interest in his or her contract value or in the Account would always be offered under the Contracts at a price determined on the basis of net asset value. The granting of a bonus credit does not reflect a reduction of that price. Instead, RLNY will purchase with its own money on behalf of the owner, an interest in the Account equal to the bonus credit. Because any bonus credit will be paid from RLNY's general account and not from the assets of the Account, no dilution will occur as a result of the credit. Likewise, because RLNY will use general account assets to increase an owner's total contract value, no dilution will occur from such an increase.

8. Recaptures of bonus credits result in a redemption of RLNY's interest in an owner's contract value or in the Account at a price determined on the basis of the Account's current net asset value and not at an inflated price. Moreover, the amount recaptured will always equal the amount that RLNY paid from its general account for the credits. Similarly, although owners are entitled to retain any investment gains attributable to the bonus credits, the amount of such gains would always be computed at a price determined on the basis of net asset value. Because neither of the harms that Rule 22c–1 was intended to address arise in connection with the proposed bonus credit provisions, the provisions do not conflict with the Rule. Nonetheless, in order to avoid any uncertainty as to hill compliance with the Act, Applicants seek exemptions from Rule 22c–1.

9. The bonus credit recapture provisions are necessary for RLNY to offer the bonus credits. It would be unfair to RLNYto permit owners to keep their bonus credits upon their exercise of the Contracts' ''free look'' provision. Because no CDSC applies to the exercise of the ''free look'' provision, the owner could obtain a quick profit in the amount of the bonus credit at RLNY's expense by exercising that right. Similarly, the owner could take advantage of the bonus credit by taking withdrawals within the recapture period, because the cost of providing the bonus credit is recouped through charges imposed over a period of years. Likewise, because no additional CDSC applies upon death of an owner (or annuitant), a death shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at RLNY's expense. In the event of such profits to owners or beneficiaries, RLNY could not recover the cost of granting the bonus credits. This is because RLNY intends to recoup the costs of providing the bonus credits through the charges under the Contract, particularly the daily mortality and expense risk charge and the daily administrative charge. If the profits described above are permitted, certain owners could take advantage of them, reducing the base from which the daily charges are deducted and greatly increasing the amount of bonus credits that RLNY must provide. Therefore, the recapture provisions are a price of offering the bonus credits. RLNY simply cannot offer the proposed bonus credits without the ability to recapture those credits in the limited circumstances described herein.

10. Applicants state that the Commission's authority under Section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, RLNY's successors in interest, Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. The exemption of these classes of persons is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to persons that in all material respects are the same as the Applicants.

11. Applicants represent that Future Contracts will be substantially similar in all material respects to the Contracts and that each factual statement and representation about the bonus credit provisions of the Contracts will be equally true of Future Contracts. Applicants also represent that each material representation made by them about the Account and DSI will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in this application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a NASD member.

Conclusion

Applicants request that the Commission issue an order pursuant to Section 6(c) of the Act exempting them as well as Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of certain credits applied to purchase payments made in consideration of the Contracts. Applicants submit that, for all the reasons stated above, the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXHANGE COMMISSION

[Release No. 34–47078; File No. SR–Amex–2001–07]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the American Stock Exchange LLC Relating to the Review of a Floor Official's Market Decision

December 20, 2002.

On February 14, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with 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 amend Amex Rule 22 to change the procedure for reviewing a Floor Official's market decision and to eliminate the right of appealing a Floor Official's market decision or ruling to the Board of Governors (''Board''). The Amex amended the proposed rule change on August 27, 2001 [3] and October 8, 2002.[4]

The proposed rule change and Amendment Nos. 1 and 2 thereto were published for comment in the **Federal Register** on November 15, 2002.[5] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 24, 2001, replacing Form 19b–4 in its entirety (''Amendment No. 1'').

[4] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 7, 2002, replacing Form 19b–4 in its entirety (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 34–46779 (November 6, 2002), 67 FR 69271.

Commission received no comments on the proposal, as amended. On December 19, 2002, the Amex filed Amendment No. 3 to the proposed rule change.[6] In Amendment No. 3, the Amex corrected a typographical error in the proposed rule text by clarifying that there would be no change to Amex Rule 22(a) through (c).

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[7] and, in particular, the requirements of Section 6 of the Act[8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[9] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission finds that the Amex's proposal, as amended, is a reasonable effort to ensure prompt review of Floor Officials' decisions. The Commission notes that the Amex provides for several levels of appeal of a Floor Official's decision. Further, decisions of a Floor Official made with the concurrence of a Senior Floor Official may also be appealed to a panel of three governors. The Commission believes that the process for review of Floor Officials' decisions will help to ensure that Floor Officials' decisions are fair and impartial, as well as prompt. In addition, the Commission notes that the proposed rule change, as amended, would leave unchanged any right that a member or its customer may have to submit a market dispute to arbitration.

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

[6] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated December 18, 2002 (''Amendment No. 3''). This was a technical amendment and is not subject to notice and comment.

[7] 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).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[10], that the proposed rule change (File No. SR–Amex–2001–07) and Amendment Nos. 1, 2 and 3 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47055; File No. SR–Amex–2002–110]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Increase the Maximum Number of Equity Securities Permitted To Be Linked to an ELN

December 19, 2002

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2002, the American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to revise Amex Company Guide Section 107B to permit the listing and trading of notes linked to up to thirty (30) equity securities (''ELNs'').

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and the Commission.

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

In its filing with the Commission, the 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 Statutory Basis for, the Proposed Rule Change

(1) Purpose

On May 20, 1993, the Commission approved Section 107B of the Amex Company Guide to provide for the listing and trading of equity linked term notes (ELNs), hybrid instruments whose values are linked to the performance of highly capitalized, actively traded common stock.[3] ELNs are non-convertible debt of an issuer, whose value is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.

Section 107B of the Amex Company Guide details the Amex's listing standards for ELNs. Specifically, Section 107B requires, among other things, that securities linked to ELNs (i) have a minimum market capitalization of $3 billion and during the 12 months preceding listing shown to have traded at least 2.5 million shares; (ii) have a minimum market capitalization of $1.5 billion and during the 12 months preceding listing shown to have traded at least 10 million shares; or (iii) have a minimum market capitalization of $500 million and during the 12 months preceding listing shown to have traded at least 15 million shares.

On March 27, 2000, the Commission granted authority to the Amex to list and trade notes linked to more than one equity security.[4] Each of the underlying securities of an ELN is required to meet the standards for linked securities set forth in Section 107B. However, the 2000 Order limited the basket of underlying securities that may be linked to an ELN to no more than twenty (20).[5] Based on the its experience over the last two (2) years, the Amex believe that the limit of twenty (20) equity securities linked to an ELN is overly restrictive. Accordingly, the Amex proposes to amend the text of Section 107B to enable ELNs to be linked to up to thirty (30) equity securities provided that each linked equity security individually

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (SR–Amex–92–42).

[4] *See* Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (SR–Amex–99–42) (the ''2000 Order'').

[5] *See Id.*