

for such communications to be published as part of a national or regional marketing program. In that regard, the Exchange believes that it is both unnecessary and impractical for a member organization to list *one* person as the recipient for all requests concerning ODDs. It is important for investors to be able to readily obtain an ODD. The Exchange interprets Rule 991 to provide member organizations sufficient latitude to set forth other reasonably specific mechanisms by which clients and other investors may obtain the ODD. A firm may, for example, provide one or more telephone numbers or addresses from which an ODD may be obtained. Alternatively, in a communication addressed only to account holders the organization may direct them to contact their registered representative.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁴ in general and furthers the objectives of Section 6(b)(5)⁵ in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

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

The Exchange believes the proposed rule change will impose no burden on competition.

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

The proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act⁶ and Rule 19b-4(e)(1)⁷ thereunder. At any time within 60 days of the filing of such 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.

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.⁸ Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Amex. All submissions should refer to the File No. SR-Amex-98-30 and should be submitted by November 27, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40613; File No. SR-Amex-98-20]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Permanent Approval of the Exchange's Pilot Program for Specialists in Portfolio Depository Receipts, Investment Trust Securities, and Index Fund Shares To Participate in the After-Hours Trading Facility

October 28, 1998.

I. Introduction

On June 9, 1998, the American Stock Exchange, Inc. ("Amex" or "the Exchange"), filed with the Securities and Exchange Commission ("SEC" or

"the Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder seeking permanent approval of the pilot program permitting specialists in Portfolio Depository Receipts³ ("PDRs"), investment trust securities, and Index Fund Shares to participate in the after-hours trading ("AHT") facility to "clean-up" order imbalances and to effect closing price coupled orders.⁴ The proposed rule change was published for comment in the **Federal Register** on July 23, 1998.⁵ No comments were received on the Amex's proposal.

II. Description of the Proposal

The Commission originally approved the pilot program on August 29, 1994 ("Original Pilot Approval").⁶ The pilot was scheduled to expire on August 29, 1995, but was extended for three successive one-year periods, and a thirty-day period.⁷ With this proposed rule change, the Amex seeks permanent approval of the pilot program, which otherwise will expire on October 31, 1998.

In the Original Pilot Approval and in each one-year extension, the Commission requested that the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange currently lists three Portfolio Depository Receipts, viz., Depository Receipts on the Standard and Poor's 500® and MidCap® Indexes, and Depository Receipts on the Dow Jones Industrial Average™. The Exchange also lists 17 Index Fund Shares which are commonly referred to as WEBSSM. WEBS are shares issued by an open-end management investment company that seek to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index. The Exchange currently lists WEBS based on the following Morgan Stanley Capital International ("MSCI") indices: MSCI Australia Index, MSCI Austria Index, MSCI Belgium Index, MSCI Canada Index, MSCI France Index, MSCI Germany Index, MSCI Hong Kong Index, MSCI Italy Index, MSCI Japan Index, MSCI Malaysia Index, MSCI Mexico Index, MSCI Netherlands Index, MSCI Singapore (Free) Index, MSCI Spain Index, MSCI Sweden Index, MSCI Switzerland Index, and MSCI United Kingdom Index. The Commission notes that due to certain restrictions imposed by the Malaysian government WEBS based on the MSCI Malaysia Index currently trade differently than the other WEBS trading on Amex.

⁴ Pursuant to the pilot program, the specialist in PDRs, investment trust securities, and Index Fund Shares may participate in a coupled price closing order so long as the other side of the order is not for an account in which a member or member organization has a direct or indirect interest.

⁵ Securities Exchange Act Release No. 40201 (July 15, 1998), 63 FR 39608.

⁶ See Securities Exchange Act Release No. 34611 (Aug. 29, 1994), 59 FR 45739 (Sept. 2, 1994).

⁷ See Securities Exchange Act Release Nos. 36123 (Aug. 18, 1995), 60 FR 44519 (Aug. 28, 1995); 37529 (Aug. 6, 1996), 61 FR 41814 (Aug. 12, 1996); 38986 (Aug. 27, 1997), 62 FR 46785 (Sept. 4, 1997); and 40533 (October 8, 1998), 63 FR 55660 (October 16, 1998).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(3)(A)(i).

⁷ 17 CFR 240.19b-4(e)(1).

⁸ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).

Exchange submit a report and analysis regarding the operation of the pilot program. The Exchange did not submit a report until 1997, however, as specialists made little or no use of the pilot program until the period September 3, 1996 to May 30, 1997. The 1997 report stated that during that period, there were two trades for a total of 600 shares of PDRs in the AHT session for PDRs, investment trust securities, and Index Fund Shares.⁸ The 1998 report stated that during the period June 1, 1997 to April 30, 1998, there were 12 trades for a total of 56,320 shares of PDRs in the AHT session.⁹ No single-sided orders remained unexecuted at the end of the AHT session during the review period and there were no problems with any of these trades.¹⁰

The Exchange believes that permanent approval of the Exchange's pilot program to permit specialists in PDRs, investment trust securities, and Index Fund Shares to participate in the AHT facility in order to "clean-up" order imbalances and effect closing price coupled orders will benefit investors by providing additional liquidity to the listed cash market for derivative securities based upon market indexes. The market price of these exchange-traded funds is based upon transactions largely effected in markets other than the Amex. (In the case of Index Fund Shares, the market price of these securities is based exclusively on transactions occurring outside the Amex.) The Exchange represents that the specialist in the Amex-listed securities has no unique access to market sensitive information regarding the market for the underlying securities or closing index values. Further, to prevent the potential for manipulation or misuse, the pilot program eliminates the migration of limit orders for PDRs, investment trust securities, and Index Fund Shares from the specialists limit order book to the AHT facility. The Exchange, therefore, believes that permanent approval of specialist participation in the AHT facility in PDRs, investment trust securities and Index Fund Shares in the manner previously approved by the Commission on a pilot basis does not raise any market integrity issues. In addition,

should a customer not care for an execution at the closing price, the rules of the Exchange's AHT facility permit cancellation of an order up to the close of the AHT session at 5:00 p.m. (Orders in the AHT facility are not executed until the 5:00 p.m. close of the AHT session.) Amex represents, therefore, that a customer has approximately 40 minutes to determine if an execution at the closing price suits his needs and may cancel the order if he believes that the closing price does not suit his objectives.

III. 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, and, in particular, Sections 6(b)(5) and 11 of the Act.¹¹ The Commission believes that the rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and in general, protect investors and the public interest.¹² The Commission also believes that the proposal is consistent with Section 11(b) of the Act and Rule 11b-1 thereunder,¹³ which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

Under the pilot program, specialists in PDRs, investment trust securities and Index Fund Shares may participate in the AHT facility to clean up order imbalances by entering an order for their own account. The pilot program also allows specialists in PDRs, investment trust securities and Index Fund Shares to participate in a coupled closing price order as long as the other side of the order is not for an account in which a member or member organization has a direct or indirect interest. Moreover, the pilot program eliminates the migration of limit orders for PDRs, investment trust securities, and Index Fund Shares from the specialists limit order book to the AHT facility to prevent the potential for manipulation or misuse of specialists' information regarding which limit orders are eligible for execution in the AHT facility.

The Commission continues to believe, as it did when the pilot program was initially approved, that permitting specialists in PDRs, investment trust securities, and Index Fund Shares¹⁴ to participate in the AHT facility by entering an order for the specialist's account to eliminate order imbalances should assist specialists in their obligation to minimize temporary disparity between supply and demand.¹⁵ Moreover, the Commission agrees with the Amex that permitting specialists in PDRs, investment trust securities, and Index Fund Shares to participate in the AHT facility to effect closing price coupled orders should benefit investors by providing additional liquidity to the listed cash market for derivative securities based upon market indexes.

The Commission also continues to believe that the Amex's rule change strikes a reasonable balance between the Exchange's need to accommodate the needs of investors by increasing the liquidity in the listed cash market for derivative securities based on market indexes and the need to prevent the potential for manipulation or misuses of information. With regard to the latter concern, although Amex specialists will be aware of limit orders remaining on the specialist's limit order book, they generally will not be able to use this information to their advantage because, under the terms of the pilot program, as permanently approved, Amex Rule 1302(b) has been amended to eliminate the migration of limit orders for PDRs, investment trust securities, and Index Fund Shares from the specialist's limit order book to the AHT facility.¹⁶ Further, the Commission notes that all orders entered by the specialist in the AHT facility receive the closing price in the Amex market on that same trading day, rather than a negotiated price. This should reduce the likelihood that any additional information the specialist has as a result of making a market in the speciality security could be misused in the AHT facility.

In addition, while the trading activity for PDRs, investment trust securities, and Index Fund Shares in the AHT facility has been modest, the Exchange

⁸ See letter dated August 5, 1997, from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation ("Division"), Commission.

⁹ See letter dated June 8, 1998, from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Michael Walinskas, Senior Special Counsel, Division, Commission.

¹⁰ *Id.*

¹¹ 15 U.S.C. 78f(b)(5) and 78k.

¹² 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).

¹³ 17 CFR 240.11b-1.

¹⁴ The Commission notes that when the original pilot program was approved, it applied only to PDRs and investment trust securities. The pilot program was modified to include Index Fund Shares with the extension of the pilot program in August 1996. See Securities Exchange Act Release No. 37529 (August 6, 1996), 61 FR 41814 (August 12, 1996).

¹⁵ See Original Pilot Approval, *supra* note 6.

¹⁶ The Commission notes that the permanent approval of the pilot program includes permanent approval of the changes to Rule 1302(b) restricting the migration of limit orders.

has reported no problems with any of these trades. Moreover, as evidenced by the reports filed by the Exchange, the pilot program has been used increasingly over the past two years.

Finally, the Commission expects the Amex, through use of its surveillance procedures, to monitor closely the trading of PDRs, investment trust securities, and Index Fund Shares in the AHT facility to ensure that trading in these issues is not subject to any patterns of manipulation, trading abuses or unusual trading activity.

IV. Conclusion

For the reasons discussed above, the Commission believes that permanent approval of specialist participation in the AHT facility in PDRs, investment trust securities and Index Fund Shares in the manner previously approved by the Commission is appropriate and consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-Amex-98-20) is approved.

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. 34-40622; File Nos. SR-Amex-98-32; SR-NASD 98-56; SR-NASD 98-67]

Self-Regulatory Organizations; American Stock Exchange, Inc., and National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto; Relating to the Combination of the American Stock Exchange, Inc. and the National Association of Securities Dealers, Inc., Including Amendments to the Composition of the NASD Board and Relating to Policies Regarding Authority Over American Stock Exchange LLC and Composition of Board of Governors of American Stock Exchange LLC

October 30, 1998.

I. Introduction

Three separate filings have been submitted to the Securities and

Exchange Commission ("SEC" or "Commission") in connection with the proposed combination between the National Association of Securities Dealers, Inc. ("NASD" or "Association") and the American Stock Exchange, Inc. ("Amex").

On August 10, 1998, the NASD submitted to the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change (SR-NASD-98-56) to amend the NASD's By-Laws to reserve one NASD Board of Governors ("NASD Board") position for a person representing an NASD member firm having not more than 150 registered persons; to reserve two Board positions for the Chief Executive Officer and one Floor Governor of the American Stock Exchange LLC ("New Amex"); and to make other clarifying amendments, including the addition of certain definitions. The NASD also proposed to add corresponding clarifying amendments and definitions to the By-Laws of NASD Regulation, Inc. ("NASD Regulation") and The Nasdaq Stock Market, Inc. ("Nasdaq").

On September 3, 1998, Amex submitted to the Commission, pursuant to Section 19(b)(1) of the Exchange Act³ and Rule 19b-4 thereunder,⁴ a proposed rule change (SR-Amex-98-32) to make certain amendments to its Constitution and Rules that will become effective at the time they become the Constitution and Rules of New Amex. An amendment to SR-Amex-98-32 was filed with the Commission on October 29, 1998.⁵

On September 14, 1998, the NASD submitted to the Commission, pursuant to Section 19(b)(1) of the Exchange Act⁶ and Rule 19b-4 thereunder,⁷ a proposed rule change (SR-NASD-98-67) to state two policies regarding NASD's oversight of New Amex and the composition of the Board of Governors of New Amex.

Notice of the proposed rule changes, together with the substance of the proposals, was published for comment in Exchange Act Release Nos. 40339 (August 19, 1998), 63 FR 45547 (August 26, 1998) (SR-NASD-98-56); 40426

(September 10, 1998), 63 FR 49766 (September 17, 1998) (SR-Amex-98-32); and 40443 (September 16, 1998), 63 FR 51108 (September 24, 1998) (SR-NASD-98-67). One comment was received on the proposals.⁸ The NASD responded to the comment letter, the substance of which is discussed in Item III below.⁹

II. Description

A. Background

On March 18, 1998, Amex and the NASD announced that their respective Boards of Governors had each agreed to enter into a merger agreement that, subject to finalization of a definitive agreement and approval by Amex Members, would result in Amex becoming a subsidiary of the NASD. On April 8, 1998, the Amex and NASD Boards each unanimously approved the terms of a definitive agreement (the "Transaction Agreement"), which was signed by the NASD and Amex as of May 8, 1998. At a Special Meeting of Members on June 25, 1998, the Amex Membership ratified the Transaction Agreement by a vote of 622 to 206.¹⁰ NASD members were not required to vote on the merger.

⁸ See letter from Bill T. Singer, Singer Frumento L.L.P., to Secretary, Commission, dated September 11, 1998 (incorporating a report from Bill T. Singer to Alan Davidson, President, Independent Broker-Dealer Association, Inc., dated September 10, 1998) ("Singer Letter"). The comment letter was written in opposition of the proposed combination of the NASD and Amex. Although the comment letter responded specifically to SR-NASD-98-56, it addressed several general issues in connection with the proposed combination. As such, the Commission has determined to treat the comment letter as if it were a comment on each of the three submitted proposals.

⁹ See letter from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated October 23, 1998 ("NASD Response").

¹⁰ Two-thirds approval from the Amex Membership was required in order for the transaction to pass. The Membership approved the transaction by roughly 75 percent. In connection with Amex member approval of the agreement, Amex sent to all 864 Amex Regular Members and Options Principal Members (referred to collectively as "Members") an Information Memorandum, dated May 14, 1998, describing the transaction in detail. Attached as exhibits to the Information Memorandum were the Restated Certificate of Incorporation and the new By-Laws of Amex Corp. (as hereinafter defined), and the Constitution of New Amex. Members also were provided with documents relating to the transaction ("Transaction Documents"). These included, among other items, the Transaction Agreement and exhibits thereto, including the Limited Liability Company Agreement of New Amex ("LLC Agreement") and the Technology Transfer and Development Agreement. Copies of the Transaction Agreement, the LLC Agreement, and the Technology Transfer and Development Agreement are available at the Commission's Public Reference Room under File No. SR-Amex-98-32.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ See Letter to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, from James F. Duffy, Executive Vice President, Legal and Regulatory Policy, Amex, and Richard G. Ketchum, President and Chief Executive Officer, NASD, dated October 29, 1998 ("Amendment No. 2").

⁶ 15 U.S.C. 78s(b)(1).

⁷ 17 CFR 240.19b-4.

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).