

business. The Listed Put and Call Option Questionnaire and the Series 42 both consist of 50 multiple choice questions. The Series 42, however, has a question bank of 307 questions so a person who has failed the exam is unlikely to receive the same series of questions upon re-testing, thereby assuring that an individual is properly tested for his competency in the subject matter. Moreover, the Commission believes that because the Series 42 is only given at designated and secured testing sites the integrity of the examination process is protected.

The Commission therefor finds good cause for approving the proposed rule change (SR-Amex-97-45) prior to the thirtieth day after date of publication of notice thereof in the Federal Register.

It is Therefore Ordered, pursuant to Section 19(b)(2),⁸ that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39525; File No. SR-Amex-97-29]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Relating to Listing and Trading of DIAMONDSSM Trust Units

January 8, 1998.

I. Introduction

On August 11, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade under Amex Rules 1000 *et seq.* DIAMONDSSM, units of beneficial interest in the DIAMONDS Trust. In addition, the Exchange proposes to adopt Amex Rule 1005,

"Down Jones Indexes," relating to license and warranty issues.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 39143 (September 29, 1997), 62 FR 51917 (October 3, 1997). No comments were received on the proposal. The Exchange filed Amendment No. 1 to the proposed rule filing on December 3, 1997.³ This order approves the proposed rule filing as amended.

II. Description

On December 11, 1992,⁴ the Commission approved Amex Rules 1000 *et seq.* to accommodate trading on the Exchange of Portfolio Depositary Receipts ("PDRsSM"), securities which represent interests in a unit investment trust ("Trust") operating on an open-end basis and that hold a portfolio of securities. The Trust sponsor ("Sponsor") for each series of PDRs is PDR Services Corporation, a wholly-owned subsidiary of Amex.⁵ Each Trust is intended to provide investors with an instrument that closely tracks the underlying securities portfolio, that trades like a share of common stock, and that pays 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. The first Trust to be formed in connection with the issuance of PDRs was based on the Standard & Poor's 500 Index ("S&P 500 Index"), known as Standard & Poor's Depositary Receipts[®] ("SPDRs[®]"), which have been trading on the Exchange since January 29, 1993.⁶ In 1995, the Commission approved Amex's listing and trading of PDRs based on the Standard & Poor's MidCap 400 IndexTM ("MidCap SPDRs").⁷

³ Amendment No. 1 discusses the composition of the trust securities, the basis for the mandatory termination date of the Trust, applicable trading halt procedures, and applicable equity rules. See letter from Michael Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, to Sharon Lawson, Senior Special Counsel, Market Regulation, Commission, dated December 3, 1997.

⁴ See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) ("SPDRs Order").

⁵ "PDRs" is a service mark of PDR Services Corp.

⁶ See SPDRs Order, *supra* note 4.

⁷ See Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995). "Standard & Poor's 500," "Standard & Poor's MidCap 400 Index," "Standard & Poor's Depositary Receipts[®]," "SPDRs[®]," "Standard & Poor's MidCap 400 Depositary Receipts" and "MidCap SPDRs" are trademarks of The McGraw-Hill Companies, Inc. and are being used by the Exchange and the Sponsor under license among Standard & Poor's, a division of The McGraw-Hill Companies, Inc., the Exchange and the Sponsor. "SPDRs" and "MidCap SPDRs" are not sponsored, endorsed, sold, or

The Exchange now proposes to list and trade under Rules 1000 *et seq.* DIAMONDSSM, units of beneficial interest in the DIAMONDS Trust.⁸ The Sponsor will enter into a trust agreement with the Trustee, State Street Bank and Trust Company, in accordance with Section 26 of the Investment Company Act of 1940 ("1940 Act"). A distributor will act as underwriter of DIAMONDS on an agency basis. All orders to create DIAMONDS in Creation Unit size aggregations 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, and a member of the National Association of Securities Dealers, Inc.

The Dow Jones Industrial Average⁹

The DJIA is a price-weighted stock index consisting of 30 stocks traded on the New York Stock Exchange ("NYSE").¹⁰ The DJIA is called an "average" because originally it was calculated by adding up the component stock prices and then dividing by the number of stocks. The method remains the same today, but the divisor (the number that is divided into the total of the stock prices) has been increased to eight significant digits to minimize distortions due to rounding. The DJIA divisor is adjusted due to corporate actions that change the price of any of its component shares. The most frequent reason for such an adjustment is a stock split. For example, suppose a company in the DJIA issues one new share for each share outstanding. After this two-for-one "split," each share of stock is worth half what it was immediately before, other things being equal. But without an adjustment in the divisor, this split would produce a distortion in the DJIA. An adjustment must be made to compensate so that the "average" will remain unchanged. At Dow Jones, this adjustment is handled by changing the divisor.¹¹

promoted by S&P, and S&P makes no representation regarding the advisability of investing in SPDRs or MidCap SPDRs.

⁸ "Dow Jones Industrial AverageSM," "DJIASM," "Dow JonesSM" and "DIAMONDS" are each trademarks and service marks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by the Exchange and the Sponsor. DIAMONDS are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such product.

⁹ The description of the DJIA included herein is based on materials prepared by Dow Jones and submitted by Amex in its proposed rule filing.

¹⁰ A price-weighted index is an index in which component stocks are weighted according to their price.

¹¹ Currently, the divisor is recalculated after the close of business on the day prior to the occurrence

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Changes in the composition of the DJIA are made entirely by the editors of *The Wall Street Journal* without consultation with the companies, the respective stock exchange, or any official agency. Additions or deletions of components may be made to achieve better representation of the broad market and of American industry.¹²

The DIAMONDS Trust

To be eligible to place orders to create DIAMONDS as described below, an entity or person must either 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 DIAMONDS, the distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of DIAMONDS to the account of the entity placing the order. DIAMONDS will be registered in book entry only, which records will be kept by 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 substantially similar in composition to the component shares of the underlying index or portfolio;¹³ (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;¹⁴ and (3) a cash payment or adjustment calculated by the Trustee to enable the securities portfolio portion to equal the net asset value of the Trust (the "Balancing Amount"). The Balancing Amount and the Dividend Equivalent Payment are referred to as

of the split. The formula used to calculate divisor adjustments is: $\text{New Divisor} = \frac{\text{Current Divisor} \times \text{Adjusted Sum of Prices}}{\text{Sum of Prices}}$

¹² For further details on how the DJIA is maintained, see the Commission's order approving the trading of options on the DJIA (File No. CBOE-97-26) in Securities Exchange Act Release No. 39011 (September 3, 1997), 62 FR 47841 (September 11, 1997).

¹³ The securities included in the Portfolio Deposit generally will include all of the component securities of the DJIA. The Trust will not hold an optimized portfolio such as is the case with World Equity Benchmark Shares ("WEBS"), but will hold shares of all of the securities included in the DJIA. The Trustee will hold, as nearly as practicable, an equal number of shares of each of the DJIA securities. See Amendment No. 1, *supra* note 3.

¹⁴ See "Distributions" *infra*.

the "Cash Component" in the case of a creation. The securities and cash accepted by the Trustee are referred to, in the aggregate, as a "Portfolio Deposit."

The mandatory termination date of the Trust will be the first to occur of (i) January 30, 2122 or (ii) the date 20 years after the death of the last survivor of eleven persons named in the trust agreement between the Trust Sponsor and the Trustee.¹⁵

Issuance

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 DIAMONDS, which aggregate number is referred to as a "Creation Unit." A Creation Unit for DIAMONDS will be made up of 50,000 DIAMONDS. Individual DIAMONDS can then be traded in the secondary market like other equity securities.¹⁶ The DIAMONDS Trust has been structured to provide for the initial issuance of DIAMONDS at a per unit price which would approximate 1/100th of the value of the DJIA.¹⁷

It is expected that the Trustee or Sponsor will make available (a) on a daily basis a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (b) on a minute-by-minute basis throughout the day, a number representing the value (on a per DIAMONDS Unit basis) of the securities portion of a Portfolio Deposit in effect on such day, plus accumulated

¹⁵ Amex state that the basis of the mandatory termination date of the Trust is to comply with the common law rule against perpetuities which provides, in brief, that no estate is valid unless it must vest no later than twenty-one years after lives in being at the creation if the estate, and that any future or present estate is void in its creation if it suspends the absolute power of alienation longer than this period. See Amendment No. 1, *supra* note 3.

¹⁶ The DIAMONDS Trust, Series I, filed with the Commission's Division of Investment Management an application seeking, among other things, an order: (1) permitting secondary market transactions in DIAMONDS at negotiated prices, rather than at a current public offering price described in the prospectus as required by Section 22(d) of the 1940 Act and Rule 22c-1; and (2) permitting the sale of DIAMONDS to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by Section 4(3) of the Securities Act of 1933 but may be required according to Section 24(d) of the 1940 Act for redeemable securities issued by a Unit Investment Trust. The Commission granted these exemptions on December 30, 1997. The exemptions permit individual DIAMONDS to be traded in secondary market transactions similar to a closed-end investment company. See Investment Company Act Release No. 22979 (December 30, 1997).

¹⁷ As of August 7, 1997 it is estimated that the value of such an individual DIAMONDS Unit would be approximately \$81.88.

dividends less expenses through the previous day's close, and (c) on a daily basis, the accumulated dividends, less expenses, per outstanding DIAMONDS Unit.

Transactions in DIAMONDS may be effected on the Exchange until 4:15 p.m. New York time each business day. The minimum fractional change for DIAMONDS shall be 1/64 of \$1.00.

Redemption

DIAMONDS in Creation Unit size aggregations generally¹⁸ will be redeemable in kind by tendering them to the Trustee. While holders may sell DIAMONDS in the secondary market at any time, they must accumulate at least 50,000 (or multiples thereof) to redeem through the Trust. DIAMONDS will remain outstanding until redeemed or until the termination of the Trust. Creation Units generally will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in composition to the securities portion of a Portfolio Deposit in effect on the date request is made for redemption, together with a "Cash Redemption Payment" (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 generally will be number of shares of each of the component stocks in a Portfolio Deposit on the day of 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.

Distributions

The DIAMONDS Trust will pay monthly dividends. The first ex-dividend date for DIAMONDS will be the third Friday of the third full month following the commencement date of

¹⁸ The Trustee shall have the discretion to deliver the cash equivalent value of an Index security or Index securities, based on the market value of such Index security or securities as of the Evaluation Time on the date such redemption is deemed received by the Trustee, as a part of the Cash Redemption Payment in lieu of delivering the Index security or securities if: (1) the Trustee determines in its discretion that an Index security is likely to be unavailable or available in insufficient quantity for delivery by the Trust upon redemption; or (2) a redeeming investor requests redemption in cash with respect to one or more Index securities, if, for example, the redeemer is restricted by regulation or otherwise from investing or engaging in a transaction in one or more Index securities. See Draft Preliminary Prospectus for DIAMONDS Trust, Series I, at 36.

the Trust unless such date is not a Business Day, in which case the ex-dividend date will be the immediately preceding Business Day (the "ex-dividend date"). Holders of DIAMONDS as reflected on the records of the DTC and the DTC Participants on the second business day following the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the monthly dividend period which ends on the business day preceding such ex-dividend date net of fees and expenses accrued daily for such period. The payment of dividends will be made on the first business day coincident with or following the Monday preceding the third Friday in the calendar month following the ex-dividend date (the "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 will be distributed. The Trustee will compute on a daily basis the dividends accumulated within each monthly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee. The DIAMONDS Trust intends to make the DTC Dividend Reinvestment Service available for use by DIAMONDS holders through DTC Participant brokers for reinvestment of their cash proceeds. An interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through such broker.

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 will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading. For DIAMONDS, a minimum of 150,000 DIAMONDS (*i.e.*, three Creation Units of 50,000 DIAMONDS each), will be required to be outstanding when trading begins.

The DIAMONDS Trust will be subject to the initial and continued listing criteria of Rule 1002(b). Rule 1002(b) provides that, following twelve months from 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:

(a) 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

(b) if the index on which the Trust is based is no longer calculated; or

(c) if such other event shall occur or condition exists 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.¹⁹ The DIAMONDS Trust may also terminate if the license agreement with Dow Jones terminates.

Trading Halts

Prior to commencement of trading in DIAMONDS, 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 further in Rule 918C(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;²⁰ or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²¹

Further, DIAMONDS trading will be halted if the circuit breaker parameters of Rule 117 have been reached. The triggering of futures price limits for the DJIA, S&P 500, S&P 100 or Major Market Index ("MMI") futures contracts will not, in itself, require a halt in DIAMONDS trading or a delayed

¹⁹ With respect to the DIAMONDS 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 \$150,000,000 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 the Trust if Trust Securities fall below \$350,000,000 in value, adjusted annually for inflation.

²⁰ Amex Rule 918C(b)(3).

²² Amex Rule 918C(b)(4).

opening. However, such an event could be considered by the Exchange along with other factors, such as a halt in options on the DJIA ("DJX"), S&P 100 ("OEX"), S&P 500 ("SPX"), or MMI ("XMI"), in deciding whether to halt trading in DIAMONDS or other index-based derivative securities.²²

Terms and Characteristics

Under Amex Rule 1000, Commentary .01, Amex members and member organizations are required to provide to all purchasers of DIAMONDS 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 description be included with any sales material on DIAMONDS that is provided to customers or the public. In addition, the Exchange requires that members and member organizations provide customers the prospectus for DIAMONDS 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 DIAMONDS for such omnibus account will be deemed to constitute agreement by the non-member to make such 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 DIAMONDS, the Exchange will distribute to Exchange members and member organizations an Information Circular calling attention to these requirements as well as the characteristics of the DIAMONDS Trust and to applicable Exchange rules.

Proposed Rule 1005

The Exchange proposes to adopt Rule 1005 ("Dow Jones Indexes") stating that Dow Jones has licensed the Exchange to use certain Dow Jones indexes for purposes of the listing and trading of particular series of Portfolio Depositary Receipts on the Exchange, and stating, among other things, that Dow Jones and the Exchange make no warranty, express or implied, as to results to be obtained by any person or entity from the use of the Indexes or any data included therein.

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the

²² See Amendment No. 1, *supra* note 3.

rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).²³ The Commission believes that providing for the exchange-trading of DIAMONDS will offer investors an efficient way of participating in the securities markets. Specifically the Commission believes that the trading of DIAMONDS 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.²⁴ The Commission also believes that PDRs in general, and DIAMONDS in particular, will benefit investors by allowing them to trade securities based on unit investment trusts in secondary market transactions.²⁵ Accordingly, as discussed below, the proposed rule change is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.²⁶

As the Commission noted in previous orders approving other PDR products (SPDRs and MidCap SPDRs) for listing and trading on Amex,²⁷ the Commission believes that the trading of a security like PDRs in general, and DIAMONDS in particular, which replicate the performance of a broad portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such

as DIAMONDS, can trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.²⁸

An individual DIAMOND has a value approximately equal to one-one-hundredth of the value of the DJIA, making it available and useful to individual retail investors desiring to hold a security replicating the performance of a broad portfolio of stocks. Accordingly, the Commission believes that trading of DIAMONDS will provide retail investors with a cost efficient means to make investment decisions based on the direction of the market and a whole and may provide market participants several advantages over existing methods of effecting program trades involving stocks.

The Commission also believes that PDRs, in general, and DIAMONDS, in particular, will provide investors with several advantages over standard open-end mutual fund shares that track a broad-based portfolio of stocks such as the DJIA. In particular, investors will have the ability to trade DIAMONDS continuously throughout the business day in secondary market transactions at negotiated prices.²⁹ In contrast, pursuant to Investment Company Act Rule 22c-1,³⁰ holders and prospective holders of open-end mutual fund shares are limited to purchasing or redeeming

²⁸ Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a "basket" or group of fifteen or more stocks having a total market value of \$1 million or more.

²⁹ Because of potential arbitrage opportunities, the Commission believes that DIAMONDS 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 DIAMOND comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes the Trust will track the underlying index more closely than an open-end index fund because the Trust will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trust will generally redeem only in kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the underlying index.

³⁰ Investment Company Act Rule 22c-1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted DIAMONDS an exemption from this provision in order to allow them to trade at negotiated prices in the secondary market. See *supra* note 16.

securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors.³¹ Accordingly, PDRs in general, and DIAMONDS in particular, will allow investors to (1) respond quickly to changes in the market; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transactions costs for trading a portfolio of securities.

Although PDRs in general, and DIAMONDS in particular, are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, DIAMONDS are equity securities that are priced off a portfolio of stocks based on the DJIA. Accordingly, the level of risk involved in the purchase or sale of DIAMONDS (or a PDR in general) is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for DIAMONDS (and PDRs in general) is based on a basket of stocks. Nonetheless, the Commission has several specific concerns regarding the trading of these securities. In particular, DIAMONDS raise disclosure, market impact, and secondary market trading issues that must be addressed adequately. As discussed in more detail below, the Commission believes Amex adequately addresses these concerns.

The Commission believes that the proposed rule filing contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading DIAMONDS. As noted above, the proposal contains four aspects addressing disclosure concerns. First, pursuant to Amex Rule 1000(a), Commentary .01, Amex members must provide their customers trading DIAMONDS with a written explanation of any special characteristics and risks attendant to trading such PDR securities (such as DIAMONDS), a in form prepared by Amex. As discussed above, members can obtain DIAMONDS product descriptions for distribution to customers from Amex. Second, members and member organizations must include this written product description with any sales material relating to the series of DIAMONDS that is provided to customers or the public. Third, any other written materials provided by a member or member organization to customers or the public referencing DIAMONDS as an

³¹ *Id.*

²³ 15 U.S.C. 78f(b)(5).

²⁴ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

²⁵ The Commission notes, however, that unlike open-end funds where investors have the right to redeem their fund shares on a daily basis, investors could only redeem PDRs in creation unit share sizes. Nevertheless, PDRs would have the added benefit of liquidity from the secondary market and PDR holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

²⁶ 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).

²⁷ See *supra* notes 4 and 7.

investment vehicle must include a statement, in a form specified by Amex, that a circular and prospectus are available from a broker upon request. Fourth, 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 DIAMONDS 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. Accordingly, the Commission believes that investors in PDR securities, in general, and DIAMONDS, in particular, will be provided with adequate disclosure of the unique characteristics of the PDR instruments and other relevant information pertaining to the instruments.

Finally, under Amex's proposal there will be no special account opening or customer suitability rules applicable to the trading of DIAMONDS.³² Nevertheless, pursuant to Amex Rule 1000(a), Amex equity rules governing account opening and suitability will apply. Specifically, these provisions provide that members shall use due diligence to learn the essential facts relative to every customer, order or account opened, and, prior to or promptly after the completion of a transaction for such account, specifically approve the opening of the account.³³

The Commission believes Amex has adequately addressed the potential market impact concerns raised by the proposal. First, Amex's proposal permits listing and trading of specific PDRs only after review by the Commission. Second, Amex has developed policies regarding trading halts in PDRs. Specifically, the Exchange would halt PDR trading in DIAMONDS if the circuit breaker parameters under Amex Rule 117 were reached.³⁴ In addition, in deciding whether to halt trading or conduct a delayed opening in PDRs, in general, and DIAMONDS, in particular, Amex represents that it will be guided by, but

not necessarily bound to, relevant stock index option trading rules. These rules would permit Amex, when determining whether to halt DIAMONDS trading, to consider 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 or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.³⁵

The Commission believes that the trading of PDRs is general, and DIAMONDS in particular, on Amex should not adversely impact U.S. securities markets. As to the trading of DIAMONDS, the Commission notes that the corpus of the DIAMONDS Trust is a portfolio of stocks replicating the DJIA, a broad-based price-weighted index consisting of 30 actively-traded and liquid stocks. In fact, as described above, the Commission believes DIAMONDS may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks.³⁶ Accordingly, the Commission believes that DIAMONDS do not contain features that will make them likely to impact adversely the U.S. securities markets.

Finally, the Commission notes that Amex has submitted surveillance procedures for the trading of DIAMONDS and believes that those procedures, which incorporate and rely upon existing Amex surveillance procedures governing equities, are adequate under the Act.

The Commission finds that Amex's proposal contains adequate rules and

procedures to govern the trading of DIAMONDS. Specifically, DIAMONDS, like other listed PDRs, are equity securities that will be subject to the full panoply of Amex rules governing the trading of equity securities on Amex, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists. In addition, Amex has developed specific listing and delisting criteria for PDRs that are applicable to DIAMONDS that will help to ensure that the markets for DIAMONDS will be deep and liquid. As noted above, Amex's proposal provides for trading halt procedures governing DIAMONDS. Finally, the Commission notes that Amex's equity rules governing account opening and suitability will apply to the trading of DIAMONDS.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 strengthens the proposed rule change by clarifying the nature of composition of the Trust, the reasoning behind the trust term, the trading halt procedures, and the applicable equity trading rules. In addition, the proposed rule change was noticed for the full statutory period and no comment letters were received. Finally, amendment No. 1 does not raise any new regulatory issues. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) of the Act, to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No.

³⁵ See Amex Rule 918C(b).

³⁶ Even though PDR transactions may serve as substitutes for transactions in the cash market, and possibly make the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create 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 stock prices 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 SPDRs, MidCap SPDRs and DIAMONDS, in particular, will serve as a vehicle to accommodate and "bundle" order flow that otherwise would flow to the cash market, thereby allowing such order flow to be handled more efficiently and effectively. Accordingly, although DIAMONDS, like any other PDR, could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

³² This reflects the fact that PDRs are equity products and not an options product, and, therefore, do not necessitate the imposition of options-like rules.

³³ See Amex Rule 411.

³⁴ In addition, for PDRs tied to an index, the triggering of futures price limits for the S&P 500 Index, S&P 100 Index, or MMI futures contracts will not, in itself, result in a halt in PDR trading or a delayed opening. However, the Exchange could consider such an event, along with other factors, such as a halt in trading in OEX, SPX, or MMI options, in deciding whether to halt trading in PDRs.

SR-Amex-97-29 and should be submitted by February 5, 1998.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,³⁷ that the proposed rule change (SR-Amex-97-29), as amended, is approve.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁸

Jonathan G. Katz,

Secretary.

[FR Doc. 98-1041 Filed 1-14-98; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

The Bureau of Consular Affairs

[Public Notice 2700]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Department of State

ACTION: 60-Day Notice of Proposed Information Collection; DSP-64, Statement Regarding Lost and Stolen Passport.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs.

Title of Information Collection: Statement Regarding Lost and Stolen Passport.

Frequency: On occasion.

Form Number: DSP-64.

Respondents: U.S. Citizens.

Estimated Number of Respondents: 30,000.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 7,500.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for

the proper performance of the agency functions.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT:

Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647-0596.

Dated: December 23, 1997.

Glen H. Johnson,

Acting, Chief Information Officer.

[FR Doc. 98-1003 Filed 1-14-98; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF STATE

[Public Notice 2701]

The Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection; DSP-10A, Birth Affidavit

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs.

Title of Information Collection: Birth Affidavit.

Frequency: On occasion.

Form Number: DSP-10A.

Respondents: Applicant's eligibility to be documented as a citizen of the United States.

Estimated Number of Respondents: 50,000.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 12,500 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647-0596.

Dated: December 23, 1997.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98-1004 Filed 1-14-98; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 2702]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Department of State.

ACTION: 60-Day Notice of Proposed Information Collection; DS-1423, Request By United States National For and Report of Exception to Section 53.1, Title 22 of the Code of Federal Regulations.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs.

³⁷ 15 U.S.C. 78s(b)(2).

³⁸ 17 CFR 200.30-3(a)(12).