

principal, from selling any security or other property to, or purchasing any security or other property from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidation, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that the Bank of America Group holds of record more than 5% (and in some cases, more than 25%) of the outstanding voting securities of each of the Acquired Funds. Because of this ownership, applicants state that the Funds may be deemed affiliated persons for reasons other than those set forth in rule 17a-8 and therefore unable to rely on the rule. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b). Applicants note that the Boards, including a majority of the Independent Members, found that participation in the Reorganization is in the best interests of each Fund that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants also note

that the Reorganization will be based on the Funds' relative net asset values.

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-12933 Filed 5-20-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44309; File No. SR-Amex-2001-04]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Trust Issued Receipts

May 16, 2001.

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> notice is hereby given that on February 7, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, and amended such proposed rule change on May 8, 2001,<sup>3</sup> described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal and Amendment No. 1 on an accelerated basis.

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

The Amex proposes to amend Amex Rule 1202 to provide eligibility requirements for Component Securities represented by a series of Trust Issued Receipts ("TIRs") that became part of such TIR when the security was either: (a) Distributed by a company whose securities are already included as a Component Security in the series of TIRs; or (b) received in exchange for the securities of a company previously included as a Component Security that are no longer outstanding due to a

merger, consolidation, corporate combination or other event. The text of the proposed rule filing is below. Additions are in italics; deletions are in brackets.

#### Trust Issued Receipts

Initial and Continued Listing

Rule 1202

Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria:

(a)-(e) No change.

\* \* \* Commentary

.01 No change.

.02 *The eligibility requirements for Component Securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either: (a) distributed by a company already included as a Component Security in the series of Trust Issued Receipts; or (b) received in exchange for the securities of a company previously included as a Component Security that is no longer outstanding due to a merger, consolidation, corporate combination or other event, shall be as follows:*

*(i) the Component Security must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security;*

*(ii) the Component Security must be registered under section 12 of the Exchange Act; and*

*(iii) the Component Security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by Component Securities included in the Trust Issued Receipt at the time of the distribution or exchange.*

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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

In September 1999, the Exchange adopted rules for the listing and trading

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

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

<sup>3</sup> Amendment No. 1 made non-substantive changes to the text of proposed Commentary .02 of Amex Rule 1202. See letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated May 4, 2001.

of TIRs.<sup>4</sup> TIRs are negotiable receipts that are issued by trusts and represent investors' discrete identifiable and undivided beneficial ownership interest in the securities deposited into the trust. Since that time, the Exchange has listed 15 TIRs under the trade name HOLDRS, representing a wide variety of industry sectors (e.g., Internet, biotechnology, pharmaceutical and telecommunications), and the market as a whole (e.g., Market 2000+HOLDRS and Eurpoe 2001 HOLDRS).

In September 2000, to accommodate the listing of additional TIRs, the Exchange revised the existing listing criteria and trading rules to permit the listing and trading of TIRs pursuant to Rule 19b-4(e).<sup>5</sup> The Exchange established the following eligibility criteria for Component Securities represented by a series of TIRs:

- Each Component Security must be registered under section 12 of the Exchange Act;
- Each Component Security must have a minimum public float of at least \$150 million;
- Each Component Security must be listed on a U.S. national securities exchange or traded through the facilities of Nasdaq and a reported national market system security;
- Each Component Security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;
- Each Component Security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and
- The most heavily weighted Component Security may not initially represent more than 20% of the overall value of the TIR.

Recently, the rules relating to the distributions of securities by Component Securities in a trust has been revised to provide: (a) If a company whose securities are included in a series of TIRs distributes a security, the distributed security will remain in the trust as a Component Security if it is listed for trading on a U.S. national securities exchange or through the facilities of Nasdaq and its Standard & Poor's sector classification is the same

as the sector classification represented by the other Component Securities in the trust at the time of the distribution; and (b) if the securities of a company that are included in a series of TIRs are no longer outstanding as a result of a merger, consolidation, corporate combination or other event, any securities received in exchange for those securities will remain in the trust as a Component Security if it is listed for trading on a U.S. national securities exchange or through the facilities of Nasdaq and its Standard & Poor's sector classification is the same as the sector classification represented by the other Component Securities in the trust at the time of the merger, consolidation, corporate combination or other event.

As a result of this change, a security that is automatically deposited into the trust as a result of a distribution or a corporate event may remain in the trust even though it does not meet all of the initial eligibility requirements set forth in Commentary .01 to Amex Rule 1202. For example, securities distributed by an issuer or exchanged in a merger generally do not have measurable price and trading histories, and may not have a minimum public float of \$150 million. There is no requirement to review the securities that are represented by TIRs on an ongoing basis to determine whether Component Securities continue to meet the initial eligibility requirements. The Exchange now proposed to amend Amex Rule 1202 to provide eligibility requirements for a Component Security that became part of a trust when the security was either: (a) Distributed by a company already included as a Component Security in the series of TIRs; or (b) received in exchange for the securities of a company previously included as a Component Security and that are no longer outstanding due to a merger, consolidation, corporate combination or other event. The eligibility requirements for such Component Securities are as follows:

- Such Component Security must be listed on national securities exchange or traded through the facilities of Nasdaq and a reported national market system security;
- Such Component Security must be registered under Section 12 of the Exchange Act; and
- Such Component Security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by Component Securities already included in the TIR at the time of the distribution or exchange.

The Exchange believes that it is appropriate in these limited situations

to provide alternate eligibility criteria for Component Securities. To reduce the number of distributions of securities from the TIR which cause inconvenience and increased transaction and administrative costs for investors, it is useful to allow certain securities that are received as part of a distribution from a company or as the result of a merger, consolidation, corporate combination or other event to remain in the TIR. The proposed eligibility requirements ensure that Component Securities included in a TIR as a result of a distribution or exchange event are widely held (having been distributed to all of the shareholders holding the original Component Security), traded through the facilities of an exchange or Nasdaq and registered under section 12 of the Act.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of section 6(b)(5)<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## 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

<sup>6</sup> 15 U.S.C. 78l.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

<sup>5</sup> Rule 19b-4(e), adopted by the Commission on December 8, 1998, permits the Exchange to list and trade new derivative securities products without a rule change provided the Exchange has in place trading rules, procedures, a surveillance program and listing standards that pertain to the class of securities covering the new product. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70921 (December 22, 1998).

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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-2001-04 and should be submitted by June 13, 2001.

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

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5) of the Act.<sup>9</sup> Specifically, the Commission finds that the proposal to provide an alternate eligibility criteria for Component Securities received as part of a distribution or as a result of a merger, consolidation, corporate combination or other event to remain in the trust will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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.<sup>10</sup>

The Amex has requested that the proposed rule change be given accelerated approval pursuant to section 19(b)(2) of the Act.<sup>11</sup>

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register** pursuant to section 19(b)(2).<sup>12</sup> There are TIRs currently listed and trading that have adopted the revised distribution provisions and such distributed or exchange securities may have or will shortly become Component Securities in

one or more trusts issuing TIRs. Accordingly, the Commission finds that it is consistent with section 6(b)(5) of the Act<sup>13</sup> to approve the proposal on an accelerated basis to accommodate such possibility.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Amex-2001-04) and Amendment No. 1 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-12934 Filed 5-22-01; 8:45 am]

BILLING CODE 8010-01-M

#### SMALL BUSINESS ADMINISTRATION

##### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of Reporting Requirements Submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before June 22, 2001. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, D.C. 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205-7044.

##### SUPPLEMENTARY INFORMATION:

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

*Title:* Other funding under the SBDC Umbrella.

*No:* 2186.

*Frequency:* On Occasion.

*Description of Respondents:* SBA Business Development Centers.

*Annual Responses:* 58.

*Annual Burden:* 29.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 01-13009 Filed 5-22-01; 8:45 am]

BILLING CODE 8025-01-P

#### SOCIAL SECURITY ADMINISTRATION

##### Office of the Commissioner; Benefit Adjustments Pursuant to Public Law 106-554

**AGENCY:** Social Security Administration.

**ACTION:** Notice.

**SUMMARY:** Pub. L. 106-554 authorizes Federal agencies to compensate beneficiaries, to the extent practicable and feasible, for any shortfall in benefits that may have been caused by an error that affected the Consumer Price Index starting in 1999. This index, produced by the Bureau of Labor Statistics in the Department of Labor, was slightly understated for certain months in 1999. Pursuant to Pub. L. 106-554, the Commissioner has determined that some recipients of Social Security and Supplemental Security Income benefits did experience a shortfall in payments in 2000 and 2001 due to the Consumer Price Index error. This is because the 2.4-percent cost-of-living increase, promulgated in the **Federal Register** on October 25, 1999, would have been 2.5 percent in the absence of the 1999 Consumer Price Index error.

Accordingly, the Commissioner has proposed, and the Office of Management and Budget has approved, a plan for making the appropriate compensation payments under Pub. L. 106-554. By August 1, 2001, we will make a one-time payment that compensates for the entire shortfall experienced in months prior to August 2001. Benefits paid in August 2001 and later will be adjusted as if the Consumer Price Index error had not occurred. In this notice we are announcing the appropriate bases and formulas we will use to compute benefits to be paid in August 2001 and thereafter.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-3013.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2).