

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****I. Introduction**

The Nuclear Regulatory Commission (NRC) prepares draft Interim Staff Guidance (ISG) documents for spent fuel storage or transportation casks or radioactive materials transportation package designs. These ISG documents provide clarifying guidance to the NRC staff when reviewing licensee integrated safety analyses, license applications or amendment requests or other related licensing. The NRC is soliciting public comments on Draft ISG-21, "Use of Computational Modeling Software," which will be considered in the final version or subsequent revisions.

**II. Summary**

The purpose of this notice is to provide the public an opportunity to review and comment on the Draft Interim Staff Guidance-21 on the use of Computational Modeling Software (CMS) by an applicant. Draft Interim Staff Guidance-21, Revision 0, provides guidance to NRC staff on how to review computational modeling methods used by an applicant as part of, and in support of, the structural and thermal technical bases for a spent fuel storage or transportation cask or radioactive materials transportation package design.

**III. Further Information**

Documents related to this action are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc-collections/isg/spent-fuel.html>. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Interim staff guidance	ADAMS accession No.
Interim Staff Guidance-21 ..	ML051710071

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments and questions on the draft SFPO ISG-21 should be directed to the NRC contact listed below by August 11, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Christopher Brown, Materials Engineer, Structural and Materials Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001. Comments can also be submitted by telephone, fax, or e-mail, which are as follows: telephone: (301) 415-1988; fax number: (301) 415-8555; e-mail: [clb@nrc.gov](mailto:clb@nrc.gov).

Dated at Rockville, Maryland this 29th day of June, 2005.

For the Nuclear Regulatory Commission.

**Gordon Bjorkman,**

*Chief, Structural and Materials Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51966; File No. SR-Amex-2005-049]

**Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to an Amendment to the Generic Listing Standards for Index-Linked Securities**

July 1, 2005.

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 April 28, 2005, 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 the Exchange. On June 17, 2005, the Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On June 24, 2005, the Amex submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 add Commentary .01 to Section 107D of the Amex Company Guide ("Company Guide") for the purpose of permitting the listing and trading, under Section 107D, of index-linked securities ("Index Securities") based on the Chicago Board Options Exchange, Inc. ("CBOE") S&P 500(sm) BuyWrite Index ("BXM") and the CBOE DJIA(sm) BuyWrite Index ("BXD") (each an "Index" and collectively, the "Indexes"). Proposed Commentary .01 establishes a limited exemption for the BXM and BXD from the continued listing requirement in Section 107D(h) of the Company Guide that an index be calculated and widely disseminated at least every 15 seconds. Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*.

\* \* \* \* \*

**Section 107 Other Securities**

The Exchange will consider listing any security not otherwise covered by the criteria of Sections 101 through 106, provided the issue is otherwise suited for auction market trading. Such issues will be evaluated for listing against the following criteria:

A-C. No Change.

D. Index-Linked Securities

Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. The Exchange may submit a rule filing pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 to permit the listing and trading of index-

<sup>3</sup> Amendment No. 1, which replaced and superseded the original filing in its entirety, included an enhanced description of each underlying index and included additional support for not requiring more frequent dissemination of the underlying BuyWrite index value.

<sup>4</sup> Amendment No. 2 made technical corrections to the proposed rule text to reflect the text of Section 107D of the Amex Company Guide in effect on April 28, 2005.

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

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

linked securities that do not otherwise meet the standards set forth below in paragraphs (a) through (k). The Exchange will consider for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, index-linked securities provided:

(a) through (k) No Change.

E. No Change.

Commentary \* \* \*

.01 *Index-linked securities based on CBOE S&P 500 BuyWrite Index<sup>SM</sup> (BXM<sup>SM</sup>) or the CBOE DJIA BuyWrite Index<sup>SM</sup> (BXD<sup>SM</sup>) may be listed and traded pursuant to Section 107D of the Company Guide even though the continued listing requirement found in paragraph (h)(3) providing that an index be calculated and widely disseminated every 15 seconds is not satisfied. An indicative value of an index-linked security based on the BXM and BXD is required to be calculated and disseminated after the close of trading to provide an updated value.*

\* \* \* \* \*

## 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, as amended, and discussed any comments it received on the proposed rule change, as amended. 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 Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Commission recently approved new Section 107D to the Company Guide adopting generic listing standards to permit the listing and trading of Index Securities pursuant to Rule 19b-4(e) under the Act.<sup>5</sup> As a result, the Exchange may now list Index Securities based on an index or indexes (the "Underlying Index") that meet the criteria set forth in paragraph (g) of Section 107D of the Company Guide.

Specifically, an Underlying Index is required either to be (i) an index meeting the specific criteria set forth in Section 107D(g) that is similar to current Amex Rule Commentary .02 to Rule

901C; or (ii) an index previously approved for the trading of options or other derivative securities by the Commission under section 19(b)(2) of the Act<sup>6</sup> and rules thereunder. The Commission has granted approvals for particular products based on both the BXM and BXD.<sup>7</sup>

#### Description of the Indexes

**BXM Index.** The BXM Index is a benchmark index designed to measure the performance of a hypothetical "buy-write"<sup>8</sup> strategy on the S&P 500. Developed by the CBOE in cooperation with Standard & Poor's Corporation ("S&P"), the Index was initially announced in April 2002.<sup>9</sup> The Exchange states that the CBOE developed the BXM Index in response to requests by options portfolio managers that the CBOE provide an objective benchmark for evaluating the performance of buy-write strategies, one of the most popular option trading strategies. In addition, the BXM Index could also provide investors with a straightforward indicator of the risk-reducing character of options.

The BXM Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the S&P 500, and (2) "writing" (or selling) near-term S&P 500 call options (SPX), generally on the third Friday of each month. This strategy consists of a hypothetical portfolio consisting of a "long" position indexed to the S&P 500 on which are deemed sold a succession of one-month, at-the-money call options on the S&P 500 (SPX) listed on the CBOE. Dividends paid on the component stocks underlying the S&P 500 and the dollar value of option premium deemed

received from the sold call options are functionally "re-invested" in the covered S&P 500 portfolio.

The value of the BXM Index on any given date will equal: (1) The value of the BXM Index on the previous day, multiplied by (2) the daily rate of return<sup>10</sup> on the covered S&P 500 portfolio on that date. Thus, the daily change in the BXM Index reflects the daily changes in value of the covered S&P 500 portfolio, which consists of the S&P 500 (including dividends) and the component S&P 500 option (SPX). The daily closing price of the BXM Index is calculated and disseminated by the CBOE on its Web site at <http://www.cboe.com> and via the Options Pricing and Reporting Authority ("OPRA") at the end of each trading day. The value of the S&P 500 Index is disseminated at least once every fifteen (15) seconds throughout the trading day. The Exchange believes that the dissemination of the S&P 500 along with the ability of investors to obtain S&P 500 call option pricing provides sufficient transparency regarding the BXM Index.<sup>11</sup> In addition, as indicated above, the value of the BXM Index is calculated once every trading day, thereby providing investors with a daily value of such "hypothetical" buy-write options strategy on the S&P 500.

**BXD Index.** Similar to the BXM Index with respect to the S&P 500, the BXD Index is a benchmark index designed to measure the performance of a hypothetical "buy-write" strategy on the DJIA. Developed by the CBOE in cooperation with Dow Jones & Company ("Dow Jones"), the BXD Index was

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See Securities Exchange Act Release Nos. 51840 (June 14, 2005), 70 FR 35468 (June 20, 2005) (File No. SR-Amex-2005-042) (approving the listing and trading of JPMorgan Chase Notes linked to the BXD Index); 51634 (Apr. 29, 2005), 70 FR 24138 (May 6, 2005) (File No. SR-Amex-2005-036) (approving the listing and trading of Wachovia Notes linked to the BXM Index); 51426 (Mar. 23, 2005), 70 FR 16315 (Mar. 30, 2005) (File No. SR-Amex-2005-022) (approving the listing and trading of Morgan Stanley Notes linked to the BXM Index); and 50719 (Nov. 22, 2004), 69 FR 69644 (Nov. 30, 2004) (File No. SR-Amex-2004-55) (approving the listing and trading of Morgan Stanley Notes linked to the BXM Index).

<sup>8</sup> A "buy-write" is a conservative options strategy in which an investor buys a stock or portfolio and writes call options on the stock or portfolio. This strategy is also known as a "covered call" strategy. A buy-write strategy provides option premium income to cushion decreases in the value of an equity portfolio, but will underperform stocks in a rising market. A buy-write strategy tends to lessen overall volatility in a portfolio.

<sup>9</sup> The BXM Index consists of a long position in the component securities of the S&P 500 and options on the S&P 500.

<sup>10</sup> The daily rate of return on the covered S&P 500 portfolio is based on (a) the change in the closing value of the stocks in the S&P 500 portfolio, (b) the value of ordinary cash dividends on the stocks underlying the S&P 500, and (c) the change in the market price of the call option. The daily rate of return will also include the value of ordinary cash dividends distributed on the stocks underlying the S&P 500 that are trading "ex-dividend" on that date (that is, when transactions in the stock on an organized securities exchange or trading system no longer carry the right to receive that dividend or distribution) as measured from the close in trading on the previous day.

<sup>11</sup> Call options on the S&P 500 (SPX) are traded on the CBOE, and both last sale and quotation information for the call options are disseminated in real-time through OPRA. The Exchange states that the value of the BXM can be readily approximated as a function of observable market prices throughout the trading day. In particular, such a calculation would require information on the current price of the S&P 500 Index and specific nearest-to-expiration call and put options on that Index. The Exchange represents that these components trade in highly liquid markets, and real-time prices are available continuously throughout the trading day from a number of sources including Bloomberg and the CBOE.

<sup>5</sup> See Securities Exchange Act Release No. 51563 (Apr. 15, 2005), 70 FR 21257 (Apr. 25, 2005) (File No. SR-Amex-2005-001).

initially announced in March 2005.<sup>12</sup> The BXD was set to an initial value of 100.00 as of October 16, 1997. The Exchange states that, as with the BXM Index, the CBOE developed the BXD Index in response to requests by options portfolio managers to provide an objective benchmark for evaluating the performance of buy-write strategies, as well as to provide investors with a straightforward indicator of the risk-reducing character of options.

The BXD Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the DJIA, and (2) "writing" (or selling) near-term DJIA call options (DJX), generally on the third Friday of each month. This strategy consists of a hypothetical portfolio consisting of a "long" position indexed to the DJIA on which are deemed sold a succession of one-month, at-the-money call options on the DJIA (DJX) listed on the CBOE. Dividends paid on the component stocks underlying the DJIA and the dollar value of option premium deemed received from the sold call options are functionally "re-invested" in the covered DJIA portfolio.

The value of the BXD Index on any given date will equal: (1) The value of the BXD Index on the previous day, multiplied by (2) the daily rate of return<sup>13</sup> on the covered DJIA portfolio on that date. Thus, the daily change in the BXD Index reflects the daily changes in value of the covered DJIA portfolio, which consists of the DJIA (including dividends) and the component DJIA call option (DJX). The daily closing price of the BXD Index is calculated and disseminated by the CBOE on its Web site at <http://www.cboe.com> and via OPRA at the end of each trading day. The value of the DJIA is disseminated at least once every fifteen (15) seconds throughout the trading day. The Exchange believes that the dissemination of the DJIA along with the ability of investors to obtain DJIA call option (DJX) pricing provides sufficient transparency regarding the

BXD Index.<sup>14</sup> In addition, as indicated above, the value of the BXD Index is calculated once every trading day, thereby providing investors with a daily value of such "hypothetical" buy-write options strategy on the DJIA.

#### Generic Listing Standards for Index-Linked Securities

The Exchange represents that, consistent with Section 107D(g)(1) of the Company Guide, the Index Securities based on the BXM or BXD, as applicable, will comply with the conditions of the applicable Commission orders regarding such Index.<sup>15</sup> For example, Index Securities based on the Indexes are subject to the condition in the Commission's orders requiring the Exchange to disseminate an Indicative Value. In addition, the Commission's orders also provide that if the Indexes cease to be calculated and disseminated, the Exchange would undertake to delist the Notes.

To date, the Exchange has listed non-principal protected Index Securities based on the BXM with and without the payment of interest.<sup>16</sup> These Index Securities are also subject to an exchange option by investors and redemption by the issuer. As noted above, the BXM and BXD are not calculated or disseminated continuously throughout the trading day. Instead, the CBOE calculates the value of each Index shortly after the close. Pursuant to the previous Commission orders regarding the BXM and BXD, the Exchange represents that it will provide an Indicative Value of the Index Security based on the BXM or BXD, as applicable. The Indicative Value is an updated value of the amount investors would receive for the Index Security if exchanged or redeemed. The Exchange states that the Indicative Value equals the performance of the Index less fees and other adjustment amounts, if any. The Indicative Value is calculated by the Amex after the close of trading and after the BXM and BXD are calculated for use by investors during the next trading day. It is designed to provide investors with a daily reference value of

the adjusted Index. The Exchange states that the Indicative Value may not reflect the precise value of the Index Security.

The new continued listing standards set forth in Section 107D(h) provide for the delisting or removal from listing of an Index Security under any of the following circumstances:

- If the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;
- If the value of the Underlying Index is no longer calculated and widely disseminated on at least a 15-second basis; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Because the BXM and BXD are not calculated and disseminated every 15 seconds, the Exchange seeks a limited exception from this continued listing requirement. In proposed Commentary .01 to Section 107D of the Company Guide, the Exchange provides that, although the BXM and BXD do not satisfy the requirements of Section 107D(h), securities based on these Indexes may nevertheless be listed and traded pursuant to the generic standards set forth in Section 107D. The Exchange believes that the dissemination of the S&P 500 with respect to the BXM and the DJIA with respect to the BXD, along with the ability of investors to obtain call option pricing provides sufficient transparency regarding the Indexes. In addition, the value of each Index is calculated once every trading day, thereby providing investors with a daily value of such "hypothetical" buy-write options strategy. Given the nature of the Indexes as "buy-write" strategies coupled with the transparency of the underlying S&P 500 or DJIA and related call options, the Exchange believes that the dissemination requirement found in Section 107D(h) of the Company Guide is not necessary for these particular Indexes. Accordingly, the Exchange requests that the Commission approve the limited exception found in proposed Commentary .01.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>17</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>18</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 foster cooperation and coordination with persons engaged

<sup>12</sup> The BXD Index consists of a long position in the component securities of the DJIA and options on the DJIA (DJX). See <http://www.cboe.com/bxd>.

<sup>13</sup> The daily rate of return on the covered DJIA portfolio is based on (a) the change in the closing value of the stocks in the DJIA portfolio, (b) the value of ordinary cash dividends on the stocks underlying the DJIA, and (c) the change in the market price of the call option. The daily rate of return will also include the value of ordinary cash dividends distributed on the stocks underlying the DJIA that are trading "ex-dividend" on that date (that is, when transactions in the stock on an organized securities exchange or trading system no longer carry the right to receive that dividend or distribution) as measured from the close in trading on the previous day.

<sup>14</sup> Call options on the DJIA (DJX) are traded on the CBOE, and both last sale and quotation information for the call options are disseminated in real-time through OPRA. The Exchange states that the value of the BXD can be readily approximated as a function of observable market prices throughout the trading day. In particular, such a calculation would require information on the current price of the DJIA and specific nearest-to-expiration call and put options on that Index. The Exchange represents that these components trade in highly liquid markets, and real-time prices are available continuously throughout the trading day from a number of sources including Bloomberg and the CBOE.

<sup>15</sup> See *supra* note 7.

<sup>16</sup> See *supra* note 7.

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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 Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange states that no written comments were solicited or received with respect to the proposed rule change, as amended.

### 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. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-049 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File No. SR-Amex-2005-049. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-Amex-2005-049 and should be submitted on or before August 2, 2005.

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

The Amex has asked the Commission to approve the proposal on an accelerated basis. After careful consideration, 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, with the requirements of section 6(b)(5) of the Act.<sup>19</sup> The Commission notes that it has approved several instruments currently listed and traded on the Amex which are based on either the BXM or BXD.<sup>20</sup> The Commission finds that the limited exception for the BXM and BXD Indexes contained in proposed Commentary .01 to Section 107D of the Company Guide from the continued listing requirement under Section 107D(h) of the Company Guide that an index be calculated and disseminated every 15 seconds is consistent with the Act and will promote just and equitable principles of trade, and foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to and facilitating transactions in securities consistent with section 6(b)(5) of the Act.<sup>21</sup> Consistent with Section 107D(h)(2) of the Company Guide, the limited exception in Commentary .01 incorporates additional continued listing requirements in prior approval orders that an Indicative Value, reflecting the performance of the Index less fees and other adjustments, must be disseminated shortly after the close of trading.

The requirements of Section 107A of the Company Guide (which are applicable pursuant to Section 107D(a)) were designed to address the concerns attendant to the trading of hybrid

securities, like the securities linked to the BXM or BXD Indexes contemplated here. For example, Section 107A of the Company Guide provides that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least \$4 million.<sup>22</sup> In any event, financial information regarding the issuers of such securities, in addition to the information on the component stocks, which are reporting companies under the Act, and the index-linked securities, which will be registered under section 12 of the Act, will be available.

In approving the product, the Commission recognizes that the Indexes are passive total return indexes based on (1) buying a portfolio consisting of the component stocks of the S&P 500 or DJIA, as applicable, and (2) "writing" (or selling) near-term S&P 500 call options (SPX) or DJIA call options (DJX), as applicable, generally on the third Friday of each month. Given the large trading volume and capitalization of the compositions of the stocks underlying the S&P 500 and DJIA, the Commission believes that the listing and trading of securities that are linked to the BXM or BXD Index should not unduly impact the market for the underlying securities compromising the S&P 500 or DJIA, as applicable, or raise manipulative concerns.<sup>23</sup> Moreover, the issuers of the underlying securities comprising the S&P 500 or DJIA, as applicable, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets.

The Commission also believes that any concerns that a broker-dealer, such as the issuer of such index-linked securities, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the issuance in relation to the net worth of the issuer.<sup>24</sup>

<sup>22</sup> See Section 107A(c) of the Company Guide.

<sup>23</sup> Issuers of such Commission-approved BXM or BXD-linked securities have disclosed in the relevant prospectuses and prospectus supplements that their (and their affiliates') hedging activities, including taking positions in the stocks underlying the applicable Index and selling call options on such Index, could adversely affect the market value of the securities from time to time and the redemption amount holders of the securities would receive on them. Such hedging activity must, of course, be conducted in accordance with applicable regulatory requirements.

<sup>24</sup> See Section 107D(e) of the Company Guide; see also Securities Exchange Act Release Nos. 44913 (Oct. 9, 2001), 66 FR 52469 (Oct. 15, 2001) (File No. SR-NASD-2001-73) (order approving the listing and trading of notes whose return is based on the

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> See *supra* note 7.

<sup>21</sup> 15 U.S.C. 78f(b)(5). In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Finally, the Commission notes that the value of the applicable Index will be calculated and disseminated by the CBOE once every trading day after the close of trading. However, the Commission notes that the value of both the S&P 500 and DJIA will be widely disseminated at least once every fifteen seconds throughout the trading day and that investors are able to obtain real-time call option pricing on the Indexes during the trading day.<sup>25</sup> Further, the Indicative Value for the BXM and BXD index-linked securities, which will be calculated by the Amex after the close of trading and after the CBOE calculates the BXM and BXD Indexes for use by investors during the next trading day, is designed to provide investors with a daily reference value of the adjusted Index. Consistent with the Commission's previous orders,<sup>26</sup> the Commission notes that issuers of such products have agreed to arrange to have the applicable Index calculated and disseminated on a daily basis through a third party in the event that the CBOE discontinues calculating and disseminating the Index. In such event, the Exchange agrees to obtain Commission approval, pursuant to filing the appropriate Form 19b-4, prior to the substitution of the applicable Index. Further, the Commission notes that the Exchange has agreed to undertake to delist the relevant index-linked securities in the event that the CBOE ceases to calculate and disseminate the applicable BXM or BXD Index, and the relevant issuer is unable to arrange to have such Index calculated and widely disseminated through a third party.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because it states that this proposal raises no new or novel issues and would permit it, pursuant to Section 107D of

performance of the Nasdaq-100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (File No. SR-Amex-2001-40) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (Sept. 27, 1996), 61 FR 52480 (Oct. 7, 1996) (File No. SR-Amex-96-27) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

<sup>25</sup> In the event that such dissemination of the S&P 500 and DJIA index values (or any successor index) and real-time call option pricing is not available, the Exchange has agreed to undertake to delist the relevant BXM or BXD index-linked securities. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on June 30, 2005.

<sup>26</sup> See *supra* note 7.

the Company Guide, to list and trade index-linked securities based on the BXM and BXD Indexes. The Commission believes that the listing and trading of such securities should provide investors with additional investment choices and that accelerated approval of the proposal would allow investors to begin trading such securities promptly. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>27</sup> to approve the proposal, as amended, on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-Amex-2005-049), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 05-13602 Filed 7-11-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-32170]

### Issuer Delisting; Notice of Application of NutriSystem, Inc., To Withdraw Its Common Stock, \$.001 Par Value, From Listing and Registration on the American Stock Exchange LLC

July 6, 2005.

On June 22, 2005, NutriSystem, Inc., a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its common stock, \$.001 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On June 20, 2005, the Board of Directors ("Board") of the Issuer unanimously approved resolutions to withdraw the Security from listing and registration on Amex and to list the Security on the Nasdaq National Market ("Nasdaq"). The Issuer stated that the Board determined to withdraw the Security from listing on Amex based on the following opinions of the Board: (i) Nasdaq is the premier stock market for

high growth companies because it is a screen-based electronic marketplace with competing market makers that offer faster trade execution times, reduced trading volatility, increased liquidity, and greater exposure to and coverage by institutions that invest in high growth markets; and (ii) in light the aforementioned advantages, it is in the best interest of the Issuer and its stockholders to list the Security on Nasdaq.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and provided written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the Act,<sup>3</sup> and shall not affect its obligation to be registered under Section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before July 29, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/delist.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1-32170 or;

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 1-32170. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 78l(b).

<sup>4</sup> 15 U.S.C. 78l(g).