

sub-advisers will examine the portfolios securities being offered to each Portfolio and accept only those securities as consideration that they would have acquired directly in a cash transaction. The Applicants represent that the transactions are consistent with the policies of each investment company and the general purposes of the 1940 Act, and comply with the requirements of Section 17(b).

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitution and related transactions involving in-kind redemptions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40749; File No. SR-Amex-98-29]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change Relating to the Listing Under Rules 1000A et seq. of Select Sector SPDRsSM and Technology 100 Index Fund Shares

December 4, 1998.

I. Introduction

On July 17, 1998, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade under AMEX Rules 1000A et seq. ("Index Fund Shares") the following securities: (1) nine series of Select Sector SPDRsSM; and (2) one series of the Technology 100 Index Fund (collectively, the "Funds").

Notice of the proposed rule change, together with substance of the proposal, was published for comment in Securities Exchange Act Release No. 40391 (September 1, 1998), 63 FR 48280 (September 9, 1998). On November 12, 1998, the Exchange filed Amendment

No. 2.³ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to list and trade under Rules 1000A et seq.⁴ the following securities issued by an open-end management investment company: (1) nine series of Select Sector SPDRsSM, as described herein;⁵ and (2) one series of the Technology 100 Index Fund.⁶

(a) Select Sector SPDRs

The Exchange proposes to list and trade nine investment series of Select Sector SPDRs to be offered by the Select Sector SPDR Trust, an open-ended investment company and a Massachusetts business trust. The Select Sector SPDRs offered by the Trust are: The Basic Industries Select Sector SPDR; The Consumer Services Select Sector SPDR; The Consumer Staples Select Sector SPDR; The Cyclical/

³ Amendment No. 2 changes the name of the Sector SPDRs to Select Sector SPDRs; clarifies the duties and identity of the lending agent; changes and explains the method of the dissemination of product information by the Exchange; delineates the construction and maintenance standards for the Select Sector Indices and the Technology 100 Index; and clarifies that in the event of market wide circuit breakers trading in the Select Sector SPDRs and the Technology 100 Index Fund would be suspended pursuant to AMEX Rule 117. The substance of this amendment is incorporated into this order. See Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Heather Seidel, Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 11, 1998 ("Amendment No. 2").

⁴ Amex Rules 1000A et seq. provide for the listing and trading of Index Fund Shares, which 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 index. See Securities Exchange Act Release No. 36947 (March 8, 1996), 63 FR 2348 (March 14, 1996). The Exchange currently lists under Rules 1000A et seq. seventeen series of World Equity Benchmark SharesTM ("WEBSTM") based on Morgan Stanley Capital International foreign stock indices. "World Equity Benchmark Shares" and "WEBS" are service marks of Morgan Stanley Group, Inc.

⁵ "S&P"®, "Standard & Poor's 500"®, "Standard & Poor's Depository Receipts"® and "SPDRs"® are trademarks of The McGraw-Hill Companies, Inc., and "Select Sector SPDR" is a service mark of The McGraw-Hill Companies, Inc.

⁶ The Select Sector SPDR Trust (with respect to Select Sector SPDRs) and The Index Exchange Listed Securities Trust (with respect to the series of the Technology 100 Index Fund) filed with the Commission an Application for Orders under Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act") as amended, for the purpose of exempting Select Sector SPDRs and the series of the Technology 100 Index Fund from Sections 2(a)(32), 5(a)(1), 22(d), 17(a)(1) and (a)(2), and Rule 22c-1 under the 1940 Act. See Investment Company Act Release No. 23492 (October 20, 1998), 63 FR 57332 (October 27, 1998).

Transportation Select Sector SPDR; The Energy Select Sector SPDR; The Financial Select Sector SPDR; The Industrial Select Sector SPDR; The Technology Select Sector SPDR; and The Utilities Select Sector SPDR.⁷

Each Select Sector SPDR offers and issues Select Sector SPDR shares at their net asset value only in aggregations of a specified number of shares ("Creation Unit"), generally in exchange for a basket of common stocks consisting of some or all of the component securities ("Fund Securities") of a specified market sector index ("Select Sector Index"), together with the deposit of a specified small cash payment known as the "cash component" and reflecting, for example, net accrued dividends. It is anticipated that the deposit of Fund Securities and the specified cash payment, in exchange for Select Sector SPDRs will be made primarily by institutional investors, arbitrageurs and the Exchange specialist. Creation Units are separable upon issue into identical shares which are listed and traded on the AMEX. Similarly, shares are also redeemable only in Creation Unit size aggregations and usually in exchange for Fund Securities and a specified cash payment. It is anticipated that a Creation Unit will consist of 50,000 shares of the relevant series of Select Sector SPDRs. The Select Sector SPDR Trust reserves the right to offer a "cash" option for creations and redemptions of Select Sector SPDRs, although it has no current intention of doing so. For each Select Sector, SPDR, the Administrator (State Street Bank and Trust Company) makes available through the National Securities Clearing Corporation ("NSCC"), immediately prior to the opening of business on the AMEX, the list of names and the required number of share of stocks of each relevant Select Sector Index to be included in the securities deposit required in connection with the creation of Select Sector SPDRs in Creation Unit size aggregations.⁸

⁷ Information on the component stocks of the Select Sector Indices and the Technology 100 Index is available in the public file.

⁸ The procedures for the creation and redemption of Select Sector SPDRs and Technology 100 Index Fund shares are similar to those applicable for SPDRs, for utilize processes of the National Securities Clearing Corporation in connection with the transmittal of trade instructions, the transfer of component securities and the cash component, and the transfer of Select Sector SPDRs or Technology 100 Index Fund shares and component securities on creation or redemption. This contrasts with procedures for the creation and redemption of other Index Fund Shares currently listed on the Amex (i.e., WEBSTM), which, while similar in certain respects to SPDR procedures, do not utilize such National Securities Clearing Corporation processes.

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Each of the nine Select Sector Indices, which is the benchmark for a Select Sector SPDR, is intended to give investors an efficient way to track the movement of baskets of the equity securities of public companies that are components of the Standard & Poor's 500 Composite Stock Index ("S&P 500") and are involved in specific sectors.⁹ Each stock included in a Select Sector Index (the "Component Stocks") will be selected from companies represented in the S&P 500.¹⁰ The nine Select Sector Indices together will include all of the companies represented in the S&P 500 and all of the stocks in the S&P 500 will be allocated to one and only one of the Select Sector Indices. Each Select Sector Index will be calculated by the AMEX's Index Services Group ("AMEX ISG") using the "market capitalization" methodology (the same method used in calculating the S&P 500). This design ensures that each of the component stocks within a Select Sector Index is represented in a proportion consistent with its percentage with respect to the total market capitalization of the Select Sector Index. Under certain conditions, the number of shares of a component stock may be adjusted to conform to requirements of Subchapter M under the Internal Revenue Code.¹¹

The stocks included in a Select Sector Index have been assigned to a Select Sector Index by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") or "the Index Compilation Agent"). The Index Compilation Agent, after consultation with Standard & Poor's, assigns Component stocks to a particular Select Sector Index with the aim of categorizing a company's

fundamental businesses on the basis of the company's sales and earnings composition and its predominant source of revenue among the company's business lines. In addition, such assignment is based on the sensitivity of the company's stock price and business results to the common factors that affect other companies in the specific Select Sector Index.¹² Standard & Poor's has sole control over the removal of stocks from the S&P 500 and the selection of replacement stocks to be added to the S&P 500, but only plays a consulting role in the assignment of the S&P 500 component securities to any Select Sector Index. The assignment of component stocks to a Select Sector Index is the sole responsibility of the Index Compilation Agent. If Standard & Poor's removes a stock from the S&P 500, Merrill Lynch will remove the same stock from whichever Select Sector Index it is in. When Standard & Poor's assign a replacement stock to the S&P 500, Merrill Lynch will assign the same stock to whichever Select Sector Index it deems appropriate.

Each Select Sector Index is weighted based on the market capitalization of each of the Component Stocks, subject to the following asset diversification requirements: (i) the market capitalization-based weighted value of any single Component Stock measured on the last day of a calendar quarter may not exceed 24.99% of the total value of its respective Select Sector Index; and (ii) with respect to 50% of the total value of the Select Sector Index, the market capitalization-based weighted value of the Component Stock must be diversified so that no single Component Stock measured on the last day of a calendar quarter represents more than 4.99% of the total value of its respective Select Sector Index, or in other words, the sum of the weight of all of the component stocks that each represent less than 5% of the Index must be equal to at least 50% of the Index weight.

Rebalancing the Select Sector Indices to meet the asset diversification requirements will be the responsibility of the AMEX ISG. If shortly prior to the last business day of any calendar quarter (a "Quarterly Qualification Date"), a Component Stock(s) approaches the maximum allowable value limits set forth above (the "Asset Diversification Limits"), the percentage that such Component Stock (or Component Stocks) represents in the Select Sector Index will be reduced and the market

capitalization-based weighted value of such Component Stock (or Component Stocks) will be redistributed across the Component Stocks that do not closely approach the Asset Diversification Limits in accordance with the methodology set forth in the prospectus and Statement of Additional Information for the Select Sector SPDR Trust. The Select Sector Indices are calculated and disseminated by the AMEX ISG.

Periodically, the Index Compilation Agent will supply the AMEX ISG with sector designations for a number of stocks deemed likely candidates for replacement selection by the Standard & Poor's 500 Index Committee. If a replacement not on the current list is selected by the Standard & Poor's 500 Index Committee, the AMEX ISG will ask the Index Compilation Agent to assign the stock to one of the nine sectors promptly. AMEX will disseminate information on this assignment and on consequent changes in the Select Sector Index(es). The AMEX does not expect the timing of dissemination of such information to be materially affected by whether a replacement stock had been included among the candidates for replacement supplied by the Index Compilation Agent.

The Index Compilation Agent at any time may determine that a Component Stock which has been assigned to one Select Sector Index has undergone such a transformation in the composition of its business that it should be removed from that Select Sector Index and assigned to a different Select Sector Index. In the event that the Index Compilation Agency notifies the AMEX ISG that a Component Stocks Select Sector Index assignment should be changed the AMEX will disseminate notice of the change by using an information circular to their membership within one business day of receipt of such notice and will implement the change in the affected Select Sector Indices on a date no less than one week after the initial dissemination of information on the sector change to the maximum extent practicable.¹³ It is not anticipated that Component Stocks will change sectors frequently.

Component Stocks removed from and added to the S&P 500 will be deleted from and added to the appropriate Select Sector Index consistent with the timing of the announcement and

Unlike the WEBS series, which do not hold all of the applicable index stocks but instead utilize a representative "portfolio sampling" technique, Select Sector SPDRs and the Technology 100 Index Fund generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable prospectus.

⁹The S&P 500 Index consists of 500 stocks chosen by Standard & Poor's for market size, liquidity, and industry group representation. It is a market-value weighted index (stock price times number of shares outstanding), with each stock's weight in the Index proportionate to its market value.

¹⁰The Select Sector Indices underlying the Select Sector SPDRs are not the same as S&P indices based on specific industry sectors, although the component stocks of the Select Sector Indices may be comparable to, and overlap with, the S&P sector indices to some degree.

¹¹Each Select Sector SPDR Fund (as well as the Technology 100 Index Fund) intends to qualify for and to elect treatment as a separate regulated investment company under Subchapter M. To qualify for such treatment, a company must annually distribute at least 90% of its net investment company taxable income (which includes dividends, interest and net short-term capital gains) and meet several other requirements, including certain diversification tests.

¹²For example, Amex states that a common factor that could affect the prices for the Component Stocks in the Financial Select Sector Index or the Utilities Select Sector Index is interest rate variations. See Amendment No. 2, *supra* note 3.

¹³Telephone Conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on November 24, 1998.

effectiveness of additions and deletions from the S&P 500 insofar as practicable. The AMEX will announce a change to a Select Sector Index promptly following an announcement by Standard & Poor's of an addition to and deletion from the S&P 500.¹⁴ Generally, changes in the applicable component stock for the relevant Select Sector SPDR Index will be made concurrently with Standard & Poor's change to the S&P 500.¹⁵

Standard & Poor's will advise the AMEX ISG regarding the handling of nonroutine corporate actions which may arise from time to time and which may have an impact on the calculation of the S&P 500, and, consequently, on the calculation of the Select Sector Indices. Corporate Actions such as a merger or acquisition, stock splits, and routine spin-offs, which require adjustments in the Select Sector Index calculation, will be handled by the AMEX staff. Index Divisor adjustments will be calculated, when necessary, in the same manner they are handled by Standard & Poor's in its maintenance of the S&P 500. In the event a merger or acquisition changes a company's fundamental business and source of revenues, the Select Sector Index assignment of the stock may change. In any event, a new Index Divisor for affected Select Sector Indices will be disseminated to the public promptly by the AMEX ISG.

Each Select Sector SPDR will normally invest at least 95% of its total assets in stocks that comprise the relevant Select Sector Index or stock equivalent positions which the Adviser deems appropriate as an alternative to such stocks.¹⁶

(b) *Technology 100 Index Fund Shares*

The Exchange also proposes to list and trade Technology 100 Index Fund shares issued by the Index Exchange Listed Security Trust, an open-ended investment company and a Massachusetts business trust. Such trust is an "index fund" presently consisting of a single investment portfolio, the Technology 100 Index Fund. Fund shares may be created and redeemed in a manner similar to that described above

for Select Sector SPDRs.¹⁷ The Fund Administrator (State Street Bank and Trust Company) makes available through NSCC, immediately prior to the opening of business on the AMEX, the list of names and the required number of shares of stocks to be included in the securities deposit required in connection with creation of Fund shares in Creation Unit size aggregations. Creation Units are separable upon issuance into identical shares which are listed and traded on the AMEX. Similarly, shares are also redeemable only in Creation Unit size aggregations and usually in exchange for Fund Securities and a specified cash payment. It is anticipated that one Creation Unit will consist of 50,000 Fund shares.

The Fund's investment objective is to provide investment results that correspond generally to the price and yield performance of publicly traded equity securities of technology companies as represented by an index (the "Technology 100 Index") compiled by Merrill Lynch. The Technology 100 Index, which is constructed in accordance with specified selection criteria, is intended to give investors an efficient, equal-dollar weighted way to track movements of certain technology stocks and American Depositary Receipts ("ADRs") traded within the United States. According to the AMEX, the Technology 100 Index provides a diversified representation of technology stocks and ADRs traded in the United States. The majority of the Technology 100 Index components are involved in the following industries: computer software, data processing, computer services, semiconductors, and telecommunications equipment.

The Technology 100 Index is constructed by Merrill Lynch based on two criteria: market capitalization and trading volume. First, to assure that stocks in the Index are highly liquid, stocks with daily trading volume of less than \$12.5 million (shares traded times trade price) are eliminated from the selection universe of all U.S. traded technology stocks and ADRs. The median 63 day trading volume calculation, using the most recent 63 trading days, is used for this screening; the data for the initial index

construction is from January 30, 1998. Second, the top 100 stocks from the liquidity-screened universe of technology names are chosen by market capitalization. The price used to calculate market capitalization in connection with the initial index construction is the primary exchange closing price as of January 30, 1998.

The Technology 100 Index is calculated and maintained by the AMEX ISG in consultation with Merrill Lynch, which may suggest changes in the industry categories represented in the Index or changes in the number of component stocks in an industry category to properly reflect the changing conditions in the technology sector. The Technology 100 Index is calculated using an equal dollar weighting methodology designed to ensure that each security is represented in an approximately equal dollar amount. In addition, Merrill Lynch may advise the Exchange regarding the handling of unusual corporate actions. Routine corporate actions (e.g. stock splits) that require straightforward index divisor adjustments are handled by the Exchange staff without consulting Merrill Lynch.

Whenever possible, all stock replacements and unusual divisor adjustments caused by the occurrence of extraordinary events such as dissolution, merger, bankruptcy, non-routine spin-offs, or extraordinary dividends will be made by the Exchange in consultation with Merrill Lynch. In the case of replacements, the largest non-index constituent in terms of market capitalization from the list of U.S.-traded technology stocks and ADRs will be chosen.

In selecting replacement stocks, the market capitalization and trading volume is calculated using the primary exchange closing price one day prior to potential replacements being considered. There is no fixed period between the consideration and change dates, but in most instances the period between the consideration and the change dates will be no more than a month.¹⁸ The chosen stock must have a median daily trading volume over the previous 63 days that is greater than that of the 75th percentile rank of the existing Index stocks. If the liquidity level is insufficient, the next largest stock will be considered. In the event that no stock meets the liquidity criteria,

¹⁴ Standard & Poor's generally announces S&P 500 changes five business days before they take effect.

¹⁵ Telephone Conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on November 20, 1998.

¹⁶ As noted above, *supra* note 8, Select Sector SPDRs generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable prospectus.

¹⁷ As noted above, *supra* note 8, the Technology 100 Index Fund generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable prospectus. The Fund reserves the right to offer a "cash" option for creations and redemptions of Fund shares, although it has no current intention of doing so. The Fund will normally invest at least 95% of its total assets in stocks that comprise the benchmark index or stock equivalent positions which the Adviser deems appropriate as an alternative to such stocks.

¹⁸ Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on December 3, 1998.

the largest stock in terms of market capitalization will be added.

Merrill Lynch will reconstitute the Index annually after the close of the third Friday of December. The reconstitution will take two steps: first, determination of Index constituents, and second, share calculations to ensure equal weighting. Index constituents will be replaced if: 1) a stock is no longer deemed a representative "technology" stock; or 2) the stock's market capitalization declines below that of the 125th market cut-off to reduce unnecessary turnover. The shares and volume figures are calculated using data as the second Friday of December.

*(c) Dissemination of Information by the Exchange*¹⁹

The value of the Select Sector Indices and the Technology 100 Index will be calculated continuously by AMEX and disseminated every 15 seconds on Network B of the Consolidated Tape Association ("CTA"). The major electronic financial data vendors, including Bloomberg, Quotron, Reuters, and Bridge Information Systems, are expected to publish information on the Select Sector and Technology 100 Indices for their subscribers.

In order to provide up to date pricing information for the Funds' shares, the Exchange will calculate and disseminate every 15 seconds through CTA Network B an amount representing on a per share basis the sum of the "Dividend Equivalent Payment" effective through and including the previous business day, plus the current value of the "Deposit Securities" (the sum of the Dividend Equivalent Payment plus the current value of the Deposit Securities is the "Value"). The Dividend Equivalent Payment is an amount intended to enable a Fund to make a distribution of dividends on the next payment date as if all the portfolio securities of the Fund had been held for the entire dividend period. The "Deposit Securities" consist of a designated portfolio of securities constituting a substantial replication, or a representation, of the stocks included in the relevant Fund index.

(d) Other Characteristics of Select Sector SPDRs and Technology 100 Index Fund

For each of the nine series of Select Sector SPDRs and the Technology 100 Index Fund, it is anticipated that a minimum of three Creation Units will be outstanding at the commencement of

trading on the Exchange.²⁰ Based on market prices as of November 12, 1998, it is anticipated that the initial trading price of a Select Sector SPDR will range from approximately \$21 to \$28, and that the initial trading price of a Technology 100 index Fund share will be approximately \$25.²¹

The Funds will pass along dividends and interest, net of expenses, to fund shareholders as "income dividend distributions." Net capital gains will be distributed to shareholders as "capital gain distributions."

The net asset value for the Funds is calculated by the Administrator, State Street Bank and Trust Company ("State Street"), which is also the Adviser and Custodian for the Funds. State Street will also act as the lending agent for the Select Sector SPDR.²² The lending agent for the Technology 100 Index Fund will be determined.²³ ALPS Mutual Funds Services, Inc. serves as the principal underwriter and distributor for the Funds.

Select Sector SPDRs and Technology 100 Index Fund shares are registered in book-entry form through the Depository Trust Company. Trading in Select Sector SPDRs and Technology 100 Index Fund shares on the Exchange is effected until 400 p.m. each business day. The minimum trading increment under Rule 127 for Select Sector SPDRs and Technology 100 Index Fund shares will be 1/64 of \$1.00.

(e) Stop and Stop Limit Orders

AMEX Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by AMEX Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a

²⁰ Based on the estimated initial trading prices for the Select Sector SPDRs and the Technology 100 Index Fund shares, the value of the one creation unit should be between \$1 million and \$1.5 million. Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on November 20, 1998.

²¹ See Amendment No. 2, *supra* note 3.

²² The lending agents for the Funds will cause the delivery of loaned securities from each Fund to borrowers, arrange for the return of loaned securities to the Fund at the termination of the loans, request deposit of collateral when required by the loan arrangements, and provide recordkeeping and accounting services. See Amendment No. 2, *supra* note 3.

²³ Merrill Lynch will not be the lending agent for the Technology 100 Index Fund as indicated in the original filing. Telephone Conversation Between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on November 23, 1998.

quotation, as set forth in Commentary .04(c)(i-v). The Exchange has designated Index Fund Shares, including Select Sector SPDRs and shares of the Technology 100 Index Fund, as eligible for this treatment.²⁴

(f) Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in AMEX Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including Select Sector SPDRs and Technology 100 Index Fund shares. These factors would include (1) the current calculation of the numerical index value derived from the current market prices of the underlying stocks in such stock index group is not available; (2) trading in one or more of the underlying stocks comprising such stock index group has been halted in the primary market(s) under circumstances which indicate that such stock or stocks will likely re-open at a price or prices significantly different than the price or prices at which such stocks or stocks last traded prior to the halt; (3) the extent to which trading is not occurring in stocks underlying the index; (4) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²⁵

(g) Disclosure

Member firms will be informed by an information circular, prior to the commencement of trading, that investors purchasing Select Sector SPDRs or Technology 100 Index Fund shares will be required to receive a fund prospectus prior to, or concurrently with, the confirmation of a transaction within. The information circular will address Exchange members' responsibilities under AMEX Rule 411 ("know your customer rule") regarding transactions in such Fund Shares. AMEX Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.²⁶ The circular also will address members' responsibility to deliver a prospectus to all investors as

²⁴ See Securities Exchange Act Release No. 29063, n. 9 (April 10, 1991), 56 FR 15652 (April 17, 1991) (order approving File No. SR-Amex-90-31 regarding Exchange designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c)).

²⁵ In the event of market wide circuit breakers trading in the Select Sector SPDRs and the Technology 100 Index Fund would be suspended pursuant to Amex Rule 117. See Amendment No. 2, *supra* note 3.

²⁶ See Amex Rule 411.

¹⁹ The Exchange will not disseminate the Indicative Per Share Portfolio Value described in the initial Rule 19b-4 filing, but will instead disseminate information as described herein. See Amendment No. 2, *supra* note 3.

well as highlight the characteristics of purchases in the Funds.

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, the requirements of Section 6(b)(5) of the Act.²⁷ The Commission believes that the Exchange's proposal to list and trade nine Select Sector SPDRs and one series of Technology 100 Index Fund Shares will provide investors with a convenient and efficient way of participating in the securities markets. The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low cost security replicating the performance of a portfolio of stocks at negotiated prices throughout the business day.²⁸ The Commission also believes that Fund Shares in general, and Select Sector SPDRs and the Technology 100 Index Fund shares in particular, will benefit investors by allowing them to trade securities based on a portfolio of stocks in secondary market transactions.²⁹ Accordingly, as discussed below, the proposed rule change is consistent with Section 6(b)(5) of the Act³⁰ which requires Exchange rules to facilitate transactions in securities while continuing to further investor protection and the public interest.³¹

As the Commission noted in previous orders approving other products (SPDRs and MidCap SPDRs) for listing and

trading on AMEX,³² the Commission believes that the trading of a security like the Select Sector SPDRs and the Technology 100 Index Fund shares, which replicate the performance of a portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such as Select Sector SPDRs and the Technology 100 Index Fund shares, trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.³³ Accordingly, the Commission believes that trading shares of the Funds will provide retail investors with a cost efficient means to make investment decisions based on the direction of certain sectors the market, and may provide market participants several advantages over existing methods of effecting program or other trades involving stocks.

Based on market prices as of November 12, 1998, it is anticipated that the initial trading price of a Select Sector SPDR will range from approximately \$21 to \$28, and the initial trading price of the Technology 100 Index Fund share will be approximately \$25. The estimated cost of an individual Select Sector SPDR or the Technology 100 Index Fund should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of stocks representing a particular sector of the marketplace.³⁴ Accordingly, the Commission believes that trading of Select Sector SPDRs and the Technology 100 Index Fund shares will provide retail investors with a cost efficient means to make investment decisions based on the direction of various segments of the market and may provide market participants several

advantages over existing methods of effecting program or other trades involving stocks.

Moreover, the Commission believes that Select Sector SPDRs and the Technology 100 Index Fund shares will provide investors with several advantages over standard open-end mutual fund shares specializing in such stocks. In particular, investors will be able to trade the Funds continuously throughout the business day in secondary market transactions at negotiated prices.³⁵ In contrast, Investment Company Rule 22c-1³⁶ limits holders and prospective holders of open-end investment company shares to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the funds as designated by the board of directors. Accordingly, the Select Sector SPDRs and the Technology 100 Index Fund shares should allow investors to: (1) respond quickly to market changes; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although the Funds are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, the Funds are equity securities that are priced off a portfolio of stocks based on the nine Select Sector SPDR Indices and the Technology 100 Index. Accordingly, the level of risk involved in the purchase or sale of these Funds is similar to the risk involved in the

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

²⁹ The Commission notes, however, that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in Select Sector SPDRs and the Technology 100 Index Fund can redeem them in Creation Unit size aggregations only. Nevertheless, Select Sector SPDRs and the Technology 100 Index Fund shares would have the added benefit of liquidity from the secondary market and fund holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

³⁰ 15 U.S.C. 78f(b).

³¹ 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).

³² See Securities Exchange Act Release Nos. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) ("SPDRs Order"), and 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995) ("MidCAP SPDRs Order").

³³ Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a "basket" or group of fifteen or more stocks having a total market value of \$1 million or more.

³⁴ For example, an investor wishing to hold securities tracking technology stocks could purchase in a single transaction the Technology Select Sector SPDR or the Technology 100 Index Fund.

³⁵ Because of potential arbitrage opportunities, the Commission believes that the Funds will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of the Funds comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes the Trusts will track the underlying index more closely than an open-end index fund because the Trusts will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trusts will generally redeem only in kind, thereby enabling the Trusts to invest virtually all of its assets in securities comprising the underlying index.

³⁶ Investment Company Act Rule 22c-1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted the Select Sector SPDRs and the Technology 100 Fund an exemption from this provision in order to allow them to trade at negotiated prices in the secondary market. See *supra* note 6.

purchase or sale of traditional common stock, with the exception that the pricing mechanism for the Funds is based on a basket of stocks. Based on these factors, the Commission believes that it is appropriate to regulate the Funds in a manner similar to other equity securities. Nevertheless, the Commission believes that the nature of the Funds raise, certain product design, disclosure, trading, market impact and other issues that must be addressed adequately. As discussed in more detail below, the Commission believes AMEX has adequately addressed these concerns.

(a) The Funds Generally

The Commission believes that the proposed Funds are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the index it is based upon, and, in turn, the performance of: (1) public companies that are components of the S&P 500 and are involved in a specific Select Sector Index as designed by Merrill Lynch, and (2) publicly traded equity securities of technology companies as represented by an index compiled by Merrill Lynch. The components of the nine individual Select Sector SPDRs, collectively, comprise all of the components in the S&P 500, a broad-based, capitalization-weighted index consisting of 500 of the most actively-traded and liquid stocks in the U.S. Thus, although Merrill Lynch is primarily responsible for the assignment of stocks into Select Sector Indices, the nature of the S&P 500 provides a liquidity screen that should insure that the Select Sector Indices are comprised of highly liquid securities. Merrill Lynch also imposes specific criteria in its selection of the Technology 100 Index components. In selecting components for the Technology 100 Index, Merrill Lynch evaluates the market capitalization and trading volume of the components to assure that the stocks within the Index are liquid and highly capitalized.

The aim of these component selection processes is to make Fund Index components highly representative of the over-all economic sector make-up and market capitalization of a given market. At the same time, securities that are illiquid or that have a small capitalization are avoided. The Commission believes that these criteria should serve to ensure that the underlying securities of these Indices are well capitalized and actively traded.

Additionally, the Funds generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable

prospectus. The Commission also notes that the Funds will normally invest at least 95% of their total assets in stocks that comprise the relevant Sector Index, the Technology 100 Index, or stock equivalent positions which the Adviser deems appropriate as an alternative to such stocks. The Commission believes that taken together, the foregoing are adequate to characterize the Funds as bona fide index funds. Furthermore, the Commission believes that the component selection and replacement procedures for the Funds should help to ensure that the component securities generally remain highly capitalized and actively traded, and that the components continue to reflect their corresponding indices.

(b) Disclosure

The Commission believes that the Exchange's proposal should ensure that investors are adequately apprised of the terms, characteristics, and risks of trading the Funds.³⁷ As noted above, all Fund Share investors will receive a prospectus regarding the product. Because the Funds will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply both to initial investors, and to all investors purchasing such securities in secondary market transactions on the AMEX. The prospectus will address the special characteristics of the Select Sector SPDRs or the Technology 100 Index Fund shares, including a statement regarding its redeemability and method of creation.

The Commission notes that the Exchange will issue an information circular to its members explaining the unique characteristics of this type of security prior to the commencement of trading in shares of the Funds. The Commission also notes the circular will address Exchange members' responsibilities under AMEX Rule 411 regarding transactions in such Fund Shares. AMEX Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.³⁸ The circular also will address members' responsibility to deliver a prospectus to all investors as well as highlight the characteristics of purchases in the Fund Shares.

(c) Trading of the Index Fund Shares

The Commission finds that adequate rules and procedures exist to govern the

trading of Index Fund Shares, including Select Sector SPDRs and the Technology 100 Index Fund shares. The Fund shares will be deemed equity securities subject to all AMEX rules governing the trading of equity securities, including, among others, rules governing priority, parity, and precedence of orders, market volatility related trading halt provisions pursuant to Rule 117, and responsibilities of specialist. The Commission also notes that the AMEX may consider halting trading in any series of Index Funds Shares under certain other circumstances, including those set forth in AMEX Rule 918C(b)(4) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

The Commission is satisfied with the AMEX's development of specific listing and delisting criteria for Index Fund Shares, including Select Sector SPDRs and the Technology 100 Index Fund shares. These criteria should help to ensure that a minimum level of liquidity will exist in the Funds and allow for the maintenance of fair and orderly markets. The delisting criteria also allows the Exchange to consider the suspension of trading and the delisting of a Select Sector SPDR or the Technology 100 Index Fund, if an event were to occur that made further dealings in such securities inadvisable. Thus, the Exchange has flexibility to delist any of the Funds if circumstances warrant such action.³⁹ Accordingly, the Commission believes that the rules governing the trading of Index Fund Shares, including the Select Sector SPDRs and the Technology 100 Index Fund, provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

Under AMEX's proposal, there will be no special account opening or customer suitability rules applicable to the trading of the Fund shares.⁴⁰ Nevertheless, as noted above, AMEX Rule 411, which provides in pertinent part that "[e]very member or member organization shall use due diligence to learn the essential facts relative to every customer and to every order or account accepted," will apply.

³⁹ The Commission believes that any restrictions that change the fund shares fundamental characteristics should raise concerns under the delisting criteria. In such a case, the Amex should determine whether continued listing as a fund share is appropriate.

⁴⁰ This reflects the fact that the Fund shares are equity products and not an options product, and, therefore, do not necessitate the imposition of options-like rules.

³⁷ The Amex will be required to file a proposed rule change if an exemption from the prospectus delivery requirement with respect to any of the Funds is sought in the future.

³⁸ See Amex Rule 411.

(d) Market Impact

The Commission believes AMEX has adequately addressed the potential market impact concerns raised by the proposal. First, AMEX's proposal permits listing and trading of specific Index Fund Share only after review by the Commission. Second, AMEX has developed policies regarding trading halts in Index Fund Shares. Specifically, the Exchange would halt Index Fund Share trading in the Funds if the circuit breaker parameters under AMEX Rule 117 were reached. In addition, in deciding whether to halt trading or conduct a delayed opening in Index Fund Shares, in general, and the Select Sector SPDRs and the Technology 100 Index Fund Shares, in particular, AMEX represents that it will be guided by, but not necessarily bound to, relevant stock index option trading rules. These rules would permit AMEX to halt or suspend trading, based on certain factors, whenever two floor governors and a senior executive officer of the Exchange deemed such action appropriate and in the interest of a fair and orderly market or to protect investors.⁴¹

The Commission believes that the trading of Index Fund Shares in general, and Select Sector SPDRs and the Technology 100 Index Fund, in particular, on AMEX should not adversely impact U.S. securities markets. As to the trading of the Fund Shares, the Commission notes that the corpus of the Trusts portfolios of stock are actively traded and liquid. In fact, as described above, the Commission believes the Funds may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks.⁴² Accordingly, the

Commission believes that the Select Sector SPDRs and the Technology 100 Index Fund shares do not contain features that will make them likely to impact adversely the U.S. securities markets.

(e) Dissemination of Portfolio Information

The Commission believes that the Values the Exchange proposes to disseminate for the Funds will provide investors with timely and useful information concerning the value of the Select Sector SPDRs and the Technology 100 Index Fund shares on a per Fund basis. The Exchange represents that the information will be disseminated through the facilities of the CTA and will reflect currently-available information concerning the value of the assets comprising the Deposit Securities. This information will be disseminated every 15 seconds during regular AMEX trading hours of 9:30 a.m. to 4:00 p.m., New York time. In addition, since it is expected that the Value will closely track the applicable Fund, the Commission believes that the Values will provide investors with adequate information to determine the intra-day value of the given Select Sector SPDR or the Technology 100 Index Fund.⁴³ The Commission expects that the AMEX will monitor the disseminated Value, and if the AMEX were to determine that the Value does not closely track the applicable Fund, it would arrange to disseminate an adequate alternative value.

(f) Surveillance

The Commission notes that the AMEX has submitted surveillance procedures for the trading of Select Sector SPDRs and the Technology 100 Index Fund shares. These procedures incorporate the Fund Shares into the existing AMEX surveillance procedures to address concerns associated with the listing and trading of such securities.

The Commission also notes that certain concerns are raised when a broker dealer, such as Merrill Lynch, is involved in the development and maintenance of a stock index, upon which a product such as the Fund shares is based. The Commission notes that Merrill Lynch has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks

Select Sector SPDRs and the Technology 100 Index Fund Shares, like any other Index Fund Share, could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

⁴³ *Supra*, note 8.

in a Select Sector Index or the Technology 100 Index to assuage such concerns. The Commission believes that the "Fire Wall" procedures put in place by Merrill Lynch to segregate and survey their trading desk and research department should help address concerns raised by Merrill Lynch's involvement in the management of the Select SPDR Indices and the Technology 100 Fund Index.

(g) Stop and Stop Limit Orders

As noted above, AMEX Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by AMEX Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i-v). The Exchange has designated Index Fund Shares, including Select Sector SPDRs and shares of the Technology 100 Index Fund, as eligible for this treatment. The Commission believes that to allow stop and stop limit orders in Index Fund Shares to be elected by quotation, a rule typically used in the options context, is appropriate because, as a result of their derivative nature, Index Fund Shares are in effect equity securities that have a pricing and trading relationship to the underlying securities similar to the relationship between options and their underlying securities.

(h) Accelerated Approval of Amendment No. 2

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the day of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 strengthens the proposed rule change by clarifying the duties and identity of the lending agents, the construction and maintenance standards for the Select Sector Indices and the Technology 100 Index, and trading halt procedures for the Funds. Amendment No. 2 also strengthens the proposal by providing for a method of disseminating information on the value of the Fund Shares that more closely tracks the actual value of Funds. Additionally, Amendment No. 2 concerns issues that have been raised in prior Exchange proposals that have been the subject of a full comment period pursuant to Section 19(b) of the Act.⁴⁴ Accordingly, the Commission believes that there is good cause, consistent with Section

⁴⁴ 15 U.S.C. 78s(b).

⁴¹ See Amex Rule 918C(b).

⁴² Even though Index Fund Share transactions may serve as substitutes for transactions in the cash market, and possibly make the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create Index Fund Shares could conceivably have an impact on price levels in the cash market. In particular, if a Index Fund Share is redeemed, the resulting long stock position could be sold into the market, thereby depressing stock prices further. The Commission notes, however, that the redemption or creation of Index Fund Shares likely will not exacerbate a price movement because Index Fund Shares will be subject to the equity margin requirements of 50% and Index Fund Shares are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes Index Fund Shares, including Select Sector SPDRs and the Technology 100 Index Fund shares, in particular, will serve as a vehicle to accommodate and "bundle" order flow that otherwise would flow to the cash market, thereby allowing such order flow to be handled more efficiently and effectively. Accordingly, although

6(b)(5) and 19(b) of the Act,⁴⁵ to approve Amendment No. 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, 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 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-98-29 and should be submitted by January 4, 1999.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁶ that the proposed rule change (SR-AMEX-98-29), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-32962 Filed 12-10-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40746; File No. SR-BSE-98-7]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. Relating to its Specialist Performance Evaluation Program

December 3, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

notice is hereby given that on October 8, 1998, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. The Exchange submitted Amendment No. 1 to its proposal on November 13, 1998.³ The proposed rule change, as amended, is 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 Exchange proposes to amend the depth measure calculations in its Specialist Performance Evaluation Program pilot program ("SPEP") and to seek permanent approval of the program at the expiration of the pilot on December 31, 1998.⁴ The text of the proposed rule change is as follows: new text is italicized and deleted text is bracketed.

Chapter XV

Specialists

Specialist Performance Evaluation Program

* * * * *

Sec. 17(c)(iii) Exceptions. Where Specialists have threshold scores in each measure at the following levels (subject to change pursuant to Commission approval), they will be deemed to have adequately performed:

Overall Evaluation Score—at or above weighted score of [5.00] 7.00

Turnaround Time—below 21.0 seconds (5 points)(5%)

Holding Orders Without Action—below 21.0% (5 points)(5%)

Price Improvement in <8th Markets—at or above 2.0% (5 points)(20%)

Price Improvement in 8th Markets—at or above 15.0% (5 points)(15%)

Price Improvement in >8th Markets—at or above 25.0% (5 points)(15%)

Combined Depth (10 points) (40%)

(a) Depth—at or above 75.0% [(5 points)(20%)]

(b) Added Depth—at or above 1.0% [(5 points)(20%)]

* * * * *

³ In Amendment No. 1, the Exchange seeks permanent approval of the Specialist Performance Evaluation Program and deletes its request for accelerated approval and retroactive implementation of the proposed rule change. See Rule 19b-4 filing, SR-BSE-98-07 (Am. 1), dated November 6, 1998 ("Amendment No. 1").

⁴ *Id.*

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 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 to amend its SPEP pilot by modifying the two depth measure calculations and the overall program score. All other aspects of the pilot program will remain the same. In addition, the Exchange is requesting permanent approval of the program, which has been in effect since 1992⁵ with periodic modification over the years.⁶ The Exchange believes that the SPEP is an effective tool for measuring specialist performance if continuously monitored and modified to meet the changing needs of the industry and the types of business sent to the Exchange, as well as changes in technology. The current pilot program will expire on December 31, 1998.

The Exchange has two depth measure calculations, which are Depth and Added Depth. The Depth measure (which measures the percentage of shares exceeding the displayed NBBO size that are executed at or better than the displayed NBBO price, for those orders that at the time of receipt exceed the displayed NBBO size) is currently weighted at 20% of the overall total score with a minimum threshold of 75%, *i.e.*, no points for any executions below 75% of the NBBO size.⁷ The

⁵ The Commission initially approved the SPEP in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8298 (March 14, 1986). The BSE was permitted to incorporate objective measures of specialist performance into its pilot program in Securities Exchange Act Release No. 31890 (Feb. 19, 1993), 58 FR 11647 (Feb. 26, 1993), at which point the initial pilot program ceased to exist as a separate program.

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

⁷ For example, assume the NBBO size is 500 shares displayed and the BSE specialist receives an order for 1200 shares. If the specialist executes 600 shares at the NBBO price, the specialist would receive credit for 600 shares out of 1200 shares, or 50%. See Securities Exchange Act Release No. 39730 (March 6, 1998), 63 FR 12847 (March 16,

⁴⁵ 15 U.S.C. 78f(b) and 78s(b).

⁴⁶ 15 U.S.C. 78s(b)(2).

⁴⁷ 17 CFR 299.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.