pence, and then cancel those repurchased shares.

2. *Capital Elections.* Under the repurchase options, JPMorgan Cazenove Limited (''JPMorgan Cazenove'') would offer to buy B shares for 65 pence per share, free of all dealing expenses and commissions. The Initial Capital Election would occur shortly after the EGM. At present, NGT expects that JPMorgan Cazenove would offer Deferred Capital Elections in 2006 and 2007.

Following completion of any repurchase offer, JPMorgan Cazenove would have the right to require NGT to purchase at 65 pence per B share, those B shares purchased from shareholders pursuant to JPMorgan Cazenove's repurchase offer. All B shares repurchased by NGT from JPMorgan Cazenove would be cancelled, and would not be held as treasury shares. Those shareholders electing to hold their B shares for a period of time (including those that select the Final Maturity Election, described below) would be entitled to a dividend on the B shares at a rate per annum of 75% of 12-month Sterling London Inter-Bank Offer Rate on a value of 65 pence per B share (''Continuing Dividend'').

3. *Final Maturity Elections.* Under the terms and conditions of the B shares, NGT would convert all of the B shares outstanding after a certain date in 2007 (specified in the proxy materials) into ordinary shares. The conversion ratio would be one new ordinary share for every M/65 B shares, where M represents the average of the closing mid-market quotations in pence of the new ordinary shares on the London Stock Exchange, as derived from the Daily Official List (as maintained by the UK Listing Authority for the purposes of the Financial Services and Markets Act 2000, as amended) for the five business days immediately preceding the conversion date), fractional entitlements being disregarded and the balance of those shares (including any fractions) shall be deferred shares as described in the proxy materials. Conversions of the B shares would be effected by NGT through a reorganization of share capital that would result in the elimination of the B shares though their conversion into ordinary shares.

II. Proposed Transactions

NGT requests authority under section 12(c) and rule 42 to acquire, retire, redeem and/or convert the B shares in connection with Initial Capital Elections, Deferred Capital Elections and Final Maturity Elections.[9] The company also requests authority under section 6(a)(2) to effect the intended reverse stock split. Further, NGT requests authority to solicit shareholder consents with regard to the B share scheme under section 12(e) and rules 62 and 65. NGT states that it already has the necessary authority to issue the B shares.[10]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–2198 Filed 5–5–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51634; File No. SR–Amex–2005–036]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of Notes Linked to the Performance of the CBOE S&P 500 BuyWrite Index(sm)

April 29, 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 March 25, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to list and trade notes, the performance of which is linked to the S&P 500 BuyWrite Index(sm) (the ''BXM Index'' or ''Index''). The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the principal offices of 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities 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 under Section 107A of the Company Guide notes linked to the performance of the BXM Index (the ''Notes''). The BXM Index is determined, calculated and maintained solely by the Chicago Board Options Exchange, Inc. (''CBOE'').[4] Wachovia Corporation

[9] Not all sellers of B shares would be unaffiliated with NGT, so those repurchases would not be exempt under rule 42.

[10] Economically, the issuance of B shares constitutes a dividend. This dividend, however, would not be subject to section 12(c) of the Act or rule 46 because it would be paid out of NGT's ''distributable reserves,'' which is generally equivalent to unrestricted retained earnings under U.S. GAAP. The issuance of B shares would be subject to sections 6 and 7 of the Act. NGT, however, is authorized through September 30, 2007 to issue various types of securities, including preferred stock and securities convertible into common stock, subject to certain conditions. *See* HCAR No. 27898 (September 30, 2004) (''Financing Order''). NGT states that the B shares issuance would comply with all of the conditions of the Financing Order.

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

[2] 17 CFR 240.19b–4.

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

[4] If the CBOE discontinues publication of the Index and the CBOE or another entity publishes a successor or substitute index that the calculation agent determines, in its sole discretion, to be comparable to the Index (a ''Successor Index''), then the calculation agent shall substitute the Successor Index as calculated by the CBOE or any other entity for the Index and calculate the Redemption Amount (as defined below) by reference to the Successor Index. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, and David Liu, Attorney, Division, Commission, on April 26, 2005. In the event that the CBOE discontinues publication of the Index and (a) the

(''Wachovia'') will issue the Notes under the name ''Portfolio Tracking Securities.'' [5]

The Notes will conform to the initial listing guidelines under Section 107A [6] and continued listing guidelines under Sections 1001–1003 [7] of the Company Guide. The Notes are a series of medium-term debt securities of Wachovia that provide for a cash payment at maturity or upon earlier exchange at the holder's option, based on the performance of the BXM Index as adjusted by the Adjustment Factor (as defined below).[8] The principal amount of each Note is expected to be $1,000. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. In fact, the value of the BXM Index must increase for the investor to receive at least the $1,000 principal amount per security at maturity or upon exchange or redemption.[9] If the value of the BXM Index decreases or does not increase sufficiently, the investor will receive less, and possibly significantly less, than the $1,000 principal amount per security.[10] In addition, holders of the Notes will not receive any interest payments from the Notes. The Notes will have a term of at least one (1) but no more than ten years.[11] Commencing May 2006 and continuing on an annual basis, during the first fifteen calendar days of May, holders of the Notes will have the right to exchange the Notes for a cash amount equal to the Redemption Amount (as defined below) on the Exchange Valuation Date (as defined below) for such exchange.[12] The Notes are not callable by the issuer.

The payment that a holder of a Note will receive at maturity or exchange (the ''Redemption Amount'') will depend on the relation of the Index ending level (the ''Index Ending Level'') to the closing level of the Index on the pricing date (the ''Index Starting Level'') of the BXM Index, as adjusted by the Adjustment Factor (as defined below). The Index Ending Level, for Notes held to maturity, will equal the arithmetic average of the products of the closing levels of the Index on each Valuation Date (as defined below). For Notes exchanged pursuant to the exchange right, the Index Ending Level will equal the closing level of the Index on the applicable Exchange Valuation Date (as defined below). For purposes of determining the amount payable at maturity of the Notes, the Redemption Amount will be determined on each of the five scheduled trading days immediately prior to the maturity date (each a ''Valuation Date'' and collectively, the ''Valuation Dates''). In connection with an exchange, the Redemption Amount will be determined on the second scheduled trading day after the end of each exchange period (the ''Exchange Valuation Date''). In the event that a Valuation Date or an Exchange Valuation Date occurs on a non-scheduled trading day or if the calculation agent determines[13] that a market disruption event [14] occurs on

calculation agent does not select or approve a Successor Index or (b) the Successor Index is no longer published on any of the relevant scheduled trading days, the calculation agent will compute a substitute level for the Index in accordance with the procedures last used to calculate the level of the Index before any discontinuation but using only those securities that comprised the Index prior to such discontinuation. If a Successor Index is selected or the calculation agent calculates a level as a substitute for the Index, the Successor Index or level will be used as a substitute for the Index for all purposes going forward even if CBOE elects to begin republishing the Index, unless the calculation agent decides to use the republished Index. If the CBOE discontinues publication of the Index and the calculation agent determines that no Successor Index is available at that time, then on each scheduled trading day until the earlier to occur of (a) the determination of the Redemption Amount or (b) a determination by the calculation agent that a Successor Index is available, the calculation agent will determine the level that would be used in computing the Redemption Amount as if that day were a scheduled trading day. *See also infra* note 22.

First Union Securities, Inc. has been appointed as the initial calculation agent. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and David Liu, Attorney, Division, Commission, on April 26, 2005.

[5] Wachovia and Standard & Poor's (''S&P''), a division of the McGraw-Hill Companies, Inc. have entered into a non-exclusive license agreement providing for the use of the BXM Index by Wachovia in connection with certain securities including the Notes. S&P is not responsible for and will not participate in the issuance and creation of the Notes. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and David Liu, Attorney, Division, Commission, on April 26, 2005.

[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. 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. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $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.

[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] The Adjustment Factor is an annual fee that accrues daily over the term of the Notes and is equal to 1.5% per annum, compounded daily on an actual/365 day count. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and David Liu, Attorney, Division, Commission, on April 26, 2005.

[9] The Notes are also subject to a 1.00% up-front fee, as well as a 1.50% annual fee, compounded daily. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and David Liu, Attorney, Division, Commission, on April 26, 2005.

[10] Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and David Liu, Attorney, Division, Commission, on April 26, 2005.

[11] The term of the Notes is expected to be five years and will be disclosed in the prospectus supplement.

[12] The ''Exchange Valuation Date'' is the second scheduled trading day following the end of each exchange period, provided that if such day is not a trading day or if a market disruption event occurs on such day, the Exchange Valuation Date will be the next following scheduled trading day on which no market disruption event has occurred. There is no minimum number of Notes required for an exchange. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and David Liu, Attorney, Division, Commission, on April 26, 2005.

[13] Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and David Liu, Attorney, Division, Commission, on April 26, 2005.

[14] A ''market disruption event'' is defined as the failure of the primary market or related markets to open for trading during regular trading hours or the occurrence or existence of any of the following events: (i) A trading disruption, if material, at any time during the one hour period that ends at the close of trading for the applicable exchange; (ii) an exchange disruption, if material, at any time during the one hour period that ends at the close of trading for the applicable exchange; or (iii) an early closure. A ''trading disruption'' generally means any suspension of, or limitation, imposed on trading by the primary exchange or related exchange or otherwise, whether by reason of movements in price exceeding limits permitted by the relevant exchange or related exchange or otherwise (i) relating to securities that comprise 20% or more of the level of the S&P 500® Index (the ''S&P 500'') or (ii) in options contracts or futures contracts relating to the Index or the S&P 500 on any relevant related exchange. An ''exchange disruption'' means any event (other than a scheduled early closure) that disrupts or impairs the ability of market participants in general to (i) effect transactions in, or obtain market values on, any primary exchange or related exchange in securities that comprise 20%

Continued

such date, the Valuation Date or the Exchange Valuation Date, as applicable, will be postponed to the next scheduled trading day on which no market disruption event occurs.

The Adjustment Factor will begin at 100% and will be reduced by the fee rate of 1.5% per annum, compounded daily on an actual/365 day count. On any calendar day, the adjustment factor is equal to:

$$(100\% - \left(\frac{1.5\%}{365}\right))^{n},$$

where ''n'' is the number of days from but excluding the pricing date to and including such calendar day.

A holder or investor on the maturity date or applicable exchange date will receive a Redemption Amount equal to:

$$\$990 \times \left(\frac{\text{Adjusted Index Ending Level}}{\text{Index Starting Level}}\right)$$

The Adjusted Index Ending Level for Notes held to maturity is equal to the average of the products of the Index Ending Level and the Adjustment Factor on each Valuation Date. In the case of an exchange, the Adjusted Index Ending Level is equal to the product of the Index Ending Level and the Adjustment Factor on the applicable Exchange Valuation Date.

The Notes are cash-settled in U.S dollars and do not give the holder any right to receive any of the component securities, dividend payments, or any other ownership right or interest in the securities comprising the BXM Index.[15] The Notes are designed for investors who want to participate in the exposure to the S&P 500 that the BXM Index provides while limiting downside risk, and who are willing to forego interest payments and principal protection on the Notes during their term.

The Exchange notes that the Commission has previously approved the listing on the Amex of securities with structures similar to that of the proposed Notes.[16] *Description of the Index.* The BXM Index is a benchmark index designed to measure the performance of a hypothetical ''buy-write''[17] strategy on the S&P 500. Developed by the CBOE in cooperation with S&P, the Index was initially announced in April 2002.[18] The Exchange states that the CBOE developed the BXM Index in response to several factors, including the repeated requests by options portfolio managers that the CBOE provide an objective benchmark for evaluating the performance of buy-write strategies, one of the most popular option trading strategies. Further, the CBOE developed the BXM Index to provide investors with a relatively straightforward indicator of the risk-reducing character of options that otherwise may seem complicated and inordinately risky.

The BXM Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the S&P 500, and (2) ''writing'' (or selling) near-term S&P 500 call options (SPX), generally on the third Friday of each month. This strategy consists of a hypothetical portfolio consisting of a ''long'' position indexed to the S&P 500 on which are deemed sold a succession of one-month, at-the-money call options on the S&P 500 (SPX) listed on the CBOE. Dividends paid on the component stocks underlying the S&P 500 and the dollar value of option premium deemed received from the sold call options are functionally ''re-invested'' in the covered S&P 500 portfolio.

The value of the BXM Index on any given date will equal the value of the BXM Index on the previous day multiplied by the daily rate of return[19] on the covered S&P 500 portfolio on that date. Thus, the daily change in the BXM Index reflects the daily changes in value of the covered S&P 500 portfolio, which consists of the S&P 500 (including dividends) and the component S&P 500 option (SPX). The daily closing price of the BXM Index is calculated and disseminated by the CBOE on its Web site at *http://www.cboe.com* and via the Options Pricing and Reporting Authority (''OPRA'') at the end of each trading day.[20] The value of the S&P 500 is widely disseminated at least once every fifteen (15) seconds throughout the scheduled trading day. The Exchange believes that the intraday dissemination of the S&P 500, along with the ability of investors to obtain real time, intraday S&P 500 call option pricing provides sufficient transparency regarding the BXM Index.[21] In addition,

or more of the level of the S&P 500 or (ii) effect transactions in options contracts or futures contracts relating to the Index or the S&P 500 on any relevant related exchange. A ''related exchange'' is an exchange or quotation system on which futures or options contracts relating to the Index or the S&P 500 are traded.

[15] Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and David Liu, Attorney, Division, Commission, on April 26, 2005.

[16] *See* Securities Exchange Act Release Nos. 50719 (Nov. 22, 2004), 69 FR 69644 (Nov. 30, 2004) (approving the listing and trading of non-principal protected notes linked to the BXM Index) (File No. SR–Amex–2004–55).

[17] A ''buy-write'' is a conservative options strategy in which an investor buys a stock or portfolio and writes call options on the stock or portfolio. This strategy is also known as a ''covered call'' strategy. A buy-write strategy provides option premium income to cushion decreases in the value of an equity portfolio, but will underperform stocks in a rising market. A buy-write strategy tends to lessen overall volatility in a portfolio.

[18] The BXM Index consists of a long position in the component securities of the S&P 500 and options on the S&P 500. The Exchange notes that the Commission has approved the listing of numerous securities linked to the performance of the S&P 500 as well as options on the S&P 500. *See, e.g.*, Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500) (File No. SR–CBOE–83–8); 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) (File No. SR–Amex–2003–46); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to the S&P 500) (File No. SR–Amex–2003–45); 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) (File No. SR–Amex–2003–62); and 48486 (Sept. 11, 2003), 68 FR 54758 (Sept. 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protection Notes on the S&P 500) (File No. SR–Amex–2003–74). In addition, the Commission previously approved the listing and trading of a packaged buy-write option strategy known as ''BOUNDS.'' *See* Securities Exchange Act Release No. 36710 (Jan. 11, 1996), 61 FR 1791 (Jan. 23, 1996) (File Nos. SR–Amex–94–56, SR–CBOE–95–14, and SR–PSE–95–01).

[19] The daily rate of return on the covered S&P 500 portfolio is based on (a) the change in the closing value of the stocks in the S&P 500 portfolio, (b) the value of ordinary cash dividends on the stocks underlying the S&P 500, and (c) the change in the market price of the call option. The daily rate of return will also include the value of ordinary cash dividends distributed on the stocks underlying the S&P 500 that are trading ''ex-dividend'' on that date (that is, when transactions in the stock on an organized securities exchange or trading system no longer carry the right to receive that dividend or distribution) as measured from the close in trading on the previous day.

[20] The Exchange notes that the Commission, in connection with Bond Index Term Notes and the Merrill Lynch EuroFund Market Index Target Term Securities, has previously approved the listing and trading of these products where the dissemination of the value of the underlying index occurred once per trading day. *See* Securities Exchange Act Release Nos. 41334 (Apr. 27, 1999), 64 FR 23883 (May 4, 1999) (approving the listing and trading of Bond Indexed Term Notes) (File No. SR–Amex–99–03) and 40367 (Aug. 26, 1998), 63 FR 47052 (Sept. 3, 1998) (approving the listing and trading of Merrill Lynch EuroFund Market Index Target Term Securities) (File No. SR–Amex–98–24).

[21] Call options on the S&P 500 (SPX) are traded on the CBOE, and both last sale and quotation information for the call options are disseminated in real time through OPRA. The value of the BXM can be readily approximated as a function of observable market prices throughout the trading day. In particular, such a calculation would require information on the current price of the S&P 500 index and specific nearest-to-expiration call and put options on that index. These components trade in highly liquid markets, and real-time prices are available continuously throughout the trading day from a number of sources including Bloomberg and CBOE. The ''Indicative Value'' (as discussed below) may be a more accurate indicator of the valuation of the Notes because it reflects the fees associated with the Notes (*e.g.*, on the initial principal amount and the Adjustment Amount); however, the ''Indicative Value'' is also not adjusted intraday. Telephone conversation between Jeffrey P. Burns,

as indicated above, the value of the BXM Index is calculated once every scheduled trading day, thereby, providing investors with a daily value of such ''hypothetical'' buy-write options strategy on the S&P 500.

The Exchange states that the CBOE has represented that the BXM Index value will be calculated and disseminated by the CBOE once every scheduled trading day after the close. The daily change in the BXM Index reflects the daily changes in the S&P 500 and related options positions. The Exchange states that Wachovia has represented that it will seek to arrange to have the BXM Index calculated and disseminated on a daily basis through a third party if the CBOE ceases to calculate and disseminate the Index.[22] If, however, Wachovia is unable to arrange the calculation and dissemination of the BXM Index as indicated above, the Exchange will undertake to delist the Notes.[23]

In order to provide an updated value of the daily Redemption Amount for use by investors, the Exchange will disseminate over the Consolidated Tape Association's Network B, a daily indicative Redemption Amount (the ''Indicative Value''). The Indicative Value will be calculated by the Amex after the close of trading and after the CBOE calculates the BXM Index for use by investors the next scheduled trading day. It is designed to provide investors with a daily reference value of the Index. The Indicative Value may not reflect the precise value of the current Redemption Amount or amount payable upon exchange or maturity. Therefore, the Indicative Value disseminated by the Amex during trading hours should not be viewed as a real time update of the BXM Index, which is calculated only once a day. While the Indicative Value that will be disseminated by the Amex is expected to be close to the current BXM Index value, the values of the Indicative Value and the BXM Index will diverge due to the application of the Adjustment Factor.

From June 30, 1988 through March 18, 2005, the annualized returns for the BXM Index and the S&P 500 were 11.91% and 11.70%, respectively, with the annualized standard deviation of the daily returns during the same time period of 10.92% and 16.06%, respectively. As the chart in attached Exhibit 3 to the Exchange's Form 19b–4 indicates, the BXM Index will closely track the S&P 500 except in those cases where the market is significantly rising or decreasing. In the case of a fast rising market, the BXM Index will trail the S&P 500 due to the limited upside potential of the Index because of the ''buy-write'' strategy. Due to the cushioning effect of the ''buy-write'' strategy, the BXM Index has in the past exhibited negative returns that are less than the S&P 500 during a down market. The Exchange expects the BXM Index to continue to display these characteristics.

The call options included in the value of the BXM Index have successive terms of approximately one month. Each day that an option expires, which day is referred to as a ''roll'' date, that option's value at expiration is taken into account in the value of the BXM Index. At expiration, the call option is settled against the ''Special Opening Quotation,'' a special calculation of the S&P 500. The final settlement price of the call option at expiration is equal to the difference between the Special Opening Quotation and the strike price of the expired call option, or zero, whichever is greater, and is removed from the value of the BXM Index. Subsequent to the settlement of the expired call option, a new, ''short'' or sold at-the-money call option is included in the value of the BXM Index.[24] The initial value of the new call option is calculated by the CBOE and is based on the volume-weighted average of all the transaction prices of the new call option during a designated time period on the day the strike price is determined.[25]

As of March 18, 2005, the market capitalization of the securities included in the S&P 500 ranged from a high of $400.4 billion to a low of $579.04 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 38.90 million shares to a low of 180,857 shares.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[26]

Because the Notes are issued in $1,000 denominations, the Amex's 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.[27] Second, even though the Exchange's debt trading rules apply, the Notes will be subject to the equity margin rules of the Exchange.[28] 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,[29] 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, Wachovia will deliver a prospectus in connection with its sales of the Notes.

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 and options that include additional monitoring on key pricing dates,[30] which the Exchange states have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material,

Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and David Liu, Attorney, Division, Commission, on April 26, 2005.

[22] Prior to such change in the manner in which the BXM Index is calculated, or in the event of any Index substitution, the Exchange will file a proposed rule change pursuant to Rule 19b–4, which must be approved by the Commission prior to continued listing and trading in the Notes. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and David Liu, Attorney, Division, Commission, on April 26, 2005.

[23] *See supra* note 4 (regarding discontinuation of the calculation and dissemination of the Notes).

[24] Like the expired call option, the new call option will expire approximately one month after the date of sale.

[25] For this purpose, the CBOE excludes from the calculation those call options identified as having been executed as part of a spread (*i.e.*, a position taken in two or more options in order to profit through changes in the relative prices of those options).

[26] *See* 17 CFR 240.10A–3.

[27] Amex Rule 411 requires, among other things, that every member or member organization use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

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

[29] *See* Amex Rule 411.

[30] Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and David Liu, Attorney, Division, Commission, on April 26, 2005.

non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [31] in general, and furthers the objectives of Section 6(b)(5) of the Act [32] 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 will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange states that no written comments were solicited or received with respect to 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. Comments may be submitted by any of the following methods:

Electronic comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–036 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–2005–036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the 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. SR–Amex–2005–036 and should be submitted on or before May 27, 2005.

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

Amex has asked the Commission to approve the proposal on an accelerated basis to accommodate the timetable for listing the Notes. 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.[33] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[34] Accordingly, the Commission finds that the listing and trading of the Notes based on the BXM Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities consistent with Section 6(b)(5) of the Act.[35]

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. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least $4 million.[36] In any event, financial information regarding Wachovia, in addition to the information on the component stocks, which are reporting companies under the Act, and the Notes, which will be registered under Section 12 of the Act, will be available.

In approving the product, the Commission recognizes that the Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the S&P 500, and (2) "writing" (or selling) near-term S&P 500 call options (SPX), generally on the third Friday of each month. Given the large trading volume and capitalization of the compositions of the stocks underlying the S&P 500, the Commission believes that the listing and trading of the Notes that are linked to the BXM Index should not unduly impact the market for the underlying securities compromising the S&P 500 or raise manipulative concerns.[37] Moreover, the issuers of the underlying securities comprising the S&P 500 are subject to reporting requirements under

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78f(b)(5).

[34] *See, e.g.*, Securities Exchange Act Release Nos. 51426 (Mar. 23, 2005), 70 FR 16315 (Mar. 30, 2005) (approving the listing and trading of notes linked to the performance of the CBOE S&P 500 BuyWrite Index(sm)) (File No. SR–Amex–2005–022); 50719 (Nov. 22, 2004), 69 FR 69644 (Nov. 30, 2004) (approving the listing and trading of notes linked to the performance of the CBOE S&P 500 BuyWrite Index(sm)) (File No. SR–Amex–2004–55); 48486 (Sept. 11, 2003), 68 FR 54758 (Sept. 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protected Notes on the S&P 500) (File No. SR–Amex–2003–74); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of UBS Partial Principal Protected Notes linked to the S&P 500) (File No. SR–Amex–2003–62); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of CSFB Accelerated Return Notes linked to S&P 500) (File No. SR–Amex–2003–45); 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) (File No. SR–Amex–2003–46); and 36710 (Jan. 11, 1996), 61 FR 1791 (Jan. 23, 1996) (approving the listing and trading of BOUNDS) (File Nos. SR–Amex–94–56, SR–CBOE–95–14, and SR–PSE–95–01).

[35] 15 U.S.C. 78f(b)(5). In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[36] *See* Company Guide Section 107A(c).

[37] The issuer, Wachovia, disclosed in the prospectus and prospectus supplement that the hedging activities of it and its affiliates, including taking positions in the stocks underlying the Index and selling call options on the Index, which could adversely affect the market value of the Notes from time to time and the redemption amount holders of the Notes would receive on the Notes. Such hedging activity must, of course, be conducted in accordance with applicable regulatory requirements.

the Act, and 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 Wachovia, 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 Wachovia.[38]

Finally, the Commission notes that the value of the Index will be calculated and disseminated by the CBOE once every trading day after the close of trading. However, the Commission notes that the value of the S&P 500 will be widely disseminated at least once every fifteen seconds throughout the trading day and that investors are able to obtain real-time call option pricing on the S&P 500 during the trading day. Further, the Indicative Value, which will be calculated by the Amex after the close of trading and after the CBOE calculates the BXM Index for use by investors the next trading day, is designed to provide investors with a daily reference value of the adjusted Index. The Commission notes that Wachovia has agreed to arrange to have the BXM Index calculated and disseminated on a daily basis through a third party in the event that the CBOE discontinues calculating and disseminating the Index. In such event, the Exchange agrees to obtain Commission approval, pursuant to filing the appropriate Form 19b–4, prior to the substitution of the CBOE BXM Index. Further, the Commission notes that the Exchange has agreed to undertake to delist the Notes in the event that the CBOE ceases to calculate and disseminate the Index, and Wachovia is unable to arrange to have the BXM Index calculated and widely disseminated through a third party.

The Commission finds good cause for approving the proposed rule change 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.[39] 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,[40] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (File No. SR–Amex–2005–036) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

Jill M. Peterson,

Assistant Secretary.

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[38] *See* Securities Exchange Act Release Nos. 44913 (Oct. 9, 2001), 66 FR 52469 (Oct. 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 (Sept. 27, 1996), 61 FR 52480 (Oct. 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).

[39] *See* supra notes 16 (citing previous approvals of securities with structures similar to that of the proposed Notes); and 18 (citing previous approvals of securities linked to the performance of the S&P 500 as well as options on the S&P 500).

[40] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51639; File No. SR–CHX–2005–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Participant Fees and Credits

April 29, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on April 21, 2005, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the CHX. The proposed rule change has been filed by the CHX as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) [4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its rules to amend its Participant Fee Schedule to allow the Exchange to extend the fixed fee exemption for CHXpress® securities to new securities during the course of a month. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

PARTICIPANT FEES AND CREDITS

* * * * *

E. Specialist Fixed Fees

Except in the case of Tape B Exemption Eligible Securities (as defined above in Section D), and Designated CHXpress Securities (as defined below), which shall be exempt from assessment of fixed fees, specialists will be assigned a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

* * * * *

''Designated CHXpress Securities'' are those issues which have been designated by the Exchange [on a monthly basis] as fixed-fee exempt *at the beginning of each month, or which have been added by the Exchange to the list of exempt securities during the month, with the consent of the specialist assigned to trade the issue.*

* * * * *

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 Exchange 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 IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).