

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it recently approved a similar proposal by the New York Stock Exchange.¹⁴ The Commission did not receive any comments on that proposal when it was published for comment.¹⁵ For these reasons, the Commission designates the amended proposal to be effective and operative upon filing with the Commission.¹⁶

At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁷

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ See Securities Exchange Act Release No. 46654 (October 11, 2002), 67 FR 64687 (October 21, 2002).

¹⁵ See Securities Exchange Act Release No. 46092 (June 19, 2002), 67 FR 43199 (June 26, 2002).

¹⁶ The proposed rule change became effective on November 25, 2002, the date on which Amendment No. 1 was filed.

¹⁷ Because the proposed rule change became effective on November 25, 2002, the date on which Amendment No. 1 was filed, the 60-day abrogation period began on November 25, 2002.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2002-87 and should be submitted by December 26, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46923; File No. SR-Amex-2002-92]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Corporate Bond TRACERS Units Representing Ownership Interests in a Trust Linked to a Basket of Investment Grade Fixed Income Securities

November 27, 2002.

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 November 5, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC")

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 approve for listing and trading under section 107A of the Amex Company Guide ("Company Guide"), trust certificates linked to a basket of investment-grade fixed-income corporate debt instruments.

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

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Under section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.³ The Amex proposes to list for trading under section 107A of the Company Guide, Corporate Bond TRACERS Units (the "Units") representing ownership interests in the Structured Asset Trust Repackaging Series 2002-_____ (the "Trust"),⁴ a special purpose entity to be formed by Morgan Stanley Dean Witter ("MSDW") Structured Asset Corporation ("SAC"),⁵

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 A series number will be assigned when the Trust is established. Pursuant to a telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Hong-Anh Tran, Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 14, 2002.

⁵ SAC is a wholly-owned special purpose entity of Morgan Stanley and the registrant under form S-

the depositor, and the trustee of the Trust pursuant to a trust agreement, which will be entered into on the date that the Units are issued. The assets of the Trust will consist of a basket or portfolio of not less than 15 investment-grade fixed-income securities (the "Underlying Corporate Bonds").

The issuance of the Units will be a repackaging of the Underlying Corporate Bonds with the obligation of the Trust to make distributions to holders of the Units depending on the amount of distributions received by the Trust on the Underlying Corporate Bonds. Due to the pass-through and passive nature of the Units, the Exchange intends to rely on the asset and stockholder equity of the corporate issuer, parent or guarantor of such issuer of the Underlying Corporate Bonds rather than the Trust to meet the requirement in section 107A of the Company Guide. The distribution and principal amount/aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the Units.⁶ The corporate issuer, parent or guarantor of such issuer of each of the Underlying Corporate Bonds will meet or exceed the requirements of section 107A of the Company Guide.⁷ Further, the Units will initially conform to the listing guidelines under section 107A,⁸ and the continued listing guidelines under sections 1001–1003⁹

3 Registration Statement (No. 333–64879) under which the securities will be issued.

⁶ Telephone conversation between Jeff P. Burns, Assistant General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on November 26, 2002.

⁷ See section 104 of the Company Guide permitting the Exchange to list corporate debt securities where the issuer of equity securities listed on the Amex, New York Stock Exchange ("NYSE") or Nasdaq National Market ("Nasdaq"), directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security or has guaranteed the debt security.

⁸ The initial listing standards for the Units require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least \$4 million; and (4) a term of at least one year. However, if traded in thousand dollar denominations, then there is no minimum public distribution and holder requirement. In addition, the listing guidelines provide that the issuer have assets in excess of \$10 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.

⁹ 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

of the Company Guide. At the time of issuance, the Units will receive an investment grade rating from a nationally recognized securities rating organization (an "NRSRO").

The Exchange states that the basket of Underlying Corporate Bonds will not be managed and will generally remain static over the term of the Units. The Units provide for periodic distributions of interest dependent on the interest paid by the Underlying Corporate Bonds. To insure periodic interest distributions, the Underlying Corporate Bonds held by the Trust will have stepped or staggered interest payment dates. Principal distributions on the Units are expected to be made on or about the dates that correspond to the maturity dates of the Underlying Corporate Bonds. However, some of the Underlying Corporate Bonds may have redemption provisions, and in the event of an early redemption or other liquidation (*e.g.*, upon an event of default) of the Underlying Corporate Bonds, the proceeds from such redemption (including any amortization payments) or liquidation will be distributed pro rata to the holders of the Units.¹⁰ Each Underlying Corporate Bond will be issued by a corporate issuer and purchased in the secondary market.

Holders of the Units will receive interest on the face value of the Underlying Corporate Bonds in an amount to be determined at the time of issuance of the Units and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent that coupon payments are received from the Underlying Corporate Bonds. Distributions of interest will be made periodically. Investors will also be entitled to be repaid the principal of their Units from the proceeds of the principal payments on the Underlying Corporate Bonds. The payout or return to investors on the Units will not be leveraged.

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 Units, 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.

¹⁰ The Trust will pay to holders of the Units interest and principal distributions pursuant to the schedule set forth in the prospectus. Among other things, the schedule discloses to holders of the Units, the maturity dates of the Underlying Corporate Bonds. Upon such distributions, holders of the Units will receive a report or notification regarding interest and principal payments showing the remaining Underlying Corporate Bonds.

The Units will mature on the latest maturity date of the Underlying Corporate Bonds. Holders of the Units will have no direct ability to exercise any of the rights of a holder of the Underlying Corporate Bonds. However, holders of the Units as a group will have the right to direct the Trust in its exercise of its rights as a holder of the Underlying Corporate Bonds.

The Exchange states that the proposed Units are similar to equity linked notes ("ELNs"), previously approved by the Commission, except that the cash flow from the proposed Units will come from a basket of investment-grade corporate bonds as compared to a single equity, basket of equity securities or equity index in the case of an ELN.¹¹ In addition, ELNs may or may not pay interest while the Units will pay interest periodically based on the pass-through nature of the structure. Also, publicly issued asset backed securities that repackage a single underlying corporate debt obligation are currently listed and traded on the NYSE.¹² The proposed Units are similar to those repackaging transactions, except that the Trust will own more than one corporate debt obligation. In addition, the Exchange recently filed a similar proposal to list and trade asset-backed securities representing ownership interest in a trust consisting of a basket of investment-grade fixed-income

¹¹ See *e.g.*, Securities Exchange Act Release Nos. 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Industrial 15 Index); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select Ten Index); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (approving the listing and trading of notes linked to a basket of no more than 20 equity securities); 40956 (January 20, 1999), 64 FR 4480 (January 28, 1999) (approving the listing and trading of notes linked to Select Sector SPDRs); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (approving the listing and trading of the Top Ten Yield MITTS); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (listing and trading of equity linked securities). See also Securities Exchange Act Release No. 41334 (April 27, 1999), 64 FR 23883 (May 4, 1999) (Bond Index Term Notes).

¹² See *e.g.* Structured Asset Trust Unit Repackagings (SATURNS), CSFB USA Debenture Backed Series 2002–10, 1,330,000 of 7.00% Class A Callable Units, dated August 15, 2002 and trading under the symbol "MKK"; 1,380,000 Preferred Plus 8.375% Trust Certificates underlying 7.05% Debentures of Citizens Communications Company, dated August 24, 2001 and trading under the symbol "PIY"; and 1,980,000 Corporate Backed Trust Certificates, Royal & Sun Alliance Bond Backed Series 2002–2, underlying securities 8.95% subordinated guaranteed bonds issued by Royal & Sun Alliance Insurance Group plc, dated February 11, 2002 and trading under the symbol "CCS."

securities.¹³ Accordingly, the Exchange proposes to provide for the listing and trading of the Units where the Underlying Corporate Bonds meet the Exchange's Bond and Debenture Listing Standards set forth in section 104 of the Company Guide. The Exchange represents that all of the Underlying Corporate Bonds in the proposed basket will meet or exceed these listing standards.

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

In addition to the Exchange's Bond and Debenture Listing Standards, an Underlying Corporate Bond must also be of investment grade quality as rated by a NRSRO and at least 75% of the underlying basket is required to contain Underlying Corporate Bonds from issuances of \$100 million or more. The payment of principal of the Units is expected to be made upon the maturity of each Underlying Corporate Bond unless it is paid upon an earlier redemption (including any amortization payments) or liquidation, as discussed above, with the maturity date of the Units being the latest maturity date of the Underlying Corporate Bonds. Amortization of the Units will be based on (1) the respective maturities of the Underlying Corporate Bonds; (2) principal payout amounts reflecting the *pro-rata* principal amount of maturing Underlying Corporate Bonds; and (3)

any early redemption or liquidation of the Underlying Corporate Bonds.

Investors will be able to obtain the prices for the Underlying Corporate Bonds through Bloomberg L.P. ("Bloomberg") or other market vendors, including the broker-dealer through whom the investor purchased the Units. In addition, the Bond Market Association provides links to price and other bond information sources on its investor web site at <http://www.investinginbonds.com>. Transaction prices and volume data for the most actively traded bonds on the exchanges are also published daily in newspapers and on a variety of financial websites. The National Association of Securities Dealers, Inc. ("NASD") Trade Reporting and Compliance Engine (TRACE) will also help investors obtain transaction information for most corporate debt securities, such as investment grade corporate bonds.¹⁴ For a fee, investors can have access to intra-day bellwether quotes.¹⁵ Price quotes are also available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Valuation prices¹⁶ and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The prices of the Underlying Corporate Bonds generally will be determined by one or more market makers in accordance with applicable statutory rules, self-regulatory organization rules and generally accepted accounting principles regarding the valuation of securities.

The Units will be listed in \$1,000 denominations with the Exchange's existing debt floor trading rules applying to trading. First, pursuant to Amex rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Units.¹⁷ Second, the Units will be subject to the debt margin

¹⁴ See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at <http://www.nasdbondinfo.com/>.

¹⁵ Corporate prices are available at 20-minute intervals from Capital Management Services at <http://www.bondvu.com/>.

¹⁶ "Valuation Prices" refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

¹⁷ 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.

rules of the Exchange.¹⁸ Third, the Exchange will, prior to trading the Units, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Units and highlighting the special risks and characteristics of the Units. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Units: (1) To determine that such transaction is suitable for the customer; and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act,¹⁹ in general, and furthers the objectives of section 6(b)(5),²⁰ in particular, 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 mechanisms of a free and open market and, in general, protect investors and the public interest.

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

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

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

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

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

¹⁸ See Amex rule 462.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

¹³ See Securities Exchange Act Release No. 46835 (November 14, 2002), 67 FR 70271 (November 21, 2002).

including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-92 and should be submitted by December 26, 2002.

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 the national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.²¹ The Commission finds that this proposal is similar to several approved equity-linked instruments currently listed and traded on the Amex,²² as well as to

asset-backed securities listed and traded on the NYSE.²³ In addition, the Commission recently approved a similar proposal to list and trade asset-backed securities representing ownership interest in a trust consisting of a basket of investment-grade fixed-income securities.²⁴ Accordingly, the Commission finds that the listing and trading of the Units 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 Securities 6(b)(5) of the Act.²⁵

As described more fully above, the Units are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds, subject to certain distribution of interest obligations of the Trust. The Units are not leveraged instruments. The Units are debt instruments whose price will still be derived and based upon the value of the Underlying Corporate Bonds. The Exchange represents that the value of the Underlying Corporate Bonds will be determined by one or more market makers, in accordance with Exchange rules and generally accepted principles of accounting regarding the valuation of securities. Investors are guaranteed at least the principal amount that they paid for the Underlying Corporate Bonds. In addition, holders of the Units will receive interest on the face value of the Underlying Corporate Bonds in an amount to be determined at the time of issuance of the Units and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent that coupon payments are received from the Underlying Corporate Bonds. Distributions of interest will be made periodically. In addition, the Units will mature on the latest maturity date of the Underlying Corporate Bonds. However,

trading of the Top Ten Yield Market Index Target Term Securities ("MITTS") (File No. SR-Amex-96-28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR-Amex-93-40); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR-Amex-92-42).

²³ See e.g., *supra* note 12.

²⁴ See *supra* note 13.

²⁵ 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).

due to the pass-through nature of Units, the level of risk involved in the purchase or sale of the Unit is similar to the risk involved in the purchase or sale of traditional common stock. The Commission notes that asset-backed securities that repackage a single underlying debt instrument are currently listed and traded on the NYSE. However, because the Units are asset-backed securities that repackage a basket of Underlying Corporate Bonds, instead of a single underlying corporate bond, there are several issues regarding the trading of this type of product that the Exchange must address.

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

The Commission notes that the Units are dependent upon the individual credit of the issuers of the Underlying Corporate Bonds. To some extent the credit risk is minimized by the Exchange's listing standards in section 107A of the Company Guide, which provide that only issuers satisfying asset and equity requirements may issue securities such as the Units. In addition, the Exchange's "Other Securities" listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.²⁶ The Commission notes that the Exchange has represented that the Units will be listed in \$1000 denominations with its existing debt floor trading rules applying to the trading. In any event, financial information regarding the issuers of the Underlying Corporate Bonds will be publicly available.²⁷

Due to the pass-through and passive nature of the Units, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the corporate issuer, parent or guarantor of such issuer of the Underlying Corporate Bonds rather than the Trust to meet the requirement in section 107A of the Company Guide. The Commission notes that the

²⁶ See Company Guide section 107A.

²⁷ The Units will be registered under section 12 of the Act.

²¹ *Id.*

²² See Securities Exchange Act Release Nos. 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR-Amex-2001-91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index) (File No. SR-Amex-2001-40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index) (File No. SR-Amex-2001-39); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR-Amex-2001-28); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (accelerated approval order for the listing and trading of notes linked to a basket of no more than 20 equity securities) (File No. SR-Amex-99-42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow-based index with a non-principal protected put option) (File No. SR-Amex-99-15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR-Amex-97-47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and

distribution and principal amount/ aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the Units. Thus, the Units will initially conform to the listing guidelines under section 107A and the continued listing guidelines under sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the Units will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the Units should not unduly impact the market for the Underlying Corporate Bonds or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Corporate Bonds meet the Exchange's section 107A listing requirements, the Underlying Corporate Bonds will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to section 104 of the Company Guide, which among other things, requires that underlying debt instrument receive at least in investment grade rating of "B" or equivalent from an NRSRO. Furthermore, at least 75% of the underlying basket is required to contain Underlying Corporate Bonds from issuances of \$100 million or more. The Amex has also represents that the basket of Underlying Corporate Bonds will not be managed and will remain static over the term of the Units. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Corporate Bonds through market vendors such as Bloomberg, or through websites such as www.investinbonds.com.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to a recently approved proposal to list and trade asset-backed securities representing ownership interest in a trust consisting of a basket of investment-grade fixed-income securities,²⁸ several other equity-linked instruments currently listed and traded on the Amex,²⁹ and other asset-backed

securities currently listed and traded on the NYSE.³⁰ The Commission believes that the Units will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Units promptly. Additionally, the Units 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,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 (SR-Amex-2002-92), 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.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46911; File No. SR-BSE-2002-10]

Self Regulatory Organizations; The Boston Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change To Eliminate the BSE's Current Revenue Sharing Program and To Establish Two Market Data Revenue Sharing Programs

November 26, 2002.

On July 22, 2002, The Boston Stock Exchange, Inc. ("BSE" 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 a proposed rule change to eliminate its existing revenue sharing program and to establish two market data revenue sharing programs. The BSE amended the proposed rule change on August 2, 2002 and on August 20, 2002. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on September 19, 2002.² The Commission received two comments on

the proposal.³ On October 28, 2002, the BSE responded to the NYSE Letter.⁴

The BSE proposes to operate market data revenue sharing programs that are substantially similar to existing programs at other self-regulatory organizations.⁵ As set forth in its July 2, 2002 Order of Summary Abrogation ("Abrogation Order"),⁶ the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow the BSE to operate market data revenue sharing programs that place the BSE on substantially similar footing as other self-regulatory organizations.

Thus, 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 exchange⁷ and, in particular, the requirements of Section 6 of the Act⁸ and the rules and regulations

³ See October 21, 2002 letter from Meyer S. Frucher, Chairman and Chief Executive Officer, The Philadelphia Stock Exchange, Inc., to Jonathan G. Katz, Secretary, Commission ("Phlx Letter"); and October 21, 2002 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, Commission ("NYSE Letter"). The Phlx Letter took no position on the BSE proposal, but instead spoke generally about the regulation of market data fees and revenues. The NYSE Letter asked the Commission to institute disapproval proceedings "as a first step in eradicating all such [market data] rebate programs." Because neither letter specifically addresses the BSE proposed rule change, the Commission has not included a summary of comments in this order. The letters are available for review in the Public Reference Room at the Commission.

⁴ See October 28, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Jonathan Katz, Secretary, Commission ("BSE Response Letter"). The BSE did not respond to the Phlx Letter because it did not receive the Phlx letter until after the BSE submitted its response to the NYSE Letter. The Commission did not require the BSE to submit an additional response letter to address the comments in the Phlx Letter, because the Phlx Letter "expresses no view" on the BSE's proposed rule change. See Phlx Letter at p. 1. The BSE Response Letter is available for review in the Public Reference Room at the Commission.

⁵ See e.g., Securities Exchange Act Release No. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999)(SR-CSE-99-03).

⁶ Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37)(Order of Summary Abrogation).

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f.

³⁰ See, e.g. *supra* note 12.

³¹ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 46496 (September 13, 2002), 67 FR 59084.

²⁸ See *supra* note 13.

²⁹ See *supra* note 22.