

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 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 date, views and arguments concerning the foregoing, including whether the proposal 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. 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 Section, 450 Fifth Street, NW, 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-98-27 and should be submitted by September 16, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40338; File No. SR-Amex-98-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to the Listing and Trading of Stock Upside Note Securities on the Lehman Brothers' European Stock Basket

August 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notes is hereby given that on July 1, 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. On August 3, 1998, the Exchange file with the Commission Amendment No. 1 to the proposed rule change.³ 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 Exchange proposes to list and trade Stock Upside Note Securities on the Lehman Brothers' European Stock Basket, a new stock basket developed by Lehman Brothers Holdings Inc. containing stocks of European companies.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Claire P. McGrath, Vice President and Special Counsel, Derivatives Legal Counsel, Amex, to Richard Strasser, Associate Director, Division of Market Regulation ("Division"), SEC, dated July 30, 1998 ("Amendment No. 1"). In Amendment No. 1, the Exchange makes several substantive changes to the filing.

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

1. Purpose

The Amex proposes to trade Stock Upside Note Securities ("SUNS") on the Lehman Brothers' European Stock Basket (the "Basket"), a new basket of stocks developed by Lehman Brothers Holdings, Inc. ("Lehman Brothers") based entirely on the shares of European companies. SUNS on the Basket are designed to allow investors to combine the protection of a portion of the principal amount of the SUNS with a potential additional payment based upon the performance of a portfolio of highly capitalized European stocks. In particular, the proposed European Stock Basket will provide at least 90% principal protection with the opportunity to participate in any upside appreciation of the Basket, subject to any cap on appreciation that may be include by the issuer.

Criteria Under Section 107A of the Amex Company Guide

Under Section 107A of the *Amex Company Guide*, the Exchange may approve for listing and trading securities that can be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures or warrants.⁴ SUNS issues on the Basket will conform to the listing guidelines under Section 107A of the *Amex Company Guide*, which provide, among other things, that the issuer shall satisfy the earnings criteria set forth in Section 101⁵ of the *Amex Company Guide* and have assets in excess of \$100 million and stockholders' equity of at least \$10 million. Where the issuer does not satisfy the earnings criteria set forth in Section 101 of the *Amex Company Guide*, the issuer must have assets in excess of \$200 million and stockholders' equity of at least \$10 million; or have assets in excess of \$100 million and stockholders' equity of at least \$20 million. Further, SUNS will have a minimum public distribution of 1,000,000 units with a minimum of 400 public shareholders, except, if traded in thousand dollar denominations, then no minimum number of holders will be required. SUNS will have a principal amount/aggregate market value of not less than \$4 million. In addition, Amex will apply the continued listing

⁴ See Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

⁵ Section 101 of the *Amex Company Guide* requires issuers to have pre-tax earnings of at least \$750,000 in the fiscal year of two of the last three fiscal years.

guidelines for the proposed SUNS as set forth in Sections 1001 through 1003 of the *Amex Company Guide*. In particular, Section 1003(b)(iii)⁶ regarding suspensions and delistings with respect to limited distribution and reduced market value will apply to the SUNS.

The SUNS are non-convertible debt securities of Lehman Brothers and will conform to the above listing standards. Although the specific maturity date will be established until immediately prior to the time of the offering, the SUNS will provide for maturity within a period of not less than two years and not more than seven years from the date of issue. The SUNS will provide for a single payment at maturity, and will bear no periodic payments of interest. The European Stock Basket SUNS will be denominated in U.S. dollars and will entitle the owner at maturity to received an amount based on the percentage change between the "Original Portfolio Value" and the "Ending Average Portfolio Value", provided: (1) The amount payable at maturity will not be less than 90% of the principal amount of the SUNS; and (2) the issuer may place a cap on the amount to be paid on the SUNS at maturity. Thus, holders of the SUNS may not receive the full amount of the appreciation of the Ending Portfolio Value over the Original Portfolio Value. For example, Lehman Brothers may place a cap on the amount to be received at maturity as a stated percentage of the issuance price, e.g., 150% of the issuance price.

Alternatively, a cap could be in the form of participation rate whereby a holder of the SUNS would participate in a stated percentage of the total percentage change between the Ending Portfolio Value and the Original Portfolio Value, e.g., 80% of the total appreciation of the European Stock Basket during the term of the SUNS. The Original Portfolio Value is the value of the European Stock Basket on the date on which the issuer prices the SUNS for the initial offering to the public. The Ending Average Portfolio Value is the average of the closing prices of the European Stock Basket securities for a ten-day period beginning on the twelfth trading day prior to maturity of the SUNS.⁷ The European Stock Basket SUNS will be cash-settled and will not give holders any right to receive any Basket security or any other ownership right or interest in such security even though the return on the investment is based on the value of the Basket.

The SUNS Basket and Components

The European Stock Basket will consist of not less than ten nor more than thirty stocks of highly capitalized European companies.⁸ Each stock included in the Basket will meet the following criteria: (1) A market capitalization in excess of \$75 million; alternatively, the lowest weighted securities in the Basket that do not account for more than 10% of the weight of the Basket, may have a market capitalization of \$50 million or greater; (2) the trading volume of each component in the Basket will be at least one million shares during each of the six months preceding the listing of the SUNS; alternatively, the lowest weighted securities in the Basket that do not account for more than 10% of the weight of the Basket, may have a volume of at least 500,000 shares during each of the six months preceding the listing of the SUNS; (3) the market price for each component stock used for the calculation of the Basket will be obtained from the stock's primary market; and (4) the market price for each component will be at least \$5 for the majority of business days during the three calendar months preceding the listing of the SUNS.⁹

Basket Calculation

The Basket will be calculated using the modified equal-dollar weighting methodology. Thus, prior to the issuance of the SUNS, Lehman Brothers will establish a weighting for each of the securities in the Basket.¹⁰ Specifically, each security included in the Basket will be assigned a multiplier so that the security represents the established percentage of the value of the entire Basket on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price, to be included in the calculation of the Basket. The weightings established for each security will assure that: (1) No single stock will represent more than 25% of the weight of the Basket; (2) the five highest weighted stocks will represent no more than 50% of the weight of the Basket; (3) foreign country securities that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 40% of the weight of the index; (4) stocks for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index; and (5) stocks for

which the primary market is in any two countries that are not subject to the comprehensive surveillance agreements do not represent 33% or more of the weight of the index.

The multiplier of each security of the Basket will generally remain unchanged except for adjustments that may be necessary as a result of stock splits or stock dividends. There will be no adjustments to the multipliers to reflect cash dividends paid with respect to a portfolio security. In addition, no adjustments of any multiplier of a portfolio security will be made unless such adjustment would require a change of at least 1% in the multiplier then in effect. If the issuer of a security included in the Basket no longer exists, whether for reason of a merger, acquisition or similar type of corporate control transaction, Lehman Brothers will assign to that security a value equal to the security's final value for the purposes of calculating portfolio values.

If the issuer of a European Stock Basket security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Basket so long as a market price for such security is available. If such a market price is no longer available for a Basket security due to a liquidation, bankruptcy, insolvency, or any other similar proceeding, the value of the security will be zero in connection with calculating the daily Basket value and the Ending Average Portfolio Value, for so long as no such market price exists for that security. Lehman Brothers will not attempt to find a replacement stock, or to compensate in a manner other than what is set forth above, for the extinction of a security due to a bankruptcy or similar event.

The value of the Basket will be calculated and disseminated every 15 seconds from 9:30 a.m. until 4:00 p.m. each trading day by the Exchange or by an independent calculation agent appointed by Lehman Brothers. The Basket value will be calculated based on real-time prices during the hours the European markets overlap trading hours at the Exchange. The Basket will be calculated using the last sale value for each component security from its primary market place. The Exchange rate for each currency represented in the Basket will be from one of two sources: (i) The WM/Reuter closing value reported in London at about 12:00 (New York time) each trading day or, (ii) the best bid and offer price posted by one or more contributing banks as provided by Bridge/Telesphere. If the market place for any one of the securities

⁶ See Amendment No. 1, *supra* note 3.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

constituting the European Stock Basket has not opened for trading on any given business day, the previous closing value will be used in the calculation. The Basket value, for any day, will equal the sum of the products of the most recently available market prices, expressed in U.S. dollars and the applicable multipliers for the Basket securities. Lehman Brothers will undertake to implement certain surveillance and compliance procedures with respect to the dissemination of the Basket value, requiring that the Basket value be announced only through public dissemination and restricting the access of the Lehman Brothers trading desk to the Basket value determined by the calculation agent until after public dissemination of the value.¹¹

Exchange Rules Applicable to SUNS

The Exchange's equity trading rules will apply to the trading of SUNS linked to the European Stock Basket. Those rules include Rule 411, which requires members to use due diligence to learn the essential facts relative to every customer to every order or account accepted; and Rule 462 which requires that application of equity margin rules to the trading of indexed term notes. The Exchange will, prior to trading the proposed SUNS, distribute an Information Circular to the membership: (1) Highlighting the essential features of the SUNS product including, but not limited to, the less than 100% principal protection feature and the fact that the issuer has placed a cap on the amount to be paid on the SUNS at maturity;¹² and (2) providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions of the SUNS and highlighting their special risks and characteristics. The circular will state that before a member, member organization, or employee of such member organization undertakes to recommend a transaction in the security, such member or member organization should make a determination that the security is suitable for such customer and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommended transaction, including those highlighted, and is financially

able to bear the risks of the recommended transaction.

2. Statutory Basis

The Basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)¹³ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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, 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. 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-98-25 and should be submitted by September 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40345; File No. SR-Amex-98-19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to Solicitation of Options Transactions

August 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 18, 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. On July 7, 1998, the Amex filed Amendment No. 1 to the proposal.² On

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² See Letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 6, 1998 ("Amendment No. 1"). Amendment No. 1 revises proposed Commentary .04 to Amex Rule 950(d) to indicate that it may be considered conduct inconsistent with just and equitable principles of trade for any member or associated person who has knowledge of the material terms and conditions of orders being crossed to use that information to buy or sell the underlying security or related securities until either the terms of the order are disclosed to the trading crowd or the trade can no longer reasonably be considered imminent. In addition, Amendment No. 1 revises proposed Commentary .04 to replace a reference to an "original" order with a reference to an "originating" order and to

Continued

¹¹ *Id.*

¹² *Id.*

¹³ 15 U.S.C. 78f(b)(5).