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Written comments should be mailed to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch. Comments may also be submitted over the Internet to: secy@nrc.gov. Comments must be submitted by May 30, 1995.

Dated at Rockville, Maryland, this 27th day of March, 1995.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Secretary of the Commission.*

[FR Doc. 95-7935 Filed 3-30-95; 8:45 am]

BILLING CODE 7590-01-M

## RESOLUTION TRUST CORPORATION

### Coastal Barrier Improvement Act; Property Availability; Sunbow/Sunbow 2, San Diego County, CA

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the property known as Sunbow/Sunbow 2, located in Chula Vista, San Diego County, California, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

**DATES:** Written notice of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until June 29, 1995.

**ADDRESSES:** Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. E. Ted Hine, Resolution Trust Corporation, California Field Office, 4000 MacArthur Boulevard, 2nd Floor, West Tower, Newport Beach, CA 92660-2516, (714) 263-4648; Fax (714) 852-7623.

**SUPPLEMENTARY INFORMATION:** The Sunbow/Sunbow 2 property is located east of Interstate Highway 805 and south of Telegraph Canyon Road in Chula Vista, California. The site consists of approximately 604 acres of undeveloped land with coastal sage scrub habitat. This property contains wetlands and habitat for the Federally-listed endangered California gnatcatcher. The

site is adjacent to Greg Rogers Park which is managed by the City of Chula Vista for recreational purposes. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, P.L. 101-591 (12 U.S.C. 1441a-3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before June 29, 1995 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal Government;
2. Agencies or entities of State or local government; and,
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

#### Notice of Serious Interest

Re: [insert name of property]

**Federal Register** Publication Date:

[Insert Federal Register publication date]

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 170(h)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).
4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a-3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects: Environmental protection.

Dated: March 27, 1995.  
Resolution Trust Corporation.

**William J. Tricarico,**  
*Assistant Secretary.*

[FR Doc. 95-7894 Filed 3-30-95; 8:45 am]

BILLING CODE 6714-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35534; File No. SR-AMEX-94-52]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to S&P MidCap 400 Depository Receipts

March 24, 1995.

#### I. Introduction and Background

On November 22, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade Standard & Poor's ("S&P") MidCap 400 Depository Receipts. Notice of the proposal appeared in the **Federal Register** on December 28, 1994.<sup>3</sup> No comments were received on the proposed rule change set forth in the Notice. This order approves the Exchange's proposal.

#### II. Description of the Proposal

The Amex proposes to list and trade under Amex Rules 1000 *et seq.* S&P MidCap 400 Depository Receipts. In addition, the Exchange proposes to amend Amex Rule 1000(b)(1) to include a reference to the alternative reinvestment of periodic cash payments to holders to reflect the availability of the DTC Dividend Reinvestment Service ("DRS") to holders of Portfolio Depository Receipts ("PDRs"), and to amend the Amex Rule 1004 disclaimer provision so that it applies to the S&P MidCap 400 Index.<sup>4</sup>

##### A. Portfolio Depository Receipts

On December 11, 1992, the Commission approved Amex Rules 1000 *et seq.*<sup>5</sup> to accommodate trading on the Exchange of PDRs, which are securities that represent interests in a unit investment trust ("Trust") operating on an open-end basis and holding a portfolio of securities. The Trust

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1982).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> Securities Exchange Act Release No. 35127, (December 20, 1994), 59 FR 66982.

<sup>4</sup> The S&P MidCap 400 Index is a capitalization-weighted index of 400 actively traded securities that includes issues selected from a population of 1,700 securities, each with a year-end market-value capitalization of between \$200 million and \$5 billion. The issues included in the Index cover a broad range of major industry groups, including industrials, transportation, utilities, and financials.

<sup>5</sup> See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253.

sponsor ("Sponsor") of each series of PDRs is PDR Services Corporation, a wholly-owned subsidiary of the Amex.<sup>6</sup> The purpose of each Trust is to allow investors to purchase PDRs, securities that represent proportionate undivided interests in a Trust's underlying securities portfolio, that trade like shares of common stock, and that pay to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. PDRs are issued by a Trust in a specified minimum aggregate quantity ("Creation Unit") in return for a deposit consisting of specified numbers of shares of stock plus a cash amount. The first Trust to be formed in connection with the issuance of PDRs was based on the S&P 500 Composite Stock Price Index ("S&P Index"), known as Standard & Poor's Depository Receipts ("SPDRs"). SPDRs have been trading on the Exchange since January 29, 1993.

The Exchange now proposes to list and trade under Rules 1000 *et seq.* Standard & Poor's MidCap 400 Depository Receipts ("MidCap SPDRs").<sup>7</sup> The Sponsor will enter into a trust agreement with a trustee in accordance with Section 26 of the Investment Company Act of 1940. PDR Distributors, Inc. ("Distributor") will act as underwriter of MidCap SPDRs on an agency basis. All orders to create MidCap SPDRs in Creation Unit size aggregations (which has been set at 25,000) must be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee. The Distributor is a registered broker-dealer, a member of the National Association of Securities Dealers, Inc., and a wholly-owned subsidiary of Signature Financial Group, Inc.

To be eligible to place orders to create MidCap SPDRs as described below, an entity or person either must be a participant in the Continuous Net Settlement ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant. Upon acceptance of an order to create MidCap SPDRs, the Distributor will instruct the Trustee to initiate the book-entry

<sup>6</sup> Portfolio Depository Receipts and PDRs are service marks of PDR Services Corporation.

<sup>7</sup> "Standard & Poor's 500," "Standard & Poor's MidCap 400 Index," "Standard & Poor's Depository Receipts," "SPDRs," "Standard & Poor's MidCap 400 Depository Receipts," and "MidCap SPDRs" are trademarks of McGraw-Hill, Inc., and are being used by the Exchange and the Sponsor under license among S&P (a division of McGraw-Hill, Inc.), the Exchange, and the Sponsor.

movement of the appropriate number of MidCap SPDRs to the account of the entity placing the order. MidCap SPDRs will be maintained in book-entry form at DTC.

Payment with respect to creation orders placed through the Distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution ("Dividend Equivalent Payment"), subject to certain specified adjustments.<sup>8</sup> The securities and cash accepted by the Trustee are referred to, in the aggregate, as a "Portfolio Deposit."

It is anticipated that the term of the MidCap SPDR Trust will be 25 years.

#### B. Issuance of MidCap SPDRs

Upon receipt of a Portfolio Deposit in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of MidCap SPDRs, which aggregate number is referred to as a "Creation Unit." The Exchange anticipates that a Creation Unit will be made up of 25,000 MidCap SPDRs.<sup>9</sup> Individual MidCap SPDRs can then be traded in the secondary market like other equity securities. Portfolio Deposits are expected to be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. On November 17, 1994, the value of an individual MidCap SPDR would have been approximately \$34.37.

The Trustee or Sponsor will make available (1) on a daily basis, a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (2) on a minute-by-minute basis throughout the day, a number representing the value (on a per MidCap SPDR basis) of the securities portion of a Portfolio Deposit in effect on such day; and (3) on a daily basis, the accumulated dividends, less expenses, per outstanding MidCap SPDR.

Transactions in MidCap SPDRs may be effected on the Exchange until 4:15 p.m. New York time each business day.

<sup>8</sup> See "Distributions," *infra*.

<sup>9</sup> PDRs may be created in other than Creation Unit size aggregations in connection with the DTC DRS. See *infra* note 12 and accompanying text.

The minimum fractional change for MidCap SPDRs shall be  $\frac{1}{32}$  of \$1.00.<sup>10</sup>

#### C. Redemption

MidCap SPDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell MidCap SPDRs in the secondary market at any time, they must accumulate at least 25,000 (or multiples thereof) to redeem them through the Trust. MidCap SPDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date a request is made for redemption, together with a "Cash Component" (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

#### D. Distributions

The MidCap SPDR Trust will pay dividends quarterly. The regular quarterly ex-dividend date for MidCap SPDRs will be the third Friday in March, June, September, and December, unless that day is a New York Stock Exchange holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of MidCap SPDRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of

<sup>10</sup> PDRs originally traded in minimum fractional changes of  $\frac{1}{8}$  of \$1.00, pursuant to Amex Rule 127. See Securities Exchange Act Release No. 31591, *supra* note 5. The Commission approved an Exchange proposal to add Commentary .01 to rule 127 to provide that securities listed under Rule 1000 *et seq.* (PDRs) will trade in minimum fractional changes of  $\frac{1}{32}$  of \$1.00. See Securities Exchange Act Release No. 31794 (January 29, 1993), 58 FR 7272. Subsequently, the Exchange amended Commentary .01 to Rule 127 to provide that the minimum fractional change for SPDRs is  $\frac{1}{64}$  of \$1.00. See Securities Exchange Act Release No. 33900 (April 12, 1994), 59 FR 18585. Nevertheless, the minimum fractional change applicable to MidCap SPDRs will be  $\frac{1}{32}$  of \$1.00.

dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date ("Dividend Payment Date"). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date through the business day preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee.

The MidCap SPDR Trust intends to make the DTC DRS available for use by MidCap SPDR holders through DTC participant brokers for reinvestment of their cash proceeds. Currently, the DTC DRS is available to holders of SPDRs. To reflect the availability of the DTC DRS to PDR holders, the Amex is proposing to amend its Rule 1000(b)(1) definition of PDR to state that in addition to being made in cash, periodic dividend payments to PDR holders may be reinvested in additional PDRs.<sup>11</sup> Because some brokers may choose not to offer the DTC DRS, an interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through that broker. The Trustee will use the cash proceeds of MidCap SPDR holders participating in the reinvestment to obtain the Index securities necessary to create the requisite number of SPDRs.<sup>12</sup> Any cash remaining will be distributed pro rata to participants in the dividend reinvestment.

#### *E. Criteria for Initial and Continued Listing*

Because of the open-end nature of the Trust upon which a series of PDRs is based, the Exchange believes it is necessary to maintain appropriate flexibility in connection with listing a specific Trust. In connection with initial listing, the Exchange establishes a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading. With respect to MidCap SPDRs, it is anticipated that a minimum of 75,000 MidCap SPDRs (*i.e.*, three Creation Units of 25,000 MidCap SPDRs each),

will be required to be outstanding when trading begins.

The MidCap SPDR Trust will be subject to the initial and continued listing criteria of Rule 1002(b). Rule 1002(b) provides that twelve months after the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

- (1) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or
- (2) if the index on which the Trust is based is no longer calculated; or
- (3) if such other event shall occur or condition exist which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing and its PDRs redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the Sponsor, following notice to PDR holders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.<sup>13</sup> The MidCap SPDR Trust will also terminate if the license agreement with S&P terminates.

#### *F. Trading Halts*

Prior to commencement of trading in MidCap SPDRs, the Exchange will issue a circular to members informing them of exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 819C(b) in exercising its discretion to halt or suspend trading. These factors would include 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 index group value;<sup>14</sup> or whether other unusual

conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>15</sup>

#### *G. Terms and Characteristics*

Under Amex Rule 1000, Commentary .01, Amex members and member organizations are required to provide to all purchasers of PDRs, including MidCap SPDRs, a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in each series is delivered to such purchaser. The Exchange also requires that such a description be included with any sales material on MidCap SPDRs that is provided to customers or the public. Any other written materials making reference to a series of PDRs as an investment vehicle must state that a written description is available from the broker or the Exchange and that a prospectus may be obtained from the broker. Similarly, the Exchange requires that members and member organizations provide customers with the prospectus for MidCap SPDRs upon request.

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase MidCap SPDRs for that omnibus account will be deemed to constitute agreement by the non-member to make the written description available to its customers on the same terms as are directly applicable to members and member organizations.

Prior to commencement of trading of MidCap SPDRs, the Exchange will distribute to its members and member organizations an Information Circular calling attention to the characteristics of the MidCap SPDR Trust and to applicable Exchange rules.

#### *H. Amendments to Rules 1000(b) and 1004*

The Exchange proposes to amend the definition of Portfolio Depositary Receipt in Rule 1000(b) to add a reference to the possible provision by a PDR Trust of reinvestment of periodic cash proceeds corresponding to the regular cash dividends or declarations declared with respect to the underlying stock index securities or portfolio of securities. Amex rule 1004 is also being amended to refer specifically to the S&P MidCap 400 Index.

### **III. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

<sup>11</sup> Telephone conversation between Michael Cavalier, Assistant General Counsel, Amex, and Francois Mazur, Attorney, Division of Market Regulation, Commission, on February 24, 1995.

<sup>12</sup> The creation of PDRs in connection with the DTC DRS represents the only circumstance under which PDRs can be created in other than Creation Unit size aggregations.

<sup>13</sup> With respect to the MidCap SPDR Trust, the Sponsor has the discretionary right to terminate the Trust if the value of Trust Securities (as defined in the Trust registration statement) falls below \$25,000,000 at any time after six months following, and prior to three years following, inception of the Trust. Following such time, the Sponsor has the discretionary right to terminate if Trust Securities fall below \$100,000,000 in value, adjusted annually for inflation.

<sup>14</sup> Amex Rule 918C(b)(3).

<sup>15</sup> Amex Rule 918C(b)(4).

rules and 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.<sup>16</sup> Specifically, the Commission finds that the Exchange's proposal to list and trade S&P MidCap SPDRs will provide investors with a convenient way of participating in the securities markets.<sup>17</sup> In particular, the Commission believes that the Exchange's proposal will 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 broad portfolio of stocks at negotiated prices throughout the business day.<sup>18</sup>

The Commission believes that listing and trading products, such as MidCap 400 SPDRs, based on a broad portfolio of stocks may benefit the securities markets by reducing volatility, such as that experienced during the October 1987 and 1989 Market Breaks.<sup>19</sup> Creating a product where actual portfolios of stocks and instruments representing portfolios of stock trade at a single location in an auction market environment may alter the dynamics of program trading,<sup>20</sup> because the availability of such single transaction portfolio trading could promote more traditional block trading techniques.

The 1987 Market Break Report noted the potential benefits of providing institutional investors and member firms with the ability to trade a portfolio of stocks at posts in a single transaction. The trading crowd at a single post can allow a single transaction in a portfolio of securities to take the place of numerous transactions in individual

stocks. Trading MidCap SPDRs should also provide an easy and inexpensive method to clear and settle a portfolio of stocks.

An individual MidCap SPDR recently would have had a value of approximately \$34, which should make it attractive to individual retail investors who wish to hold a security replicating the performance of a broad portfolio of medium capitalization stocks. Moreover, the Commission believes that MidCap SPDRs will provide investors with several advantages over standard open-end mutual funds specializing in medium capitalization stocks. In particular, investors will be able to trade MidCap SPDRs continuously throughout the business day in secondary market transactions at negotiated prices.<sup>21</sup> In contrast, Investment Company Act Rule 22c-1<sup>22</sup> limits holders and prospective holders of open-end mutual fund shares to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors. Accordingly, MidCap SPDRs will 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 value of MidCap SPDRs is based on the value of the securities held in the Trust, MidCap SPDRs are not leveraged instruments. In essence, MidCap SPDRs are equity securities that are priced off a portfolio of stocks based on the S&P MidCap 400 Index.<sup>23</sup>

<sup>21</sup> Because of potential arbitrage opportunities, the Commission believes that MidCap SPDRs 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 a SPDR comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Trust will redeem only in-kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the MidCap 400 Index.

<sup>22</sup> 17 CFR 270.22c-1 (1994). Investment Company 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 MidCap SPDRs an exemption from this provision to allow them to trade in the secondary market at negotiated prices. See Investment Company Act Release No. 20844 (January 18, 1995).

<sup>23</sup> Because SPDRs will trade like equity securities, the margin requirements for MidCap SPDRs, as with other PDRs, will be 150% of current market value for short sales, and 50% of current market value for long positions. These are the usual Regulation T, 12

Accordingly, the level of risk involved in the purchase or sale of a MidCap SPDR is similar to the risk involved in the purchase or sale of equity securities, except that the value of a MidCap SPDR is based on a basket of stocks.

Nevertheless, the Commission believes that MidCap SPDRs raise disclosure, market impact, and secondary market trading issues that must be addressed.

#### A. Disclosure

Existing Amex rules regarding PDRs are applicable to MidCap SPDRs, ensuring that investors are aware of the terms, characteristics, and risks of trading MidCap SPDRs.<sup>24</sup> Accordingly, Amex members must provide their customers trading MidCap SPDRs with a written explanation, prepared by the Amex, describing any special characteristics and risks attendant to trading MidCap SPDRs.<sup>25</sup> Members and member organizations also must include this written product description with any sales material relating to MidCap SPDRs that is provided to customers or the public. Finally, any other written materials provided by a member or member organization to customers or the public that refer to MidCap SPDRs as an investment vehicle must include a statement, in a form specified by the Amex, that a circular and prospectus are available from a broker upon request. A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of MidCap SPDRs for such omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms.<sup>26</sup>

The Amex's proposal contains no special account opening or customer suitability rules applicable to the

CFR 220 (1994), requirements for equity margin stocks. Accordingly, the Exchange has stated its intention to obtain margin offset treatment with respect to Regulation T customer margin, both for offsetting positions of MidCap SPDRs and an equivalent amount of their component securities, and for "cover" in accordance with the provisions contained in Section 220.5(c)(3) governing options. The Exchange also intend to seek similar margin offset treatment with respect to market maker charges under Exchange Act Rule 15c3-1(c)(2)(x), 17 CFR 240.15c3-1(c)(2)(x) (1994). Telephone Conversation with Michael Cavalier, *supra* note 11.

<sup>24</sup> See Amex Rule 1000, Commentary .01.

<sup>25</sup> The Amex submitted a MidCap SPDR product description as an exhibit to its filing. Among other things, the product description states that MidCap SPDRs possess risks similar to those that exist when investing in a broadly based portfolio of common stocks, including the risk that the general level of stock prices may decline.

<sup>26</sup> See Amex Rule 1000, Commentary .01.

<sup>16</sup> 15 U.S.C. 78f(b)(5) (1988).

<sup>17</sup> The Commission approved Amex rules to accommodate trading on the Exchange of PDRs in Securities Exchange Act Release No. 31591, *supra* note 5. Because the analysis contained in that release is applicable to the Amex's current proposal to list and trade MidCap SPDRs, the Commission is incorporating it by reference.

<sup>18</sup> In originally approving PDRs, the Commission noted that PDRs will benefit investors by allowing them to trade securities based on Trusts in secondary market transactions.

The Commission notes that unlike open-end funds where investors have the right to redeem their fund shares on a daily basis, investors could only redeem MidCap SPDRs in 25,000 share units. Nevertheless, MidCap SPDRs will have the added benefit of liquidity from the secondary market.

<sup>19</sup> See Division of Market Regulation ("Division"), SEC, The October 1987 Market Break (February, 1988) ("1987 Market Break Report") and Division, SEC, Market Analysis of October 13, and 16, 1989 (December 1990).

<sup>20</sup> Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a "basket" or group of 15 or more stocks having a total market value of \$1 million or more.

trading of MidCap SPDRs,<sup>27</sup> therefore, pursuant to Amex Rule 1000(a), the Amex equity rules governing account opening and suitability will apply. Rule 411 provides, among other things, that members shall use due diligence to learn the essential facts relative to every customer, and to every order or account accepted.<sup>28</sup>

### B. Market Impact

The Commission believes that the Amex has adequately addressed the potential market impact concerns raised by its proposal. The Exchange's existing trading limit policies regarding PDRs will apply to MidCap SPDRs. Thus, MidCap SPDR trading will halt if the Amex Rule 117 circuit breaker parameters are reached.<sup>29</sup> Similarly, consistent with Amex Rule 918C(b), the Amex may consider trading halts in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value, as well as the existence of other unusual conditions.<sup>30</sup>

The Commission believes that the listing and trading of MidCap SPDRs will not adversely affect U.S. securities markets.<sup>31</sup> The corpus of the MidCap SPDR Trust will be a portfolio of stocks replicating the S&P MidCap 400 Index, a broad-based, capitalization-weighted index consisting of 400 actively traded and liquid U.S. stocks. As described above, the Commission believes that MidCap SPDRs may provide substantial benefits to the marketplace and investors, including enhancing the stability of the markets for individual stocks.<sup>32</sup> Finally, the PDR surveillance

<sup>27</sup> The exemptions granted by the Commission under the Investment Company Act of 1940 that permit the secondary market trading of MidCap SPDRs, however, are specifically conditioned upon the customer disclosure requirements described above. See Investment Company Act Release No. 20797 (December 23, 1994), 60 FR 163.

<sup>28</sup> See Amex Rule 411.

<sup>29</sup> The circuit breaker rules provide that trading in the stock, options, and futures markets will halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 points or more from its previous day's closing level, and thereafter, trading will halt for an additional two hours if the DJIA declines 400 points from the previous day's close. The triggering of futures price limits for the S&P 500, S&P 100, or Major Market Index futures, however, will not in themselves result in a halt in MidCap SPDR trading or delayed openings. Such an event, however, could be considered by the Exchange, along with other factors, in deciding whether to halt trading.

<sup>30</sup> See Securities Exchange Act Release No. 31591, *supra* note 5.

<sup>31</sup> The Commission notes that SPDRs have been trading on the Amex since January 29, 1993, without incident.

<sup>32</sup> Even though PDR transactions may serve as substitutes for transactions in the cash market, thereby making the order flow in individual stocks smaller than would otherwise be the case, the

procedures, that incorporate and rely upon existing Amex surveillance procedures governing options and equities, will apply to MidCap SPDRs.

### C. Trading Rules

The Commission finds that adequate rules and procedures exist to govern the trading of MidCap SPDRs. MidCap SPDRs, like other PDRs, are equity securities that will be subject to Amex rules governing the trading of equity securities, including, among others, rules governing the priority, parity, and precedence of orders and the responsibilities of specialists. In addition, the Amex has developed specific listing and delisting criteria for MidCap SPDRs. These criteria should help to ensure that a minimum level of liquidity will exist in MidCap SPDRs to allow for the maintenance of fair and orderly markets. Accordingly, the Commission believes that the rules governing the trading of MidCap SPDRs provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

### D. Dividend Reinvestment

The Commission finds that the Exchange's proposal to amend its Rule 1000(b) definition of PDRs is consistent with the Act. Specifically, the amendment makes clear that the DTC Dividend Reinvestment Service will be made available for the use of PDR holders through DTC participant brokers for the re-investment of the cash proceeds of dividend equivalent payments.<sup>33</sup> This should provide investors with a convenient means of re-investing dividend equivalent payments received from SPDRs.

Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create PDRs could conceivably have an impact on price levels in the cash market. In particular, if a PDR is redeemed, the resulting long stock position could be sold into the market, thereby depressing process further. The Commission notes, however, that the redemption or creation of PDRs likely will not exacerbate a price movement because PDRs will be subject to the equity margin requirements of 50% and PDRs are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes PDRs, including MidCap SPDRs, 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 PDRs and MidCap SPDRs could, in certain circumstances, have an impact on the cash market, on balance the Commission believes that the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

<sup>33</sup> The product description also will be changed to make it clear to investors the availability of the Dividend Reinvestment Service.

## IV. Conclusion

For the reasons set forth above, 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).<sup>34</sup> As noted above, the trading of MidCap SPDRs on a secondary market should provide a variety of benefits to the marketplace and investors trading portfolios of securities. Accordingly, the Commission believes that MidCap SPDRs will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-AMEX-94-52), as amended, is approved.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.<sup>35</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Extend Certain SOES Rules Through October 2, 1995

March 27, 1995.

### I. Introduction

On February 10, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The NASD proposes to extend through October 2, 1995 certain of the prior changes to its Small Order Execution System ("SOES") that were implemented in January 1994 ("January 1994 Amended SOES Rules"),<sup>3</sup> modified in January 1995

<sup>1</sup> 15 U.S.C. § 78f(b)(5) (1988).

<sup>2</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>3</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>4</sup> 17 CFR 240.19b-4 (1994).

<sup>5</sup> Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993) (approving the Interim SOES Rules on a one-year pilot basis effective January 7, 1994). See also Securities Exchange Act Release No. 33424 (Jan. 5, 1994)