

2. Section 18(i) of the Act provides that each share of stock issued by a registered management company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act to permit the Fund to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants asserts that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f-3 under the Act. Applicants state that the Fund will comply with the provisions of rule 18f-3 as if it were an open-end fund.

Early Withdrawal Charges

5. Section 23(c) of the Act provides, in relevant part, that no registered closed-end fund will purchase any securities of which it is the issuer except: (a) on a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the SEC may permit by rules and regulations or orders for the protection of investors.

6. Rule 23c-3 under the Act permits a registered closed-end fund (an "interval fund") to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the fund. Rule 23c-3(b)(1) under the Act provides that an interval fund may

deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

7. Section 23(c)(3) provides that the SEC may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted above, section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request relief under section 6(c) and 23(c) from rule 23c-3 to permit them to impose EWCs on shares submitted for repurchase that have been held for less than a specified period.

8. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c-10 under the Act permits open-end funds to impose deferred sales charges, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end funds under rule 6c-10 under the Act. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs and the EWCs may discourage investors from moving their money quickly in and out of the Fund, a practice that applicants submit imposes costs on all shareholders. Applicants will comply with rule 6c-10 under the Act as if that rule applied to closed-end funds. The Fund also will disclose EWCs in accordance with the requirements of Form N-1A concerning CDSCs. Applicants further state that the Fund will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistent with the requirements of rule 22d-1 under the Act.

Asset-based Distribution Fees

9. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the SEC issues an order permitting the

transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the SEC considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act, and to the extent to which the participation is on a basis different from or less advantageous than that of other participants.

10. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end funds to enter into distribution arrangements pursuant to rule 12b-1. Applicants also request an order under section 17(d) and rule 17d-1 to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c-10, 11a-3, 12b-1, 17d-3, 18f-3, and 22d-1 under the Act and NASD Conduct Rule 2830(d), as amended from time to time, as if those rules applied to closed-end investment companies.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-11079 Filed 5-3-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41334; File No. SR-AMEX-99-03]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Bond Indexed Term Notes

April 27, 1999.

I. Introduction

On January 12, 1999, the American Stock Exchange LLC ("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 ("Act")¹ and Rule 19b-4

¹ 15 U.S.C. 78s(b)(1).

thereunder,² a proposal to approve for listing and trading under Section 107A of the Amex *Company Guide* seven bond index-linked term notes. The proposed rule change and Amendment No. 1³ to the proposal were published for comment in the **Federal Register** on March 11, 1999.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Amex proposes to list for trading under Section 107A of the *Company Guide*⁵ seven term notes, each linked to a different bond index ("Bond Index Notes"). The issuers of these securities will be qualified under Section 107A(a),⁶ and each issue will meet the size and distribution requirements of Section 107A(b).⁷

Holders of the Bond Index Notes generally will receive interest on the face value of their securities in an amount to be determined at the time of issuance of the securities and disclosed to investors. The frequency and rate of the interest payment will vary from issue to issue based upon prevailing interest rates and other factors, such as a discount factor and interest payments made on the underlying bonds and credit spreads.⁸

In addition, investors will receive at maturity an amount based on the value of the linked bond index at maturity of

the securities, which may be more or less than the original principal amount thereof. The Bond Index Notes will be valued at settlement based upon the following formula: principal amount x (ending index value/beginning index value) less a discount factor, which may reflect interest rates, commissions and other such amounts as will be disclosed in the prospectus provided to investors.⁹ Returns to investors in the Bond Index Notes are unleveraged with neither a cap nor a floor.

Bond index values for the purpose of determining the payment to holders at maturity will be determined by reference to prices for the linked index on a business day shortly prior to maturity. The Bond Index Notes will provide for maturity within a period of not less than one nor more than ten years from the date of issue, will not be callable or redeemable prior to maturity, and will be cash settled in U.S. currency.¹⁰ Holders of the securities will have no claim to the bonds included in the indices.

Prior to the commencement of trading the Bond Index Notes, the Exchange will distribute a circular to its membership providing guidance about member firm compliance responsibilities, including suitability recommendations, and highlighting the special risks and characteristics of the proposed securities. In particular, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Bond Index Notes: (1) to determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The securities will be subject to the Exchange's margin rules.¹¹ The Bond Index Notes are subject to the equity trading rules of the Exchange except that, where the securities are traded in thousand dollar denominations as debt, they will be traded subject to the Exchange's debt trading rules.

The Exchange anticipates that the issuer will link distinct issues of such securities to the following seven bond indices sponsored and calculated by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"): the U.S. Domestic Master, Mortgage Master, U.S. Corporate Master, Mortgage Master, U.S. Corporate Master, U.S. Treasury/Agency Master, U.S. Treasury Master and U.S. Agency Master Indices. Each index is

intended to track a different sector of the fixed income securities market.

The Exchange represents that each of the bond indices are broad based¹² and are adjusted pursuant to objective, publicly disseminated rules.¹³ For a bond to qualify for inclusion in an index, it must meet the pre-established and defined list of objective criteria. The bonds included in each of the seven indices also meet or exceed the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Amex *Company Guide*.¹⁴ Each index is rebalanced on the last calendar day of the month. Bonds meeting the index's inclusion criteria on the last calendar day of the month are included in the index for the following month. Issues that no longer meet the criteria during the course of the month remain in the index until the next month-end rebalancing, at which point they are dropped from the index. Bonds included in the indices are held constant throughout the month until the following monthly rebalancing. Bond

¹² The U.S. Domestic Master Index, established in 1975, is an indicator of the performance of the investment grade U.S. domestic bond market. The index has over 7,000 issues and a market value of over \$5 trillion. The U.S. Treasury Master Index was established in 1977, and has approximately 160 issues with a market value of \$2.2 trillion. The U.S. Agency Master Index, established in 1977, has 1,675 issues with a market value of approximately \$450 billion. The U.S. Corporate Master Index was established in 1972, and has approximately 4,700 issues with a market value of \$1.2 trillion. The U.S. Corporate/Government Master Index, established in 1972, has 6,574 issues with approximate market value of \$3.8 trillion. The U.S. Treasury/Agency Index is a combination of the U.S. Treasury Master and U.S. Agency Master Indices, and contains approximately 1,800 issues with market value of 6.2 trillion. A further description of each of the seven indices is set forth in detail in the notice release. See *supra*, note 4.

¹³ Information as to how the indices are calculated, including the inclusion rules, are published on Bloomberg and the Merrill Lynch public web site. Changes in any rules are generally published approximately 30 days in advance of any change.

¹⁴ The Exchange's Bond and Debenture Listing Standards provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least \$5 million and either: the issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange); an issuer of equity securities listed on the Exchange (or on the New York Stock Exchange) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; an issuer of equity securities listed on the Exchange (or on the New York Stock Exchange) has guaranteed the debt security; a nationally recognized statistical rating organization (an "NRSRO") has assigned a current rating to the debt security that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned; (i) an investment grade rating to an immediately senior issue; or (ii) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a *pari passu* or junior issue.

² 17 CFR 240.19b-4.

³ See Letter from Scott G. Van Hatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 16, 1999 ("Amendment No. 1"). Amendment No. 1 provided additional details regarding the securities, including the principal factors that will affect the rate of return on the securities and the formula for determining the value of the securities at settlement.

⁴ Securities Exchange Act Release No. 41135 (March 3, 1999), 64 FR 12194 (File No. SR-AMEX-99-03).

⁵ Under Section 107A of the *Company Guide*, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants. See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

⁶ Pursuant to Section 107A(a) of the *Company Guide*, the issuer generally must have assets of \$100 million and stockholders' equity of \$10 million.

⁷ Pursuant to Section 107A(b) of the *Company Guide*, there must be a minimum public distribution of one million trading units with a minimum of 400 holders. When trading is expected to occur in larger than average trading units (e.g., a \$1,000 principal amount or more), however, no minimum number of holders will be required. The aggregate market value of issues listed under Section 107A must be at least \$4 million.

⁸ See Amendment No. 1. The discount factor may reflect prevailing interest rates, commissions and such other amounts as will be disclosed in the prospectus provided to investors.

⁹ See Amendment No. 1.

¹⁰ *Id.*

¹¹ See Amex Rule 462.

weightings for each of the indices are based on a bond's total outstanding capitalization (total face value currently outstanding times price plus accrued interest). Returns and weighted average characteristics are published daily.

Each of the above indices are calculated by the Merrill Lynch Research Portfolio Strategy Group based on the prices of the underlying bonds determined each business day. The vast majority of the prices of the underlying securities comprising the indices are determined by the Merrill Lynch Pricing Services Group. These prices are determined in accordance with all applicable statutory rules, self-regulatory organization rules and generally accepted accounting principles regarding valuation of security positions. When a security price is not available from the Pricing Services Group, the Portfolio Strategy Group will use a security price from a third party vendor that, in its best judgment, will provide the most accurate market price thereof. The resulting index values are then disseminated to, and published by, Bloomberg L.P. and Reuters at the end of each business day. MLPS&S, in its role as calculation agent for the Bond Index Notes, will use the index values as published on Bloomberg L.P. In conjunction with the issuance of the Bond Index Notes, the Exchange intends to publish the index value associated with the previous day's close.

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 national securities exchange and, in particular, with the requirements of Section 6(b)(5) under the Act¹⁵ that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to protect investors and the public interest.¹⁶

The Commission notes that the proposed Bond Index Notes have a certain level of risk because they are derivatively priced and the final rate of return to investors is unleveraged with neither a cap nor a floor. Accordingly, the Commission has specific concerns regarding this type of product. For the reasons discussed below, the Commission believes that Amex's proposal adequately addresses these concerns.

First, the Commission notes that the protections of Section 107A of the Amex *Company Guide* were designed to address the concerns attendant to the trading of hybrid securities like the proposed Bond Index Notes.¹⁷ In particular, by imposing the hybrid listing standards, heightened suitability for recommendations, and compliance requirements, noted above, the Commission believes that the Exchange has adequately addressed the potential problems that could arise from the hybrid nature of the proposed Bond Index Notes. In addition, Amex will distribute a circular to its membership calling attention to the specific risks associated with the Bond Index Notes. Distribution of the circular should help ensure that only customers with an understanding of the risk attendant to the trading of the Bond Index Notes will trade these securities on their broker's recommendations.

Second, the Commission notes that the final rate of return on the Bond Index Notes depends, in part, upon the individual credit of the issuer. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the *Company Guide*, which provides that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the Exchange's hybrid listing standards further require that the proposed indexed term notes have at least \$4 million in market value. Further information, including specific financial data, regarding the issuer and the underlying indices will be publicly available to investors through the prospectus.

Finally, the Commission believes that the listing and trading of the proposed Bond Index Notes should not unduly impact the market for the securities underlying the indices or raise manipulative concerns. The Commission notes that all of the indices are well-established and broad-based. Both the history and performance of these indices, as well as the objective calculation rules for the indices, should be readily available through a variety of public sources. Due to the indices' issue size, market value, and representative nature of different sectors of the fixed income securities market, the Commission believes that the indices are not readily susceptible to manipulation.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-AMEX-99-03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-11145 Filed 5-3-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41335; File No. SR-CHX-99-01]

April 27, 1999.

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Approving a Proposed Rule Change Amending the Net Capital Requirements for Specialists

I. Introduction

On February 26, 1999, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² a proposed rule change to increase the minimum net capital requirements for specialists. Notice of the proposed rule change appeared in the **Federal Register** on March 23, 1999.³ The Commission received no comment letters concerning the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend CHX Rule 3 of Article XI and add interpretation and policy .01. The proposal would increase the net capital requirements for non-clearing specialists, self-clearing specialists, and members and member organizations, that clear the accounts of other CHX specialists and establish a phase-in period for the increase.

The proposal would require non-clearing specialists to maintain, at a minimum, the greater of (i) \$100,000, or (ii) the amount set forth in Rule 15c3-1 under the Act,⁴ which now is \$100,000. The proposal also would

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41167 (March 12, 1999), 64 FR 14032.

⁴ 17 CFR 240.15c3-1 ("Net Capital Rule").

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 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).

¹⁷ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8623 (March 8, 1990).