

Spent Fuel and Notice of Opportunity for Hearing" was published in the **Federal Register** on September 17, 1996. The Petitioner and several others sought a hearing as provided by 10 CFR 2.105. An Atomic Safety and Licensing Board (ASLB) was established on October 9, 1996. Among the issues raised in the petitions to intervene by the Petitioner and by Lake City, Minnesota, were issues associated with emergency planning, substantially similar to the issues raised by the Petitioner in the petition requesting that the NRC institute a proceeding pursuant to 10 CFR 2.202. Consequently, the staff deferred the response to the Petition until completion of the ASLB hearing process.

Because of the physical proximity of its Reservation to PINGP, the Prairie Island Indian Community had been particularly interested in seeing the offsite ISFSI built. Since the MEQB decision effectively ended the possibility of that facility being developed, the Indian Community initiated litigation in the Minnesota State Courts in December 1996, seeking to overturn the MEQB decision. When the litigation began, NSP requested and was granted a suspension of both NRC staff's review of the Goodhue County application and the ASLB proceeding, just prior to the pre-hearing conference which was scheduled for December 1996. State litigation ended in July 1997, when the Minnesota Supreme Court declined to hear an appeal of the Minnesota Court of Appeals ruling which affirmed the MEQB decision. Subsequently, in a letter dated July 22, 1997, NSP withdrew the Goodhue County application. NRC acknowledged the withdrawal in a letter dated August 4, 1997. The ASLB issued a Memorandum and Order terminating its proceeding on July 30, 1997. However, a motion for reconsideration is currently under review by the Board.²

III. Discussion

Section 72.32(a)(14) provides that the offsite response organizations expected

by the licensee to respond to an on-site emergency should be provided an opportunity to comment on an ISFSI emergency plan.³ As required by 10 CFR 72.32(a)(14), NSP contacted the offsite response organizations it expected to respond to an on-site emergency at the proposed Goodhue County facility. NSP requested comments from the Minnesota Departments of Public Safety and Public Health and the Goodhue County, Minnesota, Office of Emergency Management. All three responded to NSP's request. Their comments were provided to NRC with the emergency plan.

The Petitioner claims that because the Lake City, Minnesota, Fire Department contracts with Florence Township to provide fire protection, it is one of the offsite response organizations that NSP would contact in case of an on-site emergency at the Goodhue County ISFSI. Lake City is not located in Goodhue County, however, and therefore is not expected by the applicant to respond to an on-site emergency.

The emergency plan appropriate for an ISFSI is an on-site emergency plan. The staff has determined that there are no credible accidents at an ISFSI which have significance for offsite emergency preparedness.⁴ There is no specific requirement that any particular political jurisdiction be contacted to comment on an ISFSI emergency plan. Rather, the applicant is required to determine which services it will require from offsite providers and to seek comments from those organizations. NSP did not indicate in the emergency plan that Lake City, Minnesota, was expected to respond to an on-site emergency. Further, no evidence has been provided that NSP, at the time of the submittal of the license application, had plans to seek emergency planning assistance from Lake City, Minnesota. Thus, there is no violation of 10 CFR 72.32(a)(14) to warrant any enforcement action.

The Petitioner raised several additional requests regarding NRC's review of NSP's Goodhue County

application. These are matters which the NRC considers during the license review, not as part of a Petition filed under 10 CFR 2.206. Further, in light of the fact that NSP has now withdrawn the application, they are moot.

Conclusion

I have concluded that NSP did not violate NRC regulations by failing to provide Lake City, Minnesota, with an opportunity to respond to the proposed emergency plan. As provided by 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review.

Dated at Rockville, Maryland, this 26th day of September, 1997.

For The Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97-26273 Filed 10-2-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39143; File No. SR-Amex-97-29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Listing and Trading of DIAMONDSSM Trust Units

September 29, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 11, 1997, the American Stock Exchange, Inc. ("Amex" 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 self-regulatory organization. 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 Amex proposes to list and trade under Amex Rules 1000 *et seq.* DIAMONDSSM, units of beneficial interest in the DIAMONDS Trust. In addition, the Exchange proposes to adopt Amex Rule 1005, "Dow Jones Indexes," relating to license and warranty issues. The text of the proposed rule change is available at the

² On July 30, 1997, the Petitioner filed a response to NSP's July 24, 1997, Motion for Withdrawal of Application and Termination of Proceeding. In the response, the Petitioner requested that the ASLB dismiss the NSP application with prejudice, or alternatively, deny NSP's application, or impose a condition of withdrawal that the application for the Florence Township site shall not be resubmitted. The ASLB considered this Petitioner's June 30, 1997, submittal to be a motion for reconsideration. On August 29, 1997, the staff responded that Florence Township's motion for reconsideration should be denied on the basis that the proceeding had not sufficiently progressed such that dismissal with prejudice is appropriate, and on the basis that Florence Township has not demonstrated legal harm warranting the relief it requests.

³ The regulatory requirements for comments on the emergency plans for ISFSIs, like the requirements for the emergency plans, are separate and quite different from those for nuclear reactors. The requirements for emergency plans for ISFSIs are for on-site emergencies only. Because offsite health effects have not been identified for accidents at ISFSIs, there is no requirement for neighboring jurisdictions to be involved in emergency response. There is, for instance, no requirement for evacuation planning and hence no need for the kinds of more elaborate plans associated with nuclear reactors.

⁴ See NUREG-1140, "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees."

Office of the Secretary, Amex and at the Commission.

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 self-regulatory organization 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 self-regulatory organization 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

On December 11, 1992,¹ the Commission approved Amex Rules 1000 *et seq.* to accommodate trading on the Exchange of Portfolio Depositary Receipts ("PDRsSM"), securities which represent interests in a unit investment trust ("Trust") operating on an open-end basis and that hold a portfolio of securities. The Trust sponsor ("Sponsor") for each series of PDRs is PDR Services Corporation, a wholly-owned subsidiary of Amex.² Each Trust is intended to provide investors with an instrument that closely tracks the underlying securities portfolio, that trades like a share of common stock, and that pays to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. The first Trust to be formed in connection with the issuance of PDRs was based on the Standard & Poor's 500 Index ("S&P 500 Index"), known as Standard & Poor's Depositary Receipts® ("SPDRs"), which have been trading on the Exchange since January 29, 1993.³ In 1995, the Commission approved Amex's listing and trading of PDRs based on the Standard & Poor's MidCap 400 IndexTM ("MidCap SPDRs").⁴

The Exchange now proposes to list and trade under Rules 1000 *et seq.* DIAMONDSSM, units of beneficial interest in the DIAMONDS Trust.⁵ The Sponsor will enter into a trust agreement with the Trustee, State Street Bank and Trust Company, in accordance with Section 26 of the Investment Company Act of 1940 ("1940 Act"). A distributor will act as underwriter of DIAMONDS on an agency basis. All orders to create DIAMONDS in Creation Unit size aggregations must be placed with the distributor, and it will be the responsibility of the distributor to transmit such orders to the Trustee. The distributor is a registered broker-dealer, and a member of the National Association of Securities Dealers, Inc.

*The Dow Jones Industrial Average:*⁶ The Dow Jones Industrial Average is the oldest continuous barometer of the U.S. stock market, and the most widely quoted indicator of U.S. stock market activity. The 30 stocks now comprising the DJIA are all leaders in their respective industries, and their stocks are widely held by individuals and institutional investors.

The DJIA is a price-weighted stock index; that is, the component stocks are accorded relative importance based on their prices. The DJIA is called an "average" because originally it was calculated by adding up the component stock prices and then dividing by the number of stocks. The method remains the same today, but the divisor (the number that is divided into the total of the stock prices) has been increased to eight significant digits to minimize distortions due to rounding.

The DJIA divisor is adjusted due to corporate actions that change the price of any of its component shares. The most frequent reason for such an adjustment is a stock split. For example, suppose a company in the DJIA issues one new share for each share outstanding. After this two-for-one "split," each share of stock is worth half

and are being used by the Exchange and the Sponsor under license among Standard & Poor's, a division of The McGraw-Hill Companies, Inc., the Exchange and the Sponsor. "SPDRs" and "MidCap SPDRs" are not sponsored, endorsed, sold, or promoted by S&P, and S&P makes no representation regarding the advisability of investing in SPDRs or MidCap SPDRs.

⁵ "Dow Jones Industrial AverageSM," "DJIASM," "Dow JonesSM" and "DIAMONDS" are each trademarks and service marks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by the Exchange and the Sponsor. DIAMONDS are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such product.

⁶ The description of the DJIA included herein is based on materials prepared by Dow Jones.

what it was immediately before, other things being equal. But without an adjustment in the divisor, this split would produce a distortion in the DJIA. An adjustment must be made to compensate so that the "average" will remain unchanged. At Dow Jones, this adjustment is handled by changing the divisor.⁷ The formula used to calculate divisor adjustments is:

$$\text{New Divisor} = \text{Current Divisor} \times \frac{\text{Adjusted Sum of Prices/Unadjusted Sum of Prices}}{\text{Sum of Prices}}$$

Changes in the composition of the DJIA are made entirely by the editors of The Wall Street Journal without consultation with the companies, the respective stock exchange, or any official agency. Additions or deletions of components may be made to achieve better representation of the broad market and of American industry.

The DIAMONDS Trust: To be eligible to place orders to create DIAMONDS as described below, an entity or person must either be a participant in the Continuous Net Settlement ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depositary Trust Company ("DTC") participant. Upon acceptance of an order to create DIAMONDS, the distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of DIAMONDS to the account of the entity placing the order. DIAMONDS will be registered in book entry only, which records will be kept by DTC.

Payment with respect to creation orders placed through the distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is substantially similar in composition to the component shares of the underlying index or portfolio; (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution ("Dividend Equivalent Payment"), subject to certain specified adjustments;⁸ and (3) a cash payment or adjustment calculated by the Trustee to enable the securities portfolio portion to equal the net asset value of the Trust (the "Balancing Amount"). The Balancing Amount and the Dividend Equivalent Payment are referred to as the "Cash Component" in the case of a creation. The securities and cash

⁷ Currently, the divisor is recalculated after the close of business on the day prior to the occurrence of the split.

⁸ See "Distributions" *infra*.

¹ See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) ("SPDRs Order").

² "PDRs" is a service mark of PDR Services Corp.

³ See SPDRs Order, *supra* note 1.

⁴ See Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995). "Standard & Poor's 500," "Standard & Poor's MidCap 400 Index," "Standard & Poor's Depositary Receipts®," "SPDRs®," "Standard & Poor's MidCap 400 Depositary Receipts" and "MidCap SPDRs" are trademarks of The McGraw-Hill Companies, Inc.

accepted by the Trustee are referred to, in the aggregate, as a "Portfolio Deposit."

The mandatory termination date of the Trust will be the first to occur of (i) January 30, 2122 or (ii) the date 20 years after the death of the last survivor of eleven persons named in the trust agreement between the Trust Sponsor and the Trustee.

Issuance: Upon receipt of a Portfolio Deposit in payment for a creation order placed through the distributor as described above, the Trustee will issue a specified number of DIAMONDS, which aggregate number is referred to as a "Creation Unit." The Exchange anticipates that, with respect to DIAMONDS, a Creation Unit will be made up of 50,000 DIAMONDS. Individual DIAMONDS can then be traded in the secondary market like other equity securities.⁹ It is expected that Portfolio Deposits will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. The DIAMONDS Trust has been structured to provide for the initial issuance of DIAMONDS at a per unit price which would approximate 1/100th of the value of the DJIA. As of August 7, 1997 it is estimated that the value of such an individual DIAMONDS Unit would be approximately \$81.88.

It is expected that the Trustee or Sponsor will make available (a) on a daily basis a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (b) on a minute-by-minute basis throughout the day, a number representing the value (on a per DIAMONDS Unit basis) of the securities portion of a Portfolio Deposit in effect on such day, plus accumulated dividends less expenses through the previous day's close, and (c) on a daily basis, the accumulated dividends, less expenses, per outstanding DIAMONDS Unit.

Transactions in DIAMONDS may be effected on the Exchange until 4:15 p.m. New York time each business day. The

minimum fractional change for DIAMONDS shall be $\frac{1}{64}$ of \$1.00.

Redemption: DIAMONDS in Creation Unit size aggregations generally will be redeemable in kind by tendering them to the Trustee. While holders may sell DIAMONDS in the secondary market at any time, they must accumulate at least 50,000 (or multiples thereof) to redeem through the Trust. DIAMONDS will remain outstanding until redeemed or until the termination of the Trust. Creation Units generally will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in composition to the securities portion of a Portfolio Deposit in effect on the date request is made for redemption, together with a "Cash Redemption Payment" (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder generally will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

Distributions: The DIAMONDS Trust will pay monthly dividends. The first ex-dividend date for DIAMONDS will be the third Friday of the third full month following the commencement date of the Trust unless such date is not a Business Day, in which case the ex-dividend date will be the immediately preceding Business Day (the "ex-dividend date"). Holders of DIAMONDS as reflected on the records of the DTC and the DTC Participants on the second business day following the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the monthly dividend period which ends on the business day preceding such ex-dividend date net of fees and expenses accrued daily for such period. The payment of dividends will be made on the first business day coincident with or following the Monday preceding the third Friday in the calendar month following the ex-dividend date (the "Dividend Payment Date"). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends

accumulated within each monthly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee. The DIAMONDS Trust intends to make the DTC Dividend Reinvestment Service available for use by DIAMONDS holders through DTC Participant brokers for reinvestment of their cash proceeds. An interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through such broker.

Criteria for Initial and Continued Listing: Because of the open-end nature of the Trust upon which a series of PDRs is based, the Exchange believes it is necessary to maintain appropriate flexibility in connection with listing a specific Trust. In connection with initial listing, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading. For DIAMONDS, it is anticipated that a minimum of 150,000 DIAMONDS (*i.e.*, three Creation Units of 50,000 DIAMONDS each), will be required to be outstanding when trading begins.

The DIAMONDS Trust will be subject to the initial and continued listing criteria of Rule 1002(b). Rule 1002(b) provides that, following twelve months from the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) If the index on which the Trust is based is no longer calculated; or

(c) If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing and its PDRs redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set further in the Trust prospectus. For example, the Sponsor, following notice to PDRs holders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a

⁹The DIAMONDS Trust, Series I, has filed with the Commission an application seeking, among other things, an order: (1) Permitting secondary market transactions in DIAMONDS at negotiated prices, rather than at a current public offering price described in the prospectus as required by Section 22(d) of the 1940 Act and Rule 22c-1; and (2) permitting the sale of DIAMONDS to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by Section 4(3) of the Securities Act of 1933 but may be required according to Section 24(d) of the 1940 Act for redeemable securities issued by a Unit Investment Trust. These exemptions, if granted, will permit individual DIAMONDS to be traded in secondary market transactions similar to a closed-end investment company.

specified amount.¹⁰ The DIAMONDS Trust may also terminate if the license agreement with Dow Jones terminates.

Trading Halts: Prior to commencement of trading in DIAMONDS, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set further in Rule 918C(b) in exercising its discretion to halt or suspend trading. These factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value¹¹; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.¹²

Terms and Characteristics: Under Amex Rule 1000, Commentary .01, Amex members and member organizations are required to provide to all purchasers of DIAMONDS a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in each series is delivered to such purchaser. The Exchange also requires that such description be included with any sales material on DIAMONDS that is provided to customers or the public. In addition, the Exchange requires that members and member organizations provide customers the prospectus for DIAMONDS upon request.

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase DIAMONDS for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the terms as are directly applicable to members and member organizations.

Prior to commencement of trading of DIAMONDS, the Exchange will distribute to Exchange members and member organizations an Information

Circular calling attention to characteristics of the DIAMONDS Trust and to applicable Exchange rules.

Adoption of Rule 1005: The Exchange proposes to adopt Rule 1005 ("Dow Jones Indexes") stating that Dow Jones has licensed the Exchange to use certain Dow Jones indexes for purposes of the listing and trading of particular series of Portfolio Depositary Receipts on the Exchange, and stating, among other things, that Dow Jones and the Exchange make no warranty, express or implied, as to results to be obtained by any person or entity from the use of the Indexes or any data included therein.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)¹³ 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. The Exchange believes that Portfolio Depositary Receipts, generally, and DIAMONDS specifically, have the potential to benefit the markets by providing an alternate trading instrument, such as those encouraged by the Division of Market Regulation in its report, "The October 1987 Market Break," that may help temper market volatility and reduce stress on individual index component stocks during unusual market conditions.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90

days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 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 refer to File No. SR-Amex-97-29 and should be submitted by October 24, 1997.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-26285 Filed 10-2-97; 8:45 am]

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of: (a) Final action regarding amendments to sentencing guidelines and policy statements effective November 1, 1997; and (b) an amendment to correct a clerical error in USSG § 2K2.1(a)(3), as amended by amendment 522 (November 1, 1995).

SUMMARY: The Sentencing Commission hereby gives notice of: (a) Several amendments to policy statements and commentary made pursuant to its authority under 28 U.S.C. 994(a); (b)

¹⁰ With respect to the DIAMONDS Trust, the Sponsor has the discretionary right to terminate the Trust if the value of Trust Securities (as defined in the Trust registration statement) falls below \$150,000,000 at any time after six months following, and prior to three years following, inception of the Trust. Following such time, the Sponsor has the discretionary right to terminate if Trust Securities fall below \$350,000,000 in value, adjusted annually for inflation.

¹¹ Amex Rule 918C(b)(3).

¹² Amex Rule 918C(b)(4).

¹³ 15 U.S.C. 78f(b)(5).