

610 of the Amex *Company Guide* requires listed companies to publish and furnish to shareholders an annual report containing audited financial statements. In the interest of promoting greater efficiency and potentially reduced costs incurred by listed companies and member organizations in delivery of such materials to shareholders, applicable sections of the *Company Guide* are proposed to be amended to clarify that annual reports and proxy materials may be delivered as permitted by and in compliance with applicable state and federal law.

The Exchange proposes to amend Amex Section 610 of the *Company Guide* to provide that a company's distribution of its annual report to shareholders shall be in such format and by such means as permitted or required by applicable law. Amex Section 701 of the *Company Guide* relating to filing of proxy materials with the Exchange would be amended to add Commentary .01 to provide that proxy materials shall be distributed by such means as are permitted or required by applicable law or regulation. For purposes of these provisions, applicable federal law includes any interpretations thereof by the Commission. References to materials "mailed" to shareholders in Amex Section 701 would be amended to "distributed" to reflect that alternative means of distribution (e.g., electronic mail) may be applicable.

The Exchange will notify listed companies and member organizations of the amendments to Amex Sections 610 and 701, including reference to applicable state and federal law and Commission interpretations. In addition, the Exchange is interpreting Amex Rules 574 through 578 applicable to transmission of proxy materials by member organizations to permit member organizations to transmit materials to beneficial owners consistent with the proposed amendments to Amex Section 701.

Issuers and member organizations using electronic delivery means for annual reports, proxy materials and proxies are required under the proposed rule to ensure that they comply with current Commission interpretations, as well as any future interpretations that the Commission may issue on these issues. Amex understands that the Commission expects that the Exchange will monitor developments regarding electronic delivery requirements and notify their members and listed companies in the event the Commission issues future releases on these issues.<sup>6</sup>

<sup>6</sup> Telephone call between Michael Cavalier, Associate General Counsel, Amex, and Jennifer

## 2. Statutory Basis

The Exchange believes that 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, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

Amex believes that the proposed rule change will impose no burden on competition.

### 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

At any time within 60 days of the filing of such proposed rule change, the

Lewis, Attorney, Division, Commission, on November 20, 2002.

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

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that it recently approved an identical proposal by the New York Stock Exchange. See Securities Exchange Act Release No. 45838 (April 26, 2002), 67 FR 22144 (May 2, 2002). The Commission did not receive any comments on that proposal when it was published for comment. See Securities Exchange Act Release No. 45602 (March 20, 2002), 67 FR 14756 (March 27, 2002).

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the 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 File No. SR-Amex-2002-85 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46904; File No. SR-Amex-2002-87]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Relating to Elimination of Separate Exchange Requirements Regarding the Use of Written Consent Solicitations

November 25, 2002.

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>

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

notice is hereby given that on October 28, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Amex. On November 25, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Amex proposes to amend sections 705, 706, 710, 711, 712 and 713 of the Amex Company Guide to eliminate separate Exchange requirements regarding the use of consent solicitations. The following is the text of the proposed rule change. Proposed new language is italicized; deleted language is in brackets.

\* \* \* \* \*

#### Sec. 705. Meetings and Solicitation of Proxies Required

A listed company is required, with respect to any matter requiring authorization by its [stockholders] *shareholders*, to either (a) hold a meeting of its [stockholders] *shareholders* in accordance with its charter, by-laws and applicable state or other laws and to solicit proxies (pursuant to a proxy statement conforming to the proxy rules of the SEC) for such meeting of stockholders; unless, upon prior Exchange review and approval, the Exchange permits the solicitation from all stockholders of record, of written consents (conforming to the proxy rules of the SEC) in lieu of such meeting and proxy solicitation], or, (b) *use written consents in lieu of a special meeting of shareholders as permitted by applicable law. The Exchange has no separate requirements with respect to the solicitation of such*

<sup>3</sup> See letter from Claudia Crowley, Assistant General Counsel—Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 22, 2002 ("Amendment No. 1"). In Amendment No. 1, Amex proposes to delete the last sentence of the first paragraph of section 711 of the Amex Company Guide because the requirements set forth therein are already contained in section 705 of the Amex Company Guide.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

*consents, but listed companies must comply with applicable state and federal laws and rules (including interpretations thereof), including without limitation, SEC Regulations 14A and 14C.*

**Note:** An information statement under Regulation 14C of the SEC is not considered a proxy statement for purposes of this requirement.

#### [Sec. 706. Solicitation of Shareholder Consents

Upon prior Exchange review and approval, the Exchange permits solicitation of written consents from shareholders in lieu of a shareholder meeting and the solicitation of proxies (other than for the election of directors or other major corporate action) as appropriate authorization for corporate action by a listed company whenever it appears that a convened meeting of shareholders is not required. The use of consents may be granted by the Exchange on an individual basis subject to the observance of certain Exchange requirements including, among others, the condition that consents conforming to the proxy-solicitation regulations of the SEC be solicited from all shareholders of record.

A listed company's request for permission to solicit written consents of shareholders must be accompanied by a statement as to whether any substantial controversy regarding any of the matters to be acted upon is anticipated. If it appears that a contest or controversy will develop, the Exchange will require a shareholder meeting. If permission to solicit consents is granted, such authorization will be subject to the condition that, if a contest develops or a controversy arises after the consent material is distributed to shareholders, the company will terminate the solicitation of consents and revert to a formal proxy solicitation and convene a meeting of shareholders.

The use of consents will not be permitted in connection with any matter on which the Exchange requires the vote of shareholders. (See §§ 710-713.)

In addition to prior Exchange approval, the following requirements also apply:

(a) a record date for the distribution of consent forms must be used in the same manner as for the distribution of proxy-soliciting material;

(b) consents must be sent to, and solicited from, all shareholders of record in conformity with the proxy-soliciting regulations of the SEC, which also apply to the solicitation of consents;

(c) corporate action is not to be taken on the matters presented for

shareholders' consideration until the consent solicitation period has expired, even if the required number of consents is received earlier; and

(d) the solicitation period (preferably about 30 days) must be for a minimum of 20 days.]

#### Sec. 710. Vote Required

(a) *With respect to votes cast on a proposal in person or by proxy, [T]he minimum vote, under §§ 711, 712 and 713, which will constitute shareholder approval for listing purposes, is defined as approval by a majority of votes cast [on a proposal in person or by proxy]. (See § 123 regarding quorum requirements.) With respect to the use of written consents in lieu of a special shareholders meeting, the written consent to the proposal of holders of a majority of the shares entitled to vote will constitute shareholder approval for listing purpose under §§ 711, 712 and 713.*

(b)—No change.

#### Sec. 711. Options to Officers, Directors or Key Employees

Approval of shareholders is required in accordance with § 705 (unless exempted under paragraphs (a) and (b) below) as a prerequisite to approval of applications to list additional shares reserved for options granted or to be granted to officers, directors or key employees, regardless of whether or not such authorization is required by law or by the company's charter. [The Exchange requires that such shareholders' approval be solicited pursuant to a proxy statement conforming to SEC proxy rules which discloses all of the essential details of the options or of the plan pursuant to which the options will be granted.]

**Note:** This policy does not preclude the adoption of a stock option plan, or the granting of options, subject to ratification by shareholders, prior to the filing of an application for the listing of the shares reserved for such purpose.

The Exchange will not require shareholders' approval as a condition to listing shares reserved for the exercise of options when:

(a) through (b)—No change.

#### Sec. 712. Acquisitions

Approval of shareholders is required in accordance with § 705 [(pursuant to a proxy solicitation conforming to SEC proxy rules)] as a prerequisite to approval of applications to list additional shares to be issued as sole or partial consideration for an acquisition of the stock or assets of another company in the following circumstances:

(a) through (b)—No change.

### Sec. 713. Other Transactions

The Exchange will require shareholder approval *in accordance with § 705* [(pursuant to a proxy solicitation conforming to SEC proxy rules)] as a prerequisite to approval of applications to list additional shares to be issued in connection with:

(a) through (b)—No change.

Commentary—No change.

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

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

#### 1. Purpose

The Amex requires listed companies to obtain shareholder approval of certain discounted stock and option issuances as well as other potentially dilutive transactions. These requirements are set forth in Sections 711–713 of the *Amex Company Guide*. State law, as well as a company's charter and by-laws typically require shareholder approval of a variety of corporate actions as well. Section 705 of the *Amex Company Guide* requires listed companies to convene a formal shareholder meeting accompanied by a proxy solicitation conforming to SEC proxy requirements whenever shareholder approval is required. Although Section 706 of the *Amex Company Guide* permits a listed company, subject to Exchange approval, to solicit written consents from all shareholders in lieu of a meeting, it does not permit the use of consents for any matter requiring shareholder approval pursuant to Amex rules or for the election of directors and other major corporate action.

The Amex rules governing proxy solicitations and the use of written consents have been in existence for decades, and appear to be based on an assumption that the written consent process would not necessarily provide adequate shareholder participation or

information. However, for several years, under Commission requirements, issuers relying on written consents have been required to provide disclosure comparable to that required in proxy solicitations. Consents will sometimes be used when a company is permitted under state law to take action without a shareholder meeting upon the written consent of a specified percentage of shareholders, and the company has an individual or a small group that holds sufficient voting power to approve the corporate action involved. Under federal securities laws, when a company is permitted to take corporate action without a shareholder meeting upon the written consent of a specified percentage of shareholders, such company is not required to solicit the consent of all shareholders. Instead, under certain circumstances, the company is required by Section 14(c) of the Act<sup>6</sup> and Regulation 14C thereunder<sup>7</sup> to furnish all shareholders with an information statement<sup>8</sup> that contains the same disclosure as would have been provided to those shareholders had they been sent a proxy or consent solicitation. Regulation 14C also requires that the information statement be sent at least 20 days prior to the earliest date that corporate action can be taken.<sup>9</sup>

A number of Amex-listed companies have such control vested in an individual or small group, and have, on occasion, indicated a desire to take corporate action on the basis of the written consent of such individual or group. Under existing Amex rules (Section 706 of the *Amex Company Guide*), listed companies are precluded from using consents for many corporate actions, and even if a company is permitted to use consents (*i.e.*, if the corporate action did not require shareholder approval pursuant to Amex rules or involve the election of directors or major corporate action), it would be required to actually solicit the consents from all shareholders, notwithstanding that the vote was predetermined because of the voting control of an individual or small group. The additional requirement to collect and tabulate votes adds an extra level of cost and burden to the process, which some companies argue has no substantive justification, since non-control shareholders cannot change the outcome, and receive the same

information regarding the transaction whether their consent is solicited or not.

The Exchange believes that such concerns are credible and that it is appropriate to align the Exchange with what has become accepted corporate practice and has long been sanctioned by state and federal regulation. The federal proxy rules insure that all shareholders are provided all the information material to the corporate action being taken, regardless of whether the issuer must solicit shareholder approval generally, or is able to proceed based on the written consent of a smaller group. Accordingly, the Amex proposes to eliminate its separate requirements governing the use of written consents by listed companies in lieu of special shareholder meetings. This proposal would enable listed companies to obtain shareholder approval of corporate action when necessary by any lawful method.

Under the proposed rule amendments, a listed company would be permitted to obtain the requisite shareholder approval for corporate action (whether required by Amex rules or otherwise) by either holding a special meeting of shareholders and soliciting proxies in accordance with SEC proxy requirements, or by the use of written consents in lieu of such meeting as permitted by applicable law. However, Amex-listed companies will not be permitted to use written consents in lieu of the annual meeting of shareholders at which directors are to be elected.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

Amex believes that the proposed rule change will impose no burden on competition.

<sup>6</sup> 15 U.S.C. 78n(c).

<sup>7</sup> 17 CFR 240.14C.

<sup>8</sup> An information statement is a disclosure document used to inform shareholders of corporate action that has or will be taken without the general solicitation of their proxy, consent or authorization.

<sup>9</sup> 17 CFR 240.14C.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

*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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change, as amended: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it recently approved a similar proposal by the New York Stock Exchange.<sup>14</sup> The Commission did not receive any comments on that proposal when it was published for comment.<sup>15</sup> For these reasons, the Commission designates the amended proposal to be effective and operative upon filing with the Commission.<sup>16</sup>

At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>17</sup>

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> See Securities Exchange Act Release No. 46654 (October 11, 2002), 67 FR 64687 (October 21, 2002).

<sup>15</sup> See Securities Exchange Act Release No. 46092 (June 19, 2002), 67 FR 43199 (June 26, 2002).

<sup>16</sup> The proposed rule change became effective on November 25, 2002, the date on which Amendment No. 1 was filed.

<sup>17</sup> Because the proposed rule change became effective on November 25, 2002, the date on which Amendment No. 1 was filed, the 60-day abrogation period began on November 25, 2002.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 File No. SR-Amex-2002-87 and should be submitted by December 26, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46923; File No. SR-Amex-2002-92]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Corporate Bond TRACERS Units Representing Ownership Interests in a Trust Linked to a Basket of Investment Grade Fixed Income Securities**

November 27, 2002.

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 November 5, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC")

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

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

the proposed rule change as described in items I, and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to approve for listing and trading under section 107A of the Amex Company Guide ("Company Guide"), trust certificates linked to a basket of investment-grade fixed-income corporate debt instruments.

**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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Under section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.<sup>3</sup> The Amex proposes to list for trading under section 107A of the Company Guide, Corporate Bond TRACERS Units (the "Units") representing ownership interests in the Structured Asset Trust Repackaging Series 2002-\_\_\_\_\_ (the "Trust"),<sup>4</sup> a special purpose entity to be formed by Morgan Stanley Dean Witter ("MSDW") Structured Asset Corporation ("SAC"),<sup>5</sup>

<sup>3</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

<sup>4</sup> A series number will be assigned when the Trust is established. Pursuant to a telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Hong-Anh Tran, Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 14, 2002.

<sup>5</sup> SAC is a wholly-owned special purpose entity of Morgan Stanley and the registrant under form S-