

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 ISE 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 ISE 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

According to the ISE, the purpose of the proposed rule change is to give the Exchange flexibility to require members to participate in mandated system tests. The ISE believes that it is critical that its members work closely with the Exchange in testing new software releases, especially as the Exchange implements new versions of its software. The ISE represents that, while its members generally have been responsive to its testing schedule, at times the Exchange has had difficulty getting the proper level of attention of a member, resulting in some members failing to be prepared to test according to the ISE's time schedule. The proposed rule change would give the Exchange the ability to designate certain tests as mandatory for specified classes of members. Failure to engage in a test would subject a member to disciplinary action, including possible fines pursuant to changes proposed to the ISE's minor rule violation program.

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with section 6(b) of the Act,³ in general, and furthers the objectives of section 6(b)(5)⁴ in particular, which requires 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 for a free and open market and a national market system and, in general, to protect investors and the public interest. The ISE also represents that the proposal is designed to further the purposes of section 6(b)(6)⁵

requiring the rules of an exchange to provide that its members and persons associated with its members be appropriately disciplined for violation of the provisions of the Act, the rules or regulation thereunder, or the rules of the Exchange.

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

The proposed rule change does not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 ISE 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 20549-0609. 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 ISE. All submissions should refer to File No. SR-ISE-2002-07 and should be submitted by May 8, 2002.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45718; File No. SR-NYSE-2002-07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to the Listing and Trading Standards of Trust Issued Receipts

April 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On March 28, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³ On April 9, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to approve the proposed rule change, as amended, on an accelerated basis.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (March 27, 2002) ("Amendment No. 1"). Amendment No. 1 replaces the original filing in its entirety, and makes clarifications and technical corrections to the proposed rule text.

⁴ See Letter from James F. Duffy, Senior Vice President and Associate General Counsel, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission (April 9, 2002) ("Amendment No. 2"). Amendment No. 2 clarifies that the proposed rule change applies to a Trust Issued Receipt, not specific proprietary products, and clarifies rule text and the purpose of Rule 19b-4(e).

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78f(b)(6).

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

The Exchange proposes to adopt listing standards for the listing and trading, or the trading pursuant to unlisted trading privileges ("UTP"), of Trust Issued Receipts ("TIRs") under NYSE Rules 1200 through 1202, and 703.20 of the NYSE's Listed Company Manual. The Exchange also proposes to amend its rules to incorporate the listing and trading of TIRs.⁵ In addition, the Exchange proposes to adopt generic listing standards that permit the listing and trading, or trading pursuant to UTP of TIRs, pursuant to Rule 19b-4(e) of the Act.⁶ The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III 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 proposes to adopt rules to provide standards that permit the listing and trading, or the trading pursuant to UTP, of TIRs, including generic listing standards of TIRs, pursuant to Rule 19b-4(e) of the Act. The Exchange proposes to adopt listing standards applicable to TIRs consistent with the listing criteria currently used by the American Stock Exchange LLC ("Amex") and other exchanges, in order to trade TIRs on the Exchange, and/or on a UTP basis. Thus, the Exchange

proposes to adopt standards that permit the listing and trading, or trading pursuant to UTP, of TIRs, under Section 19(b)(2) of the Act.⁷ In addition, the Exchange proposes to adopt *generic* listing and trading standards for the listing and trading, or trading pursuant to UTP, of TIRs, under Rule 19b-4(e) of the Act.⁸

Trust Issued Receipts Generally

TIRs are negotiable receipts that are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the TIRs. TIRs are designed to allow investors to hold interests in a variety of companies throughout a particular industry in a single, exchange-listed and traded instrument that represents beneficial ownership in the deposited securities. Holders may cancel their TIRs at any time to receive the deposited securities.

Beneficial owners of TIRs will have the same rights, privileges and obligations as they would have if they beneficially owned the deposited securities outside of the TIR program. Holders of TIRs have the right to instruct the trustee to vote the deposited securities evidenced by the receipts. They will receive reports, proxies, and other information distributed by the issuers of the deposited securities to their security holders and will receive dividends and other distributions declared and paid by the issuers of the deposited securities to the trustee.

TIRs are not leveraged instruments, and therefore do not possess any of the attributes of stock index options. The Exchange believes that the level of risk involved in the purchase and sale of TIRs is almost identical to the risk involved in the purchase or sale of the common stocks represented by the receipt.

TIRs will be issued by a trust created pursuant to a depository trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust. An investor in TIRs will be permitted to withdraw his or her deposited securities upon delivery to the trustee of one or more round-lots of 100 TIRs. Orders for other than a round lot (or round lot multiples) will not be allowed. Conversely, an investor may deposit the necessary securities and receive the TIRs in return.

Criteria for Initial and Continued Listing

The Exchange believes that the listing criteria proposed in its new rule are generally consistent with the listing criteria currently used by the Amex, the Chicago Stock Exchange, Inc. (the "CHX"), the Chicago Board Options Exchange, Inc. (the "CBOE") and the Boston Stock Exchange, Inc. (the "BSE").⁹

If TIRs are to be listed on the NYSE, the Exchange will establish a minimum number of receipts that must be outstanding at the time trading commences on the Exchange, and such minimum number will be included in any required submission to the Commission. In connection with continued listing, the Exchange will consider the suspension of trading in, or removal from listing of, a series of TIRs when any of the following circumstances arise: (1) The trust has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the TIRs for 30 or more consecutive trading days; (2) the trust has fewer than 50,000 receipts issued and outstanding; (3) the market value of all receipts issued and outstanding is less than \$1 million; or (4) such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. These flexible criteria will allow the Exchange to avoid delisting TIRs (and possibly terminating the trust) due to relatively brief fluctuations in market conditions that may cause the number of holders to vary. However, these delisting criteria will not be applied for the initial 12-month period following formation of a trust and commencement of trading on the Exchange.

In addition, if the number of companies represented by the deposited securities drops to fewer than nine, and each time the number of companies is reduced thereafter, the Exchange will consult with the staff of the Division of Market Regulation to confirm the

⁵ See Exchange Rules 13, 36, 98, 104, 105(l), 460, Allocation Policy and pre-opening and Market-On-Close ("MOC") and Limit-at-the-Close ("LOC") procedures.

⁶ 17 CFR 240.19b-4(e). Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to Rule 19b-4(c)(1) under the Act, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listings standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class. See 17 CFR 240.19b-4(e).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 240.19b-4(e).

⁹ See Securities Exchange Act Release No. 41892 (September 21, 1999) 64 FR 52559 (September 29, 1999) (approving the listing and trading of TIRs and Internet HOLDERS on the Amex); Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999) (approving the listing and trading of TIRs and Internet HOLDERS on the CHX pursuant to UTP); Securities Exchange Act Release No. 42347 (January 13, 2000), 65 FR 4451 (January 27, 2000) (approving the listing and trading of TIRs and Internet HOLDERS on the BSE pursuant to UTP); Securities Exchange Act Release No. 43134 (August 10, 2000), 65 FR 50255 (August 17, 2000) (approving the listing standards for TIRs on the CBOE) and Securities Exchange Act Release No. 44908 (October 4, 2001), 66 FR 52161 (October 12, 2001) (approving the generic listing and trading of TIRs and HOLDERS on the CBOE).

appropriateness of continued listing of TIRs.

Trading Trust Issued Receipts Pursuant to Rule 19b-4(e)

To accommodate the efficient listing and trading, or trading pursuant to UTP, of additional TIRs, the Exchange proposes to adopt generic listing and trading standards of TIRs pursuant to Rule 19b-4(e).¹⁰ Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change, pursuant to paragraph (c)(1) of the Rule 19b-4,¹¹ if the Commission has approved, pursuant to section 19(b) of the Act,¹² the SRO's trading rules, procedures and listing requirements for the product class that include the new derivative securities product, and the SRO has a surveillance program for the product class.¹³ The Exchange believes that the Commission's approval of the proposed generic listing requirements for TIRs will allow the NYSE to begin trading qualifying products without the need for notice and comment and Commission approval under section 19(b) of the Act.¹⁴ The Exchange's ability to rely on Rule 19b-4(e) for these products potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities.

The Commission has previously approved requests of the Amex, CHX,¹⁵ and the Pacific Exchange, Inc. ("PCX")¹⁶ to provide generic standards to list and/or trade TIRs.¹⁷ The

Exchange believes that its proposed listing requirements for TIRs are substantially similar to the generic listing requirements at the Amex, CHX, and the PCX.

Exchange Rules Applicable to the Trading of Trust Issued Receipts

TIRs are considered "securities" pursuant to NYSE Rule 3 and are subject to all applicable trading rules. TIRs will be deemed "eligible securities" for purposes of the Intermarket Trading System ("ITS") Plan and therefore will be subject to the trade-through provisions of NYSE Rule 15A. TIRs are also subject to NYSE rules and policies governing, among other things, equity margin, priority, parity and precedence of orders, market volatility related trading halts, and responsibilities of member firms.¹⁸

The Exchange's surveillance procedures for TIRs will be similar to those used for investment company units and will incorporate and rely upon existing NYSE surveillance procedures governing equities.

Prior to the commencement of trading in TIRs, the Exchange will distribute a circular to the membership highlighting the characteristics of TIRs, including that TIRs are not individually redeemable. In addition, the circular will advise members of the Exchange about policies relating to trading halts in TIRs. Specifically, the circular will note that the Exchange may consider factors such as the extent to which trading is not occurring in the underlying security(s); whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current portfolio value; and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Disclosure to Customers

The Exchange will require its members to provide all purchasers of

represent more than 20% of the overall value of the receipt.

¹⁸ The Exchange notes that rules relating to odd lot executions will not apply, because TIRs are traded only in round lots or round lot multiples. Additionally, the Exchange understands that the Commission has provided an exemption from the short sale rule, Rule 10a-1 under the Act, 17 CFR 240.10a-1, for transactions in securities issued under the HOLDRs program. See Letter from James A. Brigagliano, Assistant Director, Division, Commission, to Claire P. McGrath, Vice President and Special Counsel Derivative Securities, Amex, dated (November 3, 1999), 1999 WL 692411 (SEC No-Action Letter). Thus, the NYSE will issue a notice to its members detailing the terms of the exemption, and confirming that applicable NYSE rules relating to short sales do not apply.

newly issued TIRs with a prospectus for that series of TIRs.

Trading of TIRs

Upon approval of the NYSE's listing standards for TIRs, the Exchange intends to begin trading, on a UTP basis, some or all TIRs that are currently trading on other securities exchanges. The following paragraph contains information about TIRs generally.¹⁹

Each of the companies represented by the securities in the portfolios underlying the existing TIRs are required to meet the following minimum criteria of proposed NYSE Rule 1202 and Supplementary Material .10 when they are listed on the NYSE, or traded pursuant to UTP. The generic listing standards require the following: (1) That each company's common stock must be registered under Section 12 of the Exchange Act; (2) the minimum public float of each company included in the portfolio was at least \$150 million; (3) each security was either listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security; (4) the average daily trading volume for each security was at least 100,000 shares during the preceding sixty-day trading period; and (5) the average daily dollar value of the shares traded during the preceding sixty-day trading period was at least \$1 million. The initial weighting of each security in the portfolio was based on its market capitalization; however, any security that represented more than 20% of the overall value of the receipt on the date of the weighting was determined, was reduced to no more than 20% of the receipt value.

Trading Issues for TIRs

A round lot of any of the above TIRs represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. The amount of deposited securities for each round lot of 100 TIRs will be determined at the beginning of the marketing period and will be disclosed in the prospectus to investors. Because TIRs may be acquired, held or transferred only in round lots of 100 receipts or round lot multiples, orders for other than a round lot (or round lot multiples) will not be allowed.

The Exchange believes that TIRs will not trade at a material discount or

¹⁹ The Exchange notes that this information is based upon descriptions included in the various TIRs prospectuses and depositary trust agreements, the Amex submissions relating to its TIR listing proposal, and the Commission's order approving the Amex proposal. See note 6, *supra*.

¹⁰ Telephone conversation between Elena L. Daly, Assistant General Counsel, Office of General Counsel, NYSE, and Lisa N. Jones, Attorney, Division, Commission (April 2, 2002).

¹¹ 17 CFR 240.19b-4(c)(1).

¹² 15 U.S.C. 78s(b).

¹³ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

¹⁴ 15 U.S.C. 78s(b).

¹⁵ See Securities Exchange Act Release No. 43396 (September 29, 2000), 65 FR 60230 (October 10, 2000).

¹⁶ See Securities Exchange Act Release No. 44182 (April 16, 2001), 66 FR 21798 (May 1, 2001).

¹⁷ Specifically, the Exchange proposes to provide generic standards to list or trade, pursuant to Rule 19b-4(e), any TIRs that meet the following criteria: (1) Each component security of the TIR must be registered under section 12 of the Act; (2) each component security of the TIR must have a minimum public float of at least \$150 million; (3) each component security of the TIR must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security; (4) each component security of the TIR must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; and (5) each component security of the TIR must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million. Finally, the Exchange proposes that no component security of the TIR may initially

premium to the assets held by the issuing trust, because the arbitrage process should promote correlative pricing between the TIRs and the deposited securities. If the price of the TIR deviates enough from the portfolio of deposited securities to create a material discount or premium, an arbitrage opportunity would be created, allowing the arbitrageur to either: (1) Buy the TIRs at a discount, exchanging them for shares of the underlying securities and selling those shares at a profit; or (2) sell the TIRs short at a premium, buying the securities underlying the TIRs, depositing them in exchange for the TIRs, and delivering against the short position. In both instances, the arbitrageur locks in a profit and the markets move back into line.

The Exchange represents that its rules and policies currently applicable to investment company units will also apply to TIRs. These include the Exchange's policies regarding mandatory dissemination of pre-opening price indications (other than ITS pre-opening notifications) in the case of significant order imbalances, and the Exchange's MOC and LOC procedures (which do not apply to investment company units and will also not apply to TIRs). Other such rules and policies include those relating to specialist allocation, capital and net liquid assets requirements for specialist member organizations, market making activity by a specialist, and control relationships involving a specialist.

Maintenance of TIRs Portfolio

Except when a reconstitution event occurs, as described below, the securities represented by a TIR will not change. According to the prospectus of TIRs, under no circumstances will a new company be added to the group of issuers of the underlying securities, and weightings of component securities will not be adjusted after they are initially set.²⁰

Reconstitution Events of TIRs

Trust agreements will provide for, and prospectuses for TIRs will describe, the automatic distribution of specified deposited securities in the trust's portfolio to the beneficial owners of TIRs in the circumstances referred to in such trust agreements and prospectuses

as "reconstitution events." The reconstitution events occur under the following circumstances:

(1) If the issuer of the underlying securities no longer has a class of common stock registered under Section 12 of the Act, then its securities will no longer be an underlying security and the trustee will distribute the securities of that company to the owners of the TIRs;

(2) If the Commission finds that an issuer of underlying securities should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the shares of that company to the owners of the TIRs;

(3) If the underlying securities of an issuer cease to be outstanding as a result of a merger, consolidation or other corporate combination, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of the TIRs, unless the acquiring company's securities are already included in the TIR as deposited securities, in which case such additional securities will be deposited into the trust; and

(4) If an issuer's underlying securities are delisted from trading on a national securities exchange or Nasdaq and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the deposited securities are delisted.

As described in the prospectus, if a reconstitution event occurs, the trustee will deliver the deposited security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

Issuance and Cancellation of TIRs

The trust will issue and cancel—and an investor may obtain, hold, trade or surrender—TIRs only in round lots of 100 or in round lot multiples. Orders for other than a round lot or round lot multiples will not be allowed. While investors will be able to acquire, hold, transfer and surrender a round lot of 100 TIRs, the bid and asked prices will be quoted on a per receipt basis. The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

An investor may obtain TIRs by either purchasing them on an exchange or by delivering to the trustee the underlying securities evidencing a round lot of TIRs. The trustee will charge an issuance and cancellation fee of up to \$10.00 per 100 TIRs. Lower charges may

be assigned for bulk issuances and cancellations. An investor may cancel TIRs and withdraw the deposited securities by delivering a round lot or round lot multiple of the TIRs to the trustee, during normal business hours. According to the prospectus, the trustee expects that, in most cases, it will deliver the deposited securities within one business day of the withdrawal request.

Termination of TIRs

The trust shall terminate upon the earlier of: (1) The removal of the TIRs from listing on a national securities exchange or Nasdaq if they are not listed for trading on another national securities exchange or Nasdaq within five business days from the date the receipts are delisted; (2) the trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to the initial depositor of its intent to resign; (3) 75% of the beneficial owners of outstanding TIRs (other than Merrill Lynch, Pierce, Fenner & Smith Incorporated) vote to dissolve and liquidate the trust; or (4) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to the beneficial owners as promptly as practicable after the termination event.

2. Statutory Basis

The Exchange believes that the basis under Act for this proposed rule change is the requirement under section 6(b)(5) of the Act,²¹ which provides 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, in general, to protect investors and the public interest.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 20549-0609. 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

²⁰ The Exchange represents that the number of each security represented in a receipt may change due to certain corporate events such as stock splits or reverse stock splits on the deposited securities, and the relative weightings among the deposited securities may change based on the current market price of the deposited securities. See proposed NYSE Rule 1202, Supplementary Material .20.

²¹ 15 U.S.C. 78f(b)(5).

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 NYSE. All submissions should refer to File No. SR-NYSE-2002-07 and should be submitted by May 8, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act²² and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds, as it did with the Amex and other exchanges, that the proposal establishes listing standards for TIRs that will provide investors with a convenient and less expensive way of participating in the securities markets. The Exchange's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.²³

As noted in the Amex approval order, the Commission believes that TIRs will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade TIRs representing a portfolio of securities continuously throughout the business day in secondary market transactions at negotiated prices. TIRs will allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that

the investors owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the TIRs.

Although TIRs are not leveraged instruments, and therefore do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of securities.²⁴

Trading of Trust Issued Receipts—Listing and UTP

The Commission finds that the NYSE's proposal contains adequate rules and procedures to govern the trading of TIRs, whether by listing or pursuant to UTP. TIRs are equity securities that will be subject to the full panoply of NYSE rules governing the trading of equity securities on the NYSE,²⁵ including, among others, rules governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.²⁶

In addition, the NYSE has developed specific listing and delisting criteria for TIRs that will help to ensure that a minimum level of liquidity will exist for TIRs to allow for the maintenance of fair and orderly markets. The delisting criteria also allows the NYSE to consider the suspension of trading and the delisting of a TIR if an event occurred that made further dealings in such securities inadvisable. This will give the NYSE flexibility to delist TIRs if circumstances warrant such action. The NYSE's proposal also provides

procedures to halt trading in TIRs in certain enumerated circumstances.

Moreover, in approving this proposal, the Commission notes the Exchange's belief that TIRs will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The Exchange also represents that the potential for arbitrage should keep the market price of a TIR comparable to the overall value of the deposited securities.

The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in TIRs.

Finally, the NYSE will apply surveillance procedures for TIRs that will be similar to the procedures used for investment company units and will incorporate and rely upon existing NYSE surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading TIRs, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of TIRs provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

Disclosure and Dissemination of Information

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risk of trading TIRs. The prospectus will address the special characteristics of a particular TIR basket, including a statement regarding its redeemability and method of creation. The Commission notes that all investors in TIRs who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a TIR directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all NYSE member firms who purchase TIRs from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of any TIRs, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of

²² 15 U.S.C. 78f(b)(5).

²³ In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁴ The Commission has concerns about continued trading of the TIRs whether listed or pursuant to UTP, if the number of component securities falls to reflect a cross section of the selected industry. Accordingly, the NYSE has represented that it would consult the Commission concerning continued trading, once the trust has fewer than nine component securities, and for each subsequent loss of a security thereafter.

²⁵ The Commission notes that the amendments to NYSE trading rules are substantially similar to changes approved for the trading of exchange-traded funds. See Securities Exchange Act Release No. 44616 (July 30, 2001), 66 FR 40761 (August 3, 2001).

²⁶ Trading rules pertaining to the availability of odd-lot trading do not apply because TIRs only can be traded in round-lots.

security. The circular also will note the Exchange members' prospectus delivery requirements, and highlight the characteristics of purchases in TIRs. The circular also will inform members of Exchange policies regarding trading halts in TIRs.

Trading TIRs Pursuant to Rule 19b-4(e)

The Commission further believes that adopting generic listing standards for these securities pursuant to Rule 19b-4(e) under the Act should fulfill the intended objective of the rule by giving the NYSE the ability to potentially reduce the time frame for bringing these securities to the market, or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that it maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission finds that the NYSE's proposal contains adequate rules and procedures to govern the listing and trading of TIRs pursuant to Rule 19b-4(e) on the NYSE, or pursuant to UTP. All TIR products listed under the generic standards will be subject to the full panoply of NYSE rules and procedures that now govern both the trading of TIRs and the trading of equity securities.

As described above, the Commission has previously approved similar Amex, CHX, and PCX rules that permit the generic listing and trading of individual TIRs. In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and the Exchanges' rules and surveillance programs that govern their trading. The Commission concluded then, as it does now, that securities approved for listing under those rules would allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transactions costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the TIRs.

The Commission notes that the NYSE's proposed generic listing standards are substantially similar to the Amex, CHX and PCX. The Commission therefore believes that TIRs that satisfy the NYSE's proposed generic listing

standards should produce the same benefits to the NYSE and to investors.

The NYSE has requested that the Commission find good cause for approving the proposed rule change, and Amendments Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that the Exchange's proposal to trade TIRs, pursuant to UTP, will provide investors with a convenient and less expensive way of participating in the securities markets. The Commission believes that the proposed rule change, as amended, could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that by increasing the availability of TIRs as an investment tool, the NYSE's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.

As noted above, the Commission has approved the listing and trading of TIRs at the Amex, under rules that are substantially similar to the NYSE rules.²⁷ The trading requirements of TIRs at the NYSE will be substantially similar to the trading requirements of TIRs at the Amex. The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.²⁸ The Commission does not believe that trading of this product raises novel regulatory issues that were not addressed in the previous filing. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁹ that the proposed rule change, as amended, (SR-NYSE-2002-07) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45729; File No. SR-NYSE-2002-15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Trading of Certain Holding Company Depositary Receipts

April 10, 2002.

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 April 10, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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, and to approve the proposed rule change on an accelerated basis.

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

The Exchange proposes to adopt standards for the trading pursuant to unlisted trading privileges ("UTP"), of certain Trust Issued Receipts ("TIRs"), known as Holding Company Depositary Receipts ("HOLDERS").³ The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On April 9, 2002, the Commission approved the Exchange's listing standards for the listing and trading, or the trading pursuant to UTP, of TIRs under NYSE Rules 1200 through 1202, and Paragraph 703.20 of the NYSE's Listed Company Manual. The Commission also approved amendments to the Exchange's Rules 13, 36, 98, 104, 105(1), 460, the Allocation Policy and pre-opening and MOC/LOC policies to incorporate therein referenced to TIRs. Finally, the Commission approved the Exchange's generic listing standards that permit the listing and trading, or trading pursuant to UTP of TIRs, pursuant to Rule 19b-4(e) of the Act. See Securities Exchange Act Release No. 45719 (April 9, 2002).

²⁷ See note 6, *supra*.

²⁸ *Id.*

²⁹ 15 U.S.C. 78s(b)(2).