

Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder 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 1940 Act.

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

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-38142; International Series Release No. 1043; File No. SR-Amex-96-50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to the Listing and Trading of Index Warrants Based on the BEMI South Africa Index

January 8, 1997.

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 30, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange 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, pursuant to Rule 19b-4 of the Act proposes to approve for listing and trading under Section 106 (Currency and Index Warrants) of the Amex *Company Guide* index warrants based on the BEMI South Africa Index ("Index"), a market capitalization-weighted broad-based index developed by ING Barings Securities Limited comprised of 30 South African companies representing five different industry groups.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 106 of the Amex *Company Guide*, the Exchange may approve for listing index warrants based on foreign and domestic market indices. The Amex has received approval to trade a number of index warrant products pursuant to Section 106.³ The Amex represents that the listing and trading of warrants on the Index will comply in all respects to Exchange Rules 1100 through 1110 for the trading of stock index and currency warrants.

Warrant issues on the Index will conform to the listing guidelines under Section 106, which provide, among other things, that: (1) the issuer shall have tangible net worth in excess of \$250,000,000 and otherwise substantially exceed earnings requirements in Section 101(A) of the *Company Guide* or meet the alternative guideline in paragraph (a); (2) the term of the warrants shall be for a period ranging from one to three years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of \$4,000,000.

Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the warrant expiration date if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent

that the Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The procedures for determining the cash settlement value for the warrants have not yet been determined by ING Barings. Once those procedures have been determined by ING Barings, they will be fully set forth in the prospectus and in the Information Circular distributed by the Exchange to its membership prior to the commencement of trading the warrant.

The Amex has adopted suitability standards applicable to recommendations to purchasers of Index warrants and transactions in customer accounts. Amex Rule 411, Commentary .02 recommends that index warrants under Section 106 of the *Company Guide* be sold only to investors whose accounts have been approved for options trading pursuant to Rule 921. The requirements under Rule 923 (Suitability) shall apply to recommendations in index warrants both with respect to customer accounts that have been approved for options trading and customer accounts that have not been so approved. Amex Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in Index warrants on the day the order is entered. In addition, the Amex, prior to the commencement of trading of Index warrants, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

The Amex is proposing to list index warrants based on the Index, an internationally-recognized capitalization-weighted index representing a broad-based portfolio of 30 large, actively traded stocks from South Africa.⁴ The total market capitalization of the Index was \$118.6 billion on September 30, 1996. The total available market capitalization⁵ of the Index was \$32.1 billion on September 30, 1996. The median available capitalization of the companies in the Index on that date was \$737 million and

⁴ The list of the component securities and their respective weights in the Index were attached to the proposed rule filing as Exhibit A, and are available for examination at the Amex or at the Commission as specified in Item IV.

⁵ A company's "available capitalization" is defined as the lower of (i) the company's "free float" or (ii) the legally available capitalization of the company. A company's "free float" is defined as the percentage of shares which could reasonably be expected to trade on the open market. Generally, government holdings, corporate cross-ownership and other strategic holdings are not considered freely floating.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 36070 (August 9, 1995), 60 FR 42205 (August 14, 1995) (approval for index warrants on the Deutscher Aktienindex); Securities Exchange Act Release No. 33036 (October 8, 1993), 58 FR 53588 (October 15, 1993) (approval for index warrants on the Amex Hong Kong 30 Index); and Securities Exchange Act Release No. 31016 (August 11, 1992), 57 FR 37012 (August 17, 1992) (approval for index warrants on the Japan Index).

the average available market capitalization of these companies was \$1.07 billion. The individual available market capitalization of the companies ranged from \$848 million to \$11.8 billion.

The Index was designed by and is maintained by ING Barings. The stocks selected for inclusion in the Index were chosen on the basis of both country and company criteria. To be included in the Index a country must have a minimum Gross Domestic Product per capita of \$400 and minimum market trading value of \$2 billion per year, in at least one of the last three years. The companies included in the Index are drawn from a database of stock entities, which may represent individual companies in their entirety, or separate lines of stock, e.g., A shares and B shares, of the same company. The criteria for stock entities to be included are: capitalization value greater than 1% of the ING Barings database for that country; minimum free-float of 10%; and minimum average daily trading value of \$100,000. In addition shares that rank first or second in their industry sector may be included if they have a minimum capitalization of 0.5% of the ING Baring database for that country and meet the normal free-float & daily trading value rules.

The Index is composed of companies from 5 industry groups including: consumer goods, energy, capital equipment, basic materials, agriculture/food and financial. The largest stock accounts for 11.43% of the Index, while the smallest accounts for 0.716%. The top five stocks in the Index by weight account for 43.64%. The Exchange believes that the Index is a Stock Index Group and a Broad Stock Index Group pursuant to Rule 1100(b).

The Exchange also believes that the proposed Index complies with the information sharing standards of Section 106(g) of the Company Guide.⁶ The Exchange has entered into an agreement with the Johannesburg Stock Exchange establishing the appropriate means to obtain comprehensive surveillance information with respect to the Index's component stocks. Once the agreement has been deemed effective by the Commission, the proposed Index will comply with the information

sharing standards of Section 106(g) of the Company Guide.

The Index is capitalization-weighted and based on available capitalization. The Index is quoted in U.S. dollars and disseminated daily shortly after 4 p.m. New York time using local market closing prices and Reuters 4 p.m. currency exchange rates. The Index was first calculated on January 7, 1992 with a benchmark value of 100. In the event a component security in the Index does not open for trading, the most recent closing value for that component will be used in the Index's calculation.

The Index is maintained by ING Barings Recomposition Committee. The Recomposition Committee, established at the time of the launch of the Index, reviews on a quarterly basis the Index rules and composition. The committee implements changes or fixes standards as appropriate and oversees the security environment of the Index and its record-keeping. The quarterly recomposition meeting is normally held in the second week of the last month of the quarter. The date of these meetings is posted at least two months in advance on Reuters and the results are posted on Reuters the day after a committee meeting. Any changes in the composition of the Index are implemented on the last day of the month that the committee meeting is held. This is approximately two weeks after the committee meeting.

ING Barings will maintain the Index so that new issues and privatizations are included in the Index at the end of the month in which they have come to market, provided the company has met the criteria for inclusion in the Index. New companies resulting from a spin-off of a component company will be put into the Index and remain in the Index until the next quarterly recomposition meeting. In the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, reorganization, recapitalization or similar event with respect to the component stocks, the divisor will be adjusted, if necessary, to ensure Index continuity.

According to the Exchange, membership of the committee is regulated by a "Fire Wall."⁷ All members are isolated from sales, trading functions and corporate finance functions. Members are drawn from Index research, calculation group, and the legal department of ING Barings. To

ensure impartiality and good practice, the committee has retained Russell Systems Limited (part of the Frank Russell Group) to attend all meetings and to provide an audit of attendance and appropriateness of the agenda. Russell Systems Limited also provides advice on good practice in indexation and on how to ensure the use of the best available information on emerging markets.

2. Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) (5) in particular⁸ in that its designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

The Amex does not believe that the proposed rule change will impose any inappropriate 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the

⁶ Section 106(g) of the Company Guide states that foreign country securities or American Depository Receipts thereon that are not subject to a comprehensive surveillance agreement, and have less than 50% of their global trading volume in dollar value within the United States, shall not in the aggregate, represent more than 20% of the weight of an index, unless such index is otherwise approved for warrant or option trading.

⁷ See Letter from A.N. Marsh, Legal Department, ING Barings, to Richard Mikaliunas, Vice President, Capital Markets Development, Amex, dated November 20, 1996.

⁸ 15 U.S.C. 78f(b) (5).

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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-96-50 and should be submitted by February 6, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority:⁹

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-38143; File No. SR-Amex-96-35]

**Self-Regulatory Organizations;
American Stock Exchange, Inc.; Order
Approving Proposed Rule Change and
Notice of Filing and Order Granting
Accelerated Approval of Amendment
Nos. 1 and 2 Relating to the Trading of
Options on the Tobacco IndexSM**

January 8, 1997.

I. Introduction

On October 1, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 relating to the trading of options on The Tobacco IndexSM. The proposal was published for comment in the Federal Register on October 24, 1996.³ The Exchange filed an amendment ("Amendment No. 1")⁴ to its proposal

on November 8, 1996. The Exchange filed a second amendment ("Amendment No. 2")⁵ to its proposal on December 6, 1996. No comments were received on the proposed rule change. This order approves the Exchange's proposal as amended.

II. Description of the Proposal

A. General

The Amex proposes to trade options on The Tobacco IndexSM ("Index"), a new index developed by the Amex composed of tobacco company stocks (or American Depositary Receipts ("ADRs") thereon) that are traded on the Amex and the New York Stock Exchange ("NYSE"). In addition, the Amex proposes to amend Rule 901C, Commentary .01, to reflect that 90% of the Index's numerical value will be accounted for by stocks that meet the current criteria and guidelines set forth in Rule 915.

B. Composition of the Index

The Amex proposes to trade standardized options on the Index, developed by the Amex, representing a portfolio of large, actively traded tobacco company stocks.⁶ The Index will comprise nine tobacco industry stocks. The components of the Index will be American Brands, Inc.; B.A.T. Industries P.L.C.; Dimon, Inc.; Empresas La Modernas (ADR); Loews Corp.; Philip Morris Companies, Inc.; RJR Nabisco Holdings Corporation, Inc.; UST, Inc.; and Universal Corporation.⁷ The Index was initialized at a level of 250 at the close of trading on August 16, 1996. As of January 2, 1997, the Index had a value of approximately 289. The Exchange will use an "equal-dollar weighted" method to calculate the value of the Index.⁸ The market capitalizations of the individual stocks in the Index as of the close of trading on August 23, 1996 ranged from a high

of \$73 billion to a low of \$762 million, with the median and average being \$6.9 billion and \$14 billion respectively. As of the close of trading on August 23, 1996, no one stock accounted for more than 11.50% of the Index's total weight, and the percentage weighting of the five largest issues in the Index accounted for 56.92% of the Index's value.

C. Eligibility Standards for the Inclusion of Component Stocks in the Index

The Index conforms with Exchange Rule 901C, which specifies criteria for inclusion of stocks in a narrow-based index on which standardized options will be traded on the Exchange. In addition, the Index conforms to most of the criteria set forth in Rule 901C, Commentary .02 (which provides for the commencement of trading of options on an index thirty days after the date of filing)⁹ except that there are only nine component securities,¹⁰ and that four (or 44%) of the components have a minimum monthly volume during the preceding six months of less than 1,000,000 shares, with one component having traded less than 500,000 shares in at least one of the last six months.¹¹

All of the component securities meet the following eligibility standards: (1) all component securities are traded on the Amex, NYSE, or are traded through the facilities of the National Association of Securities Dealers Automated

⁹ Under Amex Rule 901C, Commentary .02, the Amex may list options on a stock industry index pursuant to Section 19(b)(3)(A) under the Act, provided that the index satisfies certain criteria. See securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (approving substantially identical proposed rule amendments from the Amex, the NYSE, the Philadelphia Stock Exchange, Inc. ("Phlx"); the Chicago Board Options Exchange, Inc. ("CBOE"); and the Pacific Stock Exchange, Inc. ("PSE") relating to narrow-based index options listing standards).

¹⁰ *Id.* The generic standards require that upon the initial listing of narrow-based index options, the underlying index must include at least ten stocks. Thereafter, the index must contain at least nine component stocks at all times.

¹¹ *Id.* The generic initial listing standards require that component stocks comprising the top 90 percent of the index, by weight, must have a monthly trading volume of at least 1,000,000 shares per month over the six months preceding the filing of the index with the Commission; thereafter, the component stocks must maintain monthly trading volume of at least 500,000 shares per month. The trading volume for the component stocks constituting the bottom 10 percent of the index, by weight, must have been at least 500,000 shares over the same initial period; thereafter, they must meet an average monthly trading volume of at least 400,000 shares per month.

B.A.T. Industries PLC is the one component whose minimum monthly trading volume was less than 400,000 shares. In February 1996, B.A.T. traded only 395,800 shares. During the most recent six month period, however, B.A.T.'s trading volume has increased, with a high of 6.74 million shares in August 1996, and a low of 866,500 shares in October 1996. Amendment No. 1, *supra* note 4.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 37839 (October 17, 1996), 61 FR 55176.

⁴ Amendment No. 1 provides information and representations with respect to the proposed rule change. Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated November 7, 1996.

⁵ Amendment No. 2 provides further information and representations with respect to the proposed rule change. Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated December 5, 1996.

⁶ A list of securities comprising the Index, as well as listed shares outstanding and prices as of August 23, 1996, was submitted by the Exchange as Exhibit B, and is available at the principal office of the Amex and at the Commission.

⁷ American brands, Inc. Plans to spin off remaining tobacco related business by the middle of next year. As a result of the spin-off the Amex anticipates that it will replace American Brands, Inc. in the Index with a company in the tobacco industry. Amendment No. 1, *supra* note 4.

⁸ See *infra* Section II.D entitled "Calculation of the Index" for a description of this calculation method.