

- Project.
- c. Kansas City, Missouri, Main Post office and Mid-American District Office.
- d. Santa Monica, California, Carrier Annex.
5. Quarterly Report on Service Performance.
6. Quarterly Report on Financial Performance.
7. Report on the Southeast Area and South Florida District.
8. Tentative Agenda for the March 1–2, 2004, meeting in Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

**William T. Johnstone,**

*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–49087; File No. SR–Amex–2002–116]

**Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 5 to the Proposed Rule Change by the American Stock Exchange LLC Relating to Specialist Stabilization Requirements for Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts**

January 15, 2004.

**I. Introduction**

On December 27, 2002, 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”) <sup>1</sup> and Rule 19b–4 thereunder, <sup>2</sup> a proposed rule change to amend Amex Rules 170, 1000(a), and 1000A(a) to: (1) Eliminate certain specialist stabilization requirements and other technical requirements for Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts (collectively referred to as “Exchange Traded Funds” or “ETFs”), and (2) correct erroneous cross references in the

Exchange’s rules to the definition of the term “derivative product.”

The Exchange filed Amendment Nos. 1, 2, 3, and 4 to the proposed rule change on April 23, 2003, June 3, 2003, October 3, 2003, and October 22, 2003, respectively.<sup>3</sup> The proposed rule change, as amended, was published in the **Federal Register** on November 25, 2003.<sup>4</sup> The Commission received no comments on the proposed rule change. On December 22, 2003, the Exchange submitted Amendment No. 5 to the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as amended, publishes notice of Amendment No. 5 and grants accelerated approval to Amendment No. 5.

**II. Discussion**

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.<sup>6</sup> Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the Exchange’s procedures be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Exchange proposes to eliminate the current restriction on the ability of specialists to buy on plus ticks or sell on minus ticks without Floor Official approval for transactions in ETFs, along with other requirements. The Commission previously approved a similar proposal that eliminated these requirements of Amex Rule 170 for transactions in options traded on the Exchange.<sup>8</sup> The Commission notes that

<sup>3</sup> See letters from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated April 22, 2003 (“Amendment No. 1”), June 2, 2003 (“Amendment No. 2”), October 2, 2003 (“Amendment No. 3”), and October 21, 2003 (“Amendment No. 4”).

<sup>4</sup> Securities Exchange Act Release No. 48800 (November 17, 2003), 68 FR 66144. (“Notice”).

<sup>5</sup> See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated December 19, 2003 (“Amendment No. 5”). Amendment No. 5 clarifies in the proposed rule text that the proposal to eliminate the specialist stabilization requirements and other technical requirements under Amex Rule 170 would apply to only Exchange Traded Funds rather than all “derivative products.”

<sup>6</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See Securities Exchange Act Release No. 27235 (September 11, 1989), 54 FR 38580 (September 19,

ETFs, similar to options, are priced derivatively, based on the value of an underlying basket of securities. Thus, the Commission believes that because ETFs are priced derivatively, an Exchange specialist would not be able to manipulate the pricing of an ETF. Accordingly, the Commission believes that it is appropriate to eliminate this restriction for Exchange Traded Funds. The Commission notes, however, that Exchange specialists must continue to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market.<sup>9</sup>

The Exchange also proposes to eliminate Commentary .06 to Amex Rule 170 regarding short sales for ETFs to the extent that the Commission has granted no action relief or has otherwise exempted ETFs from the short sale rule.<sup>10</sup> In this regard, the Commission notes that Exchange rules regarding short sales would continue to apply to transactions in an ETF unless the Commission has granted “no action” relief or otherwise exempted such ETF from the short sale rule.

**III. Accelerated Approval of Amendment No. 5**

Pursuant to Section 19(b)(2) of the Act,<sup>11</sup> the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving Amendment No. 5 to the proposal, prior to the 30th day after publishing notice of Amendment No. 5 in the **Federal Register**.

The Commission notes that Amendment No. 5 merely clarifies that

1989). The Exchange adopted maximum quote spread rules applicable to registered options traders in 1975 and formally extended them to options specialists in 1989. *See Id.* In its proposal, the Exchange asserted that ETFs should not be subject to these maximum quote spread rules because the Exchange believes that none of the registered exchanges, ATSS, third market dealers, or Nasdaq that currently trade ETFs establish, or are subject to, maximum quote spread differentials. *See Notice supra* note 4. Further, the Exchange represents that there is no restriction on the trading of ETFs in multiple market centers and most ETFs are multiply traded. Telephone conversation between William Floyd Jones, Associate General Counsel, Amex, and Lisa N. Jones, Special Counsel, Division, Commission, dated November 10, 2003. As a result, the Commission does not believe that such a requirement is necessary at this time.

<sup>9</sup> See Amex Rule 170 and Rule 11b–1 under the Act, 17 CFR 240.11b–1.

<sup>10</sup> See Rule 101 under the Act, 17 CFR 240.10a–1.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

<sup>2</sup> 17 CFR 240.19b–4.

the proposal to eliminate the specialist stabilization requirements and other technical requirements would apply to only Exchange Traded Funds rather than all "derivative products." The Commission believes that this technical modification more closely mirrors the intent of the proposed rule change. The Commission therefore finds that the approval of Amendment No. 5 on an accelerated basis is appropriate because this technical revision does not raise new regulatory issues.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 5, including whether the proposed amendment 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-Amex-2002-116. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should be submitted by February 17, 2004.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-AMEX-2002-116), as amended, is approved and Amendment No. 5 to the proposed rule change is hereby granted accelerated approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49097; File No. SR-CHX-2004-05]

#### Self-Regulatory Organizations; Notice Of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Inc. To Adopt an Anti-Money Laundering Compliance Program

January 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 12, 2004, 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 and II below, which Items have been prepared by the Exchange. The Exchange amended the proposal on January 15, 2004. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change.

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

The Exchange proposes to adopt CHX Rule 10 to Article VI of the CHX Rules to require Exchange members to develop and implement anti-money laundering compliance programs. The text of the proposed rule change follows. Additions are in *italics*.

\* \* \* \* \*

Chicago Stock Exchange Rules

ARTICLE XXVIII

Article VI

Restrictions and Requirements

\* \* \* \* \*

<sup>13</sup> 17 CFR 200.30-2(a)(12).

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

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

#### Anti-Money Laundering Compliance Program

*RULE 10. Each member organization and each member not associated with a member organization shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.) and the implementing regulations promulgated under that Act by the Department of the Treasury. Each member organization's anti-money laundering program must be approved, in writing, by a member of senior management.*

*The anti-money laundering program required by this Rule shall, at a minimum:*

*(a) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions as required under 31 U.S.C. 5318(g) (and the regulations promulgated under that provision);*

*(b) Establish and implement policies, procedures and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act (and the implementing regulations promulgated under that Act);*

*(c) Provide for independent testing for compliance to be conducted by member staff or by a qualified outside party;*

*(d) Designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number and facsimile number), an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation; and*

*(e) Provide ongoing training for appropriate staff.*

\* \* \* \* \*

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

<sup>12</sup> 15 U.S.C. 78s(b)(2).