A [6] and will be subject to the continued listing guidelines under Sections 1001–1003 [7] of the Company Guide. The Notes are senior non-convertible debt securities issued by Lehman. The Notes will have a term of at least one (1) but no more than ten (10) years. The original public offering price will be $1,000 per Note with a required minimum initial investment amount of $10,000.

The Notes will entitle the owner at maturity to receive at least 100% of the principal investment amount as long as the Russell 2000 never experiences a Threshold Event. In the case of a positive Index return, the holder would receive the full principal investment amount of the Note plus the product of $1,000, the percentage change of the Russell 2000 during the term and the participation rate (expected to be between 105–115%). Accordingly, even if the Index declines but never drops below the Threshold Level, the holder will receive the principal investment amount of the Notes at maturity. If however, the Notes experience a Contingent Event during the term, the holder loses the ''principal protection,'' and will be entitled to receive a payment based on the percentage change of the Index, positive or negative. In this case, the Notes will not have a minimum principal investment 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. Accordingly, if the Index experiences a negative return and a Contingent Event, the Notes would be fully exposed to any decline in the level of the Russell 2000.[8] The Notes are not callable by Lehman or redeemable by the holder before maturity.[9]

The payment that a holder of or investor in a Note will be entitled to receive (the ''Redemption Amount'') will depend on the relation of the level of the Russell 2000 at the close of the market on the third business day (the ''Valuation Date'') before maturity of the Notes (the ''Final Index Level'') and the Initial Index Level.[10] In addition, whether the Notes retain ''principal protection'' or are fully exposed to the performance of the Index is determined by whether the Russell 2000 ever experiences a Contingent Event during the term of the Notes.

If the percentage change of the Index is positive, the Redemption Amount per Note will equal:

$$\$1000 + \left[\$1000 \times \left(\frac{\text{Final Index Level} - \text{Initial Index Level}}{\text{Initial Index Level}}\right)\right]^{11}$$

If the percentage change of the Index is zero or negative and the Index never experienced a Contingent Event, the Redemption Amount per Note will equal the principal investment amount of $1,000.

If the Index experiences a Contingent Event the Redemption Amount per Note will equal:

[6] The initial listing standards for the Notes require: (1) A market value of at least $4 million; and (2) a term of at least one year. Because the Notes will be issued in $1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 holders do not apply. *See* Section 107A. 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 that 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. Amex represents that Lehman meets these requirements. Telephone conference among Jeffrey Burns, Associate General Counsel, Amex and Beth Kleiman, Vice President Capital Markets, Amex, and Ira Brandriss, Assistant Director; Geoffrey Pemble, Special Counsel; and Mitra Mehr, Attorney, Division of Market Regulation, Commission, on January 6, 2005 (''Telephone Conference with Amex'').

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[8] A negative return of the Russell 2000, together with a Contingent Event, will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment amount.

[9] Telephone Conference with Amex.

[10] In the event that a market disruption event occurs on the Valuation Date, such date will be the next business day on which no market disruption event occurs. Telephone Conference with Amex. In Amendment No. 1, Amex submitted the following definition of ''market disruption event'' for purposes of the proposed rule change: ''The term 'market disruption' event, as defined in the prospectus [related to the Note], is (i) a material suspension or limitation imposed on trading relating to 20% or more of the component stocks of the Index on the primary market or related markets at any time during the one-hour period that ends at the close of trading on such day; (ii) a material suspension of or limitation imposed on trading in futures and options contracts relating to the Index or any successor index by the primary exchange on which futures or options are traded, at any time during the one-hour period that ends at the close of trading on such day; (iii) any event, other than an early closure, that disrupts or impairs the ability of market participants in general to effect transactions in, or obtain market values for the securities that comprise 20% or more of the Index or any successor index on the relevant exchanges of which those securities are traded, at any time during the one-hour period that ends at the close of trading on such day; (iv) any event, other than early closure, that disrupts or impairs the ability of market participants in general to effect transactions in, or obtain market values for, the futures or options contracts relating to the Index or any successor index on the primary exchange or quotation system on which those futures or options contracts are traded at any time during the one-hour period that ends at the close of trading on such day; and (v) the closure of the relevant exchanges on which the securities that comprise 20% or more of the Index or any successor index are traded or on which futures or options contracts relating to the Index or any successor index are traded prior to its scheduled closing time unless the earlier closure is announced by the relevant exchanges at least one hour prior to the actual closing of the regular trading session and submission deadline for orders for execution at the close.''

[11] Amex represents that this formula is equivalent to the formula that appears in the prospectus. Telephone Conference with Amex.

$$\$1000+\left[\$1000\times\left(\frac{\text{Final Index Level}-\text{Initial Index Level}}{\text{Initial Index Level}}\right)\times\text{Participation Rate}\right]$$

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 Russell 2000. Unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity.[12] The Notes are designed for investors who want to participate or gain exposure to the Russell 2000 while partially limiting their investment risk and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of securities and options linked to the performance of the Russell 2000.[13]

Description of the Index

The Index is a capitalization-weighted index maintained by Frank Russell.[14] It is designed to track the performance of 2,000 common stocks of corporations with small market capitalizations relative to other stocks in the U.S. equity market. The companies represented in the Index are domiciled in the U.S. and its territories and cover a wide range of industries. All 2,000 stocks underlying the Index are traded on the New York Stock Exchange, Inc. (''NYSE''), the Amex or the Nasdaq Stock Market (''Nasdaq'') and form a part of the Russell 3000 Index. The Russell 3000 Index is comprised of the 3,000 largest U.S. companies, based on market capitalization, and it represents approximately 98% of the U.S. equity market.

The Index measures the price performance of the shares of common stock of the smallest 2,000 companies included in the Russell 3000 Index, which represented approximately 8% of the total market capitalization of the Russell 3000 Index as of December 3, 2004.[15] The Index is designed to track the performance of the small capitalization segment of the U.S. equity market. The Index is defined, assembled, and calculated by Frank Russell without regard to the Notes.

Only companies domiciled in the U.S. and its territories are eligible for inclusion in the Index. Companies domiciled in other countries are excluded from the Index, even if their common stock shares are traded on U.S. markets. Preferred stock, convertible preferred stock, participating preferred stock, paired shares, warrants, and rights are also excluded. Trust receipts, royalty trusts, limited liability companies, OTC Bulletin Board and Pink Sheets' quoted stock, closed-end mutual funds, and limited partnerships that are traded on U.S. exchanges are also ineligible for inclusion in the Index. Real Estate Investment Trusts and Beneficial Trusts are eligible for inclusion, however. In general, only one class of shares of a company is allowed in the Russell 3000 Index, although exceptions to this general rule have been made where Frank Russell has determined that each class of shares acts independently. The primary criteria used to determine the initial list of securities eligible for the Russell 3000 Index is total market capitalization, which is defined as the price of the shares times the total number of shares outstanding.

Based on closing values on May 31 of each year, Frank Russell reconstitutes the composition of the Russell 3000 Index using the then existing market capitalizations of eligible companies to reflect changes in capitalization rankings and shares available. If a stock ceases to trade as a result of a merger or acquisition during the year, then the stock would be deleted from the Index immediately, but would not be replaced until the subsequent annual recapitalization. No interim replacements will be made. As of June 30 of each year, the Index is adjusted to reflect the reconstitution of the Russell 3000 Index for that year.

As of December 3, 2004, the market capitalization of the Index components ranged from a high of approximately $2.531 billion to a low of approximately $3.858 million. As of the same date, the Index's highest weighted component stock constituted approximately 0.2257% of the Index's market capitalization, and the top five component stocks constituted approximately 1.0080% of the Index's market capitalization. The average daily trading volume for these same securities for the last six (6) months ranged from a high of approximately 1.07 million shares to a low of approximately 103,465 shares.

As a capitalization-weighted index, the Index reflects changes in the capitalization, or market value, of the component stocks relative to the capitalization on a base date. The current Index value is calculated by adding the market values of the Index's component stocks, which are derived by multiplying the price of each stock by the number of shares outstanding to arrive at the total market capitalization of the 2,000 stocks. The total market capitalization is then divided by a divisor, which represents the ''adjusted'' capitalization of the Index on the base date of December 31, 1986. To calculate the Index, last sale prices are used for exchange-traded and Nasdaq stocks. If a component stock is not open for trading, the most recently traded price for that security is used in calculating the Index. To provide continuity for the Index's value, the divisor is adjusted periodically to reflect certain events, including changes in the number of common shares outstanding for component stocks, company additions or deletions, corporate restructurings, and other capitalization changes. As of December 3, 2004, the divisor was 1,735,296.

The Index value is updated and disseminated every 15 seconds throughout the trading day and is available from numerous vendors, independent of the issuer and Amex, such as Bloomberg and Reuters. The value of the Index on a delayed basis can be accessed by individual investors at *http://finance.yahoo.com.* The last sale information for the Notes is disseminated on a real time basis on Tape B and a variety of other sources.[16] In the event that the Index is no longer calculated and disseminated by an independent third-party source, the Exchange will delist the Notes.[17]

Because the Notes are issued in $1,000 denominations, the Amex's

[12] Telephone Conference with Amex.

[13] *See e.g.*, Securities Exchange Act Release Nos. 50724 (November 23, 2004), 69 FR 69655 (November 30, 2004)(SR–NASD–2004–132)(listing and trading of Accelerated Return Notes linked to the Russell 2000); 50710 (November 19, 2004), 69 FR 69435 (November 29, 2004)(SR–NASD–2004–157)(listing and trading of Leveraged Upside Securities linked to the Russell 2000); 49388 (March 10, 2004), 69 FR 12720 (March 17, 2004)(SR–CBOE–2003–151)(options on three Russell Indexes); 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002)(SR–NYSE–2002–28); 32694 (July 29, 1993), 58 FR 41814 (August 4, 1993)(SR–CBOE–93–16)(FLEX options on Russell 2000); 32693 (July 29, 1993), 58 FR 41817 (August 5, 1993) (SR–CBOE–93–15); and 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992)(SR–CBOE–92–02)(options on the Russell 2000).

[14] For additional information regarding the Index see *http: //www.russell.com.*

[15] As of January 5, 2005, the total market capitalization of the Index was $1.33 trillion. *See* Amendment No. 1.

[16] Telephone Conference with Amex.

[17] Telephone Conference with Amex.

existing debt 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.[18] Second, even though the Exchange's debt trading rules apply, the Notes will be subject to the equity margin rules of the Exchange.[19] 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, Lehman will deliver a prospectus in connection with the initial sales of the Notes. The procedures for the delivery of a prospectus will be the same as Lehman's current procedure involving primary offerings.[20]

The Exchange 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. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

Pursuant to the Securities Exchange Act Rule 10A–3, 17 CFR 240.10A–3 and Section 3 of the Sarbanes-Oxley Act of 2002, Public Law 107–204, 116 stat. 745 (2002), Amex will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.[21]

[18] 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.

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

[20] Telephone Conference with Amex.

[21] Telephone Conference with Amex.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act[22] in general, and furthers the objectives of Section 6(b)(5) of the Act[23] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change, as amended, would 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, 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 at (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2004–99 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 No. SR–Amex–2004–99. 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 at (*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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 No. 2004–99 and should be submitted on or before February 16, 2005.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

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

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.[24] The Commission notes that the proposal is similar to several approved instruments currently listed and traded on Amex.[25] 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

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Securities Exchange Act Release Nos. 50850 (December 14, 2004), 2004 SEC Lexis 2953 (SR–Amex–2004–87) (approving the listing and trading of Contingent Principal Protected Notes linked to S&P 500); 50414 (September 20, 2004), 69 FR 58001 (September 28, 2004) (SR–Amex–2004–68) (approving the listing and trading of Wachovia Contingent Principal Protected Notes on the S&P 500); 48486 (September 11, 2003); 68 FR 54758 (September 18, 2003) (SR–Amex–2003–74) (approving the listing and trading of CSFB Contingent Principal Protected Notes on the S&P 500); 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (SR–Amex–2004–48) (approving the listing and trading of Morgan Stanley PLUS Notes); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (SR–Amex–2003–62) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (SR–Amex–2003–45) (approving the listing and trading of a CSFB Accelerated Return Notes linked to S&P 500).

facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[26]

The requirements of Section 107A of the Company Guide were designed to address the concerns attendant to the trading of hybrid securities, like the Notes. For example, Section 107A of the Company Guide provides that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. Amex represents that Lehman meets these requirements. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have a market value of at least $4 million.[27] The Commission also notes that the Notes will be registered under Section 12 of the Act.[28] By imposing the hybrid listing standards and the suitability, disclosure, and compliance requirements noted in the proposal above, the Commission believes Amex has addressed adequately the potential problems that could arise from the hybrid nature of the Notes.

In approving the product, the Commission recognizes that the Index is a modified capitalization-weighted index of 2000 stocks traded on NYSE, Nasdaq and Amex. The Commission notes that the Index is broadly diversified and that the overwhelming majority of the stocks that comprise the Index are not inactively traded. Thus, the Commission believes that the listing and trading of the Notes should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns. Moreover, all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets.

The Commission also believes that any concerns that a broker-dealer, such as Lehman, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the Notes issuance in relation to the net worth of Lehman.[29]

Finally, the Commission notes that the value of the Index will be widely disseminated at least once every fifteen seconds throughout the trading day. The Exchange represents that the Index will be determined, calculated and maintained solely by Frank Russell.

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.[30] 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,[31] to approve the proposal on an accelerated basis.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change, as amended (SR–Amex–2004–99), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–278 Filed 1–25–05; 8:45 am]

BILLING CODE 8010–01–P

[26] 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).

[27] *See* Company Guide Section 107A.

[28] 15 U.S.C. 781.

[29] *See* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (SR–NASD–2001–73) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq–100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (SR–Amex–2001–40) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (SR–Amex–96–27) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

[30] *See supra* note 24.

[31] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[32] *Id.*

[33] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51058; File No. SR–Amex–2004–38]**

## Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 2, 3 and 4 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 by the American Stock Exchange LLC Relating to the Listing and Trading of the iShares® COMEX Gold Trust

January 19, 2005.

## I. Introduction

On May 24, 2004, the American Stock Exchange LLC (''Amex'' 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 list and trade under new Amex Rules 1200A *et seq.* iShares® COMEX Gold Trust Shares (''Gold Shares''). On November 9, 2004, Amex amended its proposal; however, the Exchange withdrew this amendment on November 17, 2004. On November 10, 2004 the Exchange submitted a second amendment.[3] On November 16, 2004, the Exchange submitted a third amendment.[4] On December 1, 2004, the Exchange submitted a fourth amendment.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 9, 2004.[6] The Commission received no comment letters regarding the proposed rule change. On January 7, 2005, the Exchange submitted a fifth amendment.[7] This notice and order

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

[2] 17 CFR 240.19b-4.

[3] *See* Amendment No. 2, dated November 10, 2004 (''Amendment No. 2''). In Amendment No. 2, the Exchange revised the proposed rule text and corresponding description. Amendment No. 2 replaced Amex's original filing in its entirety.

[4] *See* Amendment No. 3, dated November 16, 2004 (''Amendment No. 3''). In Amendment No. 3, the Exchange proposed clarifying changes to certain aspects of Amendment No. 2 and modified the proposed rule text.

[5] *See* Amendment No. 4, dated December 1, 2004 (''Amendment No. 4''). In Amendment No. 4, the Exchange provided additional description of the creation and redemption process for the Gold Trust shares and made clarifying changes to the proposed rule text. Amendment No. 4 replaced Amex's amended proposal in its entirety.

[6] *See* Securities Exchange Act Release No. 50792 (December 3, 2004), 69 FR 71446 (''Notice'').

[7] *See* Amendment No. 5, dated January 7, 2005 (''Amendment No. 5''). In Amendment No. 5, the Exchange proposed changes to Commentary .01 to Rule 1202A for the purpose of clarifying that the Exchange will submit separate rule filings under

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