

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 exchange⁷ and, in particular, the requirements of Section 6 of the Act⁸ 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 Act⁹ 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 Act¹⁰, 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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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

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.*

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

satisfies the applicable standards set forth in Section 107B.⁶

The Amex submits that its proposal to increase the number of equity securities that may be linked to an ELN to thirty (30) will better reflect the competitive nature of attracting listings to the Amex. The Amex believes that expanding the basket of equity securities that may be linked to an ELN will enhance competition and benefit investors and the marketplace through additional product choices and alternatives. Amex also believes that there would be no investor protection concerns with expanding the number of equity securities that may be linked to an ELN from twenty (20) to thirty (30).

(2) Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Amex does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

⁶ The Amex notes that a recent proposal by UBS AG to list and trade Enhanced Appreciation Securities (the "Notes") on the Amex would be prohibited under current Section 107B because of the limitation of twenty (20) equity securities. These Notes, issued in amounts of \$1,000 under the symbol "EAN.B," will consist of a basket of thirty (30) common stocks each of which are component stocks of the Dow Jones Industrial Average ("DJIA"). Each component of the basket is equally weighted and will represent approximately 3.33% of the basket. The payment that an investor will receive at maturity is based on the return of each basket stock. For each positive return, the basket stock will be doubled subject to a maximum gain amount. Therefore, the maximum total return at maturity for each \$1,000 principal amount of the Notes will be such maximum or ceiling amount. The Notes are also subject to full downside risk with a negative return reducing the cash payment at maturity. The Amex believes that the limitation of twenty (20) equity securities to be linked to an ELN such as these Notes is unduly restrictive because each linked security is highly capitalized and actively-traded. In addition, the Amex submits that it lists and trades options, exchange-traded funds and index-linked notes based on the DJIA. These Notes are essentially linked to the DJIA with a different payout scenario at maturity.

⁷ 15 U.S.C. 78f(b).

⁸ 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4¹⁰ thereunder because the Amex has designated the proposed rule change as one that does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of such 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.

Under Rule 19b-4(f)(6)(iii) of the Act,¹¹ the proposed rule change does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Amex is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Amex has requested that the Commission waive the 30-day operative date and the five-day pre-filing notice requirement in order for it to implement the proposed rule change on December 19, 2002 to allow the Amex to list and trade UBS AG Enhanced Appreciation Securities ("EAN.B") immediately. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period as well as the five-day pre-filing notice requirement,¹² and, therefore, the proposal is effective

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² For purposes only of waiving the five-day pre-filing notice requirement and the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

and operative upon filing with the Commission.

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-2002-110 and should be submitted by January 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47085; File No. SR-CBOE-2002-46]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating Its AutoQuote Triggered Ebook Execution System

December 23, 2002.

On August 21, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 relating to its AutoQuote Triggered Ebook Execution ("Trigger") system. Notice of the proposed rule

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.