SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40626; File No. SR–Amex–98–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Index-Linked Term Notes

November 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 under the Act,[2] notice is hereby given that on October 13, 1998, the American Stock Exchange, Inc. (''Exchange'' or ''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 Exchange. 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 Exchange seeks to list and trade separate Index-linked Term Notes (''Notes''). The value of each Note will be linked to an index comprised of a single specified domestic mutual fund portfolio (''Index'' or collectively ''Indexes'').

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at 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 Exchange 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 Exchange 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

Under Section 107A of the Exchange's *Company Guide*, the Exchange may approve for listing and trading securities that cannot be readily categorized under the Exchange's listing criteria for common and preferred stock, bonds, debentures, or warrants.[3] The Exchange seeks to list Index-linked Term Notes, each of which shall be separately linked to a specified domestic mutual fund portfolio Index.[4] The mutual fund portfolios underlying the Indexes will be registered under the Investment Company Act of 1940.

The Index-linked Term Notes will be senior, unsecured debt securities that will conform to the listing guidelines under Section 107A of the *Company Guide*.[5] Although a specific maturity date will not be established until the time of the offering, the Notes will provide for a maturity of between two and seven years from the date of issuance. Each note may provide for payments at maturity based in whole or in part on changes in the value of the corresponding Index. Each Index will measure the total return of the corresponding mutual fund portfolio. The total return value shall reflect the changes in the Net Asset Value (''NAV'') of the corresponding mutual fund portfolio, plus any cash dividends and/or distributions paid on those shares.[6]

The Exchange will calculate the value of each Index once each business day. Holders of the Notes will not receive any interest payments. However, holders of the Notes will receive at maturity the full principal amount of their Notes, plus a ''Supplemental Redemption Amount,'' if any, based on a formula to be set forth in the prospectus. The Exchange notes that the formula may produce a total return at maturity that is lower than what a holder of the corresponding mutual fund portfolio might receive during the same period. At maturity, holders of the Notes will not receive less than 100% of the initial issue price.

a. *Description of the Index-linked Term Notes and the Underlying Mutual Fund Portfolios.* Similar to other notes linked to an index that trade on the Exchange, both the issue (Index-linked Term Notes) and the issuer will meet the general criteria set forth in Section 107A of the Exchange's *Company Guide*. Furthermore, the Exchange has represented that the issuer will have a minimum tangible net worth in excess of $100,000,000 and otherwise substantially exceeds the earnings requirements set forth in Section 101 of the Exchange's *Company Guide*.[7] Each mutual fund portfolio underlying an Index will include hundreds of stocks from among a wide variety of industry groups. The underlying mutual fund portfolios will range in value from $900 million to over $2 billion in total net assets. The NAV of each mutual fund portfolio will be reported each business day through the facilities of the National Association of Securities Dealers Automated Quotation System (''Nasdaq'') and also will be reported in the Mutual Fund Tables of the Wall Street Journal and other newspapers. The Notes will be subject to the suspension and delisting policies of the Exchange set forth in Part 10 (Sections 1001–1011) of the Exchange's *Company Guide*.[8]

b. *Calculation and Dissemination of Net Asset Values and Index Values.* Each Index will measure the total return of its underlying mutual fund portfolio. Such amount shall be equal to the change in the mutual fund's NAV, plus

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

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[4] The Exchange notes that the Commission recently approved a similarly structured product for listing and trading on the Exchange—Market Index Target Term Securities linked to the Merrill Lynch EuroFund Index. *See* Exchange Act Release No. 40367 (Aug. 26, 1998), 63 FR 47052 (Sept. 3, 1998).

[5] Section 107A of the Exchange's *Company Guide* states that the Exchange will consider listing any security not otherwise covered by the Exchange's listing requirements, provided the security is suited for auction market trading and satisfies the following criteria:

(a) Assets/Equity: The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the earnings criteria set forth in Section 101 (*i.e.*, pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years), the Exchange generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million.

(b) Distribution: Minimum public distribution of 1,000,000 trading units with a minimum of 400 public shareholders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(c) Principal Amount/Aggregate Market Value: Not less than $4 million.

[6] As discussed *infra* in Section II(A)(1)(c), ''Settlement of Index-linked Term Notes,'' the total return value may be reduced by an adjustment factor.

[7] Section 101 of the Exchange's *Company Guide* requires that an issuer have pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

[8] Under Section 1003(b)(iii) of the Exchange's *Company Guide*, the Exchange may consider delisting debt securities if the aggregate market value or the principal amount of debt securities publicly held is less than $400,000 or, the issuer is not able to meet its obligations on the listed debt securities.

any cash dividends and/or distributions paid on the mutual fund portfolio shares. The value for each Index will be disseminated once a day over the Consolidated Tape Association's Network B. If any mutual fund portfolio does not comply with Rule 22c–1 of the Investment Company Act of 1940,[9] which requires daily computation of a fund's current NAV, the Exchange will use the last available NAV in its calculation of the Index.

c. *Settlement of Index-linked Term Notes.* The Notes will be settled at maturity by either a cash payment or by delivering shares in the corresponding mutual fund portfolio, at the determination of the issuer. The value of the Notes at maturity will be equal to the principal amount of such Notes plus a Supplemental Redemption Amount. The Supplemental Redemption Amount, which may not be less than zero, will equal the principal amount of such Note multiplied by the percentage difference between the Adjusted Ending Index Value and the Starting Index Value. The Adjusted Ending Index Value means the ending value of the Index [10] reduced by an adjustment factor, if any, to be set forth in the prospectus.

d. *Other Exchange Rules Applicable to Index-linked Term Notes.* Because the Notes are linked to a portfolio of equity securities, the Exchange's existing equity floor trading rules and standard equity trading hours (9:30 A.M. to 4:00 P.M., Eastern Standard Time) will apply to the trading of the Notes. Further, the Notes will be subject to the equity margin rules of the Exchange.[11]

Pursuant to Exchange Rule 411, ''Duty to Know and Approve Customers,'' the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes. In addition, consistent with Exchange practices regarding other structured products, the Exchange will distribute an informational circular to its membership prior to the commencement of trading in the Notes to provide guidance regarding member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines. The circular will state that before a member, member organization, or employee of such member organization undertakes to recommend a transaction in a Note, such member or member organization should make a determination that the Note is suitable for such customer. As part of that determination, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommended transaction, including those highlighted, and that the customer is financially able to bear the risk of the recommended transaction. Lastly, as with other structured products, the Exchange will closely monitor trading activity in the Notes to identify and deter any potential improper trading activity in the Notes.

9 17 CFR 270.22c–1.

10 The ending value of the Index shall represent the average of the values of the Index during a period prior to the stated maturity as specified in the prospectus.

11 *See* Exchange Rule 462, ''Minimum Margins.''

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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 believes the proposed rule change will not 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

The Exchange did not solicit or receive written comments 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 Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

12 15 U.S.C. 78f.

13 15 U.S.C. 78f(b)(5).

(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, 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, N.W., Washington, D.C. 20549. Copies of the submissions, 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 persons, 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 Exchange. All submissions should refer to File No. SR–Amex–98–37 and should be submitted by November 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40628; File No. SR–BSE–98–8]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Relating to its Fee Schedule

November 2, 1998.

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 October 29, 1998,[3] the Boston Stock Exchange

14 17 CFR 200.30–3(a)(12).

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

2 17 CFR 240.19b–4.

3 The BSE initially submitted this filing on October 1, 1998; however, it did not comport with the requirements of Rule 19b–4 under the Act, and, therefore, the BSE resubmitted the filing.