

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40201; File No. SR-AMEX-98-20]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Permanent Approval of the Exchange's Pilot Program for Specialists in Portfolio Depository Receipts, Investments Trust Securities, and Index Fund Shares To Participate in the After-Hours Trading Facility

July 15, 1998.

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> notice is hereby given that on June 9, 1998, the American Stock Exchange, Inc. ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III 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.

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

The text of the proposed rule change is available at the Office of the Secretary, the 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments if received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange seeks permanent approval of the pilot program permitting specialists in Portfolio Depository

Receipts<sup>3</sup> ("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.<sup>4</sup>

The Exchange believes that permanent approval of the Exchange pilot program to permit specialists in PDR's, 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 would benefit investors by providing additional liquidity to the listed cash market for derivative securities based upon well-known market indexes. The Amex maintains that investor interest in these securities is rapidly increasing, and specialist participation in the AHT session provides necessary liquidity after the close of the regular trading session. In addition, the market price of these exchange-trading funds is based upon transactions largely effected in

<sup>3</sup> 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 WEBS™. 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. (See SR-Amex-95-43.)

<sup>4</sup> The Commission originally approved the pilot program in Securities Exchange Act Release No. 34611 (Aug. 29, 1994), 59 FR 45739 (Sept. 2, 1994) ("Original Pilot Approval"). The pilot was scheduled to expire on August 29, 1995, but was extended for three successive one-year periods in 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); and 38986 (Aug. 17, 1997), 62 FR 46785 (Sept. 4, 1997). In the Original Pilot Approval and in each extension, the Commission requested that the Exchange submit a report and analysis regarding the operation of the pilot program. The Exchange did not submit a report until 1997, 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, index trust securities, and Index Funds Shares. See letter dated August 5, 1997, from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Michael Walinskas, Senior Special Counsel, SEC. 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 PDRs in the AHT session for PDRs, index fund securities, and Index Fund Shares. See letter dated June 8, 1998, from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Michael Walinskas, Senior Special Counsel, SEC.

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 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. The Exchange, therefore, believes that 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.) A customer, therefore, has approximately 40 minutes to determine if an execution at the closing price suits its need and may cancel its order if it believes that the closing price does not suit its objectives.

###### 2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, in that it is designed to prevent fraudulent acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

The Exchange believes that proposed permanent approval of the pilot program would 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

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

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

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

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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 Exchange consents, the Commission will:

(A) By order approve such 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, 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, N.W., Washington, DC 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, 450 Fifth Street, N.W., Washington, DC 20549. 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-98-20 and should be submitted by August 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jonathan G. Katz,**  
Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40223; File No. SR-Amex-98-26]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listed Company Filings With the Exchange

July 16, 1998.

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> notice is hereby given that on July 8, 1998, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. 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 amend Section 134, 1101 and 1102 of its Company Guide to cease requiring listed companies to file with the Exchange paper copies of material which they electronically file with the Commission. The Exchange also proposes to amend Section 402, 610, 623, 701, 922, 930 and 940 of the Company Guide to reduce, in certain instances, the number of copies of documents which must be filed with the Exchange. The Exchange further proposes to amend Section 210 to conform it to rule changes that the Commission adopted with respect to SEC Form 8-A.<sup>3</sup>

The text of the proposed rule change is available at the Office of the Secretary, the 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 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 IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

Under the Federal securities laws, companies listed on national securities exchanges are required to file with the Commission and their listed

marketplace various reports including, for example, proxy statements and annual and interim financial reports. The Exchange's review of these filings plays a central role in the ongoing process of monitoring corporate transactions as well as in evaluating compliance with the Exchange's continued listing guidelines.

Over the past several years, the Commission has phased-in a requirement that domestic issuers file their reports electronically through the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system although certain documents, such as annual reports to shareholders, may, but are not required to be filed electronically. Similarly, non-U.S. issuers may, but are not required to, file electronically.

To relieve listed companies of the burden and cost of providing separate paper copies of their SEC filings to the Exchange, the Amex is proposing to amend Section 1101 of its Company Guide to provide that a company which files any of the specified documents with the Commission electronically will be deemed to have satisfied its comparable Exchange filing requirement.<sup>4</sup> The only exception will be for the EDGAR-optional annual reports to shareholders. The Exchange believes that since issuers' annual reports will continue to be mailed in hard copy to shareholders, it will not be burdensome to the listed companies to continue to provide paper copies to the Exchange. In addition, the Amex believes this distinction is appropriate because annual reports often contain relevant material which is not susceptible to electronic transmission.

Implementation of this proposal also requires that the Commission provide "no action" relief from the statutory requirements that exchange-listed issuers file copies of their filings directly with their marketplaces. The Exchange is submitting a request for such relief under separate cover.<sup>5</sup>

The Exchange believes that elimination of paper filings with the Exchange will not impair the Exchange's regulatory process since the Amex has a contractual arrangement with a commercial vendor which provides real-time access to the EDGAR

<sup>4</sup> The Amex represents that its "Guide to Filing Requirements" will be similarly amended.

<sup>5</sup> The proposed rule change, although immediately effective pursuant to Section 19(b)(3)(A), will not be implemented until the Exchange receives approval from the Commission of its related request for no action relief.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 38850 (July 18, 1997) 62 FR 39755 (July 24, 1997) (S7-15-96) (Adopting Phase 2 Recommendations of Task Force on Disclosure Simplification).

<sup>7</sup> 17 CFR 200.30-3(a)(12).