

provide that, under certain circumstances, the Fund may satisfy a request for redemption in-kind with portfolio securities. The Transaction will be completed only if each Trust's board of trustees ("Board"), including the trustees who are not "interested persons" as that term is defined in Section 2(a)(19) of the Act ("Independent Trustees") approves the redemption in-kind.

#### Applicants' Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from knowingly purchasing any security or other property (except securities of which the seller is the issuer) from the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include, among others, any person owning 5% or more of the outstanding voting securities of the other person and any person controlling, controlled by or under common control with the other person. Under section 2(a)(9) of the Act, a person that owns beneficially more than 25% of the voting securities of a company is presumed to control the company.

2. Applicants state that Norwest Bank, as the record holder on behalf of the NW Plan of 29% of the outstanding voting securities of the Fund, would be an affiliated person of the Fund. Applicants also state that because the Fund holds greater than 5% of the outstanding voting securities of the Portfolio, the Fund would be an affiliated person of the Portfolio, and Norwest Bank, through its subsidiary, NIM, could be viewed as an affiliated person of an affiliated person of the Portfolio. Applicants state that to the extent that an in-kind redemption could be viewed as involving the sale of portfolio securities from the Fund to the NW Plan, section 17(a)(2) may prohibit the Transaction.

3. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

4. Applicants submit that the terms of the Transaction meet the standards set forth in section 17(b) of the Act. Applicants contend that the potential

conflicts of interest posed by an in-kind redemption are that the portfolio securities redeemed would be selected or priced in a way that would be unfair to either the redeeming fund or the remaining shareholders. Applicants state that the redemption in-kind will not involve any choice as to the securities to be distributed. Applicants also submit that the portfolio securities to be distributed in-kind will be valued in the same manner as they would be valued for purposes of determining the Fund's net asset value.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Fund will distribute to the NW Plan pursuant to an in-kind redemption a pro rata share of each portfolio security held by the Portfolio ("In-Kind Securities"), provided that the Fund may distribute cash (i) in lieu of odd lot securities, fractional shares and accruals on such securities, and (ii) as proceeds from the liquidation of S&P 500 Index futures contracts held by the Portfolio.

2. The In-Kind Securities distributed to the NW Plan will be valued in the same manner as they would be valued for purposes of computing the Fund's net asset value.

3. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of the redemption setting forth a description of each security distributed in-kind, the terms of the in-kind distribution and the information or materials upon which the valuation was made.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41472; File No. SR-Amex-99-14]

#### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the American Stock Exchange LLC Relating to a Reduction in the Morgan Stanley High Technology Index Value

June 2, 1999.

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 13, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes 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 Amex proposes to split the Morgan Stanley High Technology Index ("Index") to one-third its current 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 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

The Exchange proposes to split the Morgan Stanley High Tech Index to one-third its current value and temporarily increase its position and exercise limits to three times their current levels as discussed more fully below. Position and exercise limits will revert to their applicable limits at the expiration of the furthest LEAP expiration month as established on the date of the split.

Morgan Stanley High Tech Index: On September 26, 1995, the Commission approved the Exchange's request to permit options trading on the Index.<sup>3</sup> Initially, the aggregate value of the stocks contained in the Index was reduced by a divisor to establish an index benchmark value of 200. The Index's current value, as of the close on April 7, 1999, taken from Bloomberg Financial Markets Commodities News

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

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

<sup>3</sup> Securities Exchange Act Release No. 36283 (Sept. 26, 1995), 60 FR 51825 (Oct. 3, 1995).

and rounded to the nearest whole number, was approximately 1075.

As a consequence of the rising of the Index's value, premium levels for options on the Index have also risen. These higher premium levels have discouraged retail investors and some market professionals from trading options on the Index. The Exchange believes that decreasing the value of the Index may make the Index options more attractive to retail investors and other market professionals and therefore more competitive with other products in the marketplace. As a result, the Exchange is proposing to decrease the Index to one-third its present value.

To decrease the Index's value, the Exchange will triple the divisor used in calculating the Index. No other changes are proposed as to the components of the Index, its method of calculation (other than the change in the divisor), expiration style of the option, or any other Index specification.

The lower valued Index will result in substantial lowering of the dollar values of option premiums for Morgan Stanley High Technology contracts. The Exchange plans to adjust outstanding series similar to the manner in which equity options are adjusted for a 3-for-1 stock split. On the effective date of the split "ex-date," the number of outstanding Morgan Stanley option contracts will be tripled and strike prices reduced by a factor of three.

**Position and Exercise Limits:** Currently, the Index's position and exercise limits are equal to 15,000 contracts on the same side of the market. The Exchange proposes to triple the Index's position and exercise limits to 45,000 contracts on the same side of the market. This change will be made in conjunction with the simultaneous reduction of the Index's value and the tripling of the number of contracts.

Because the new limits will be equivalent to the Index's present limits, there is no additional potential for manipulation of the Index or the underlying securities. Further, an investor who is currently at the 15,000 contract limit will, as a result of the index value reduction, automatically hold 45,000 contracts to correspond with the lowered Index value. The position and exercise limits will revert to their then applicable limits at the expiration of the furthest non-LEAP (Long Term Equity Anticipation Security) expiration month as established on the date of the split.

## 2. Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>5</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 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 will impose any 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 on 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 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, 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-99-14 and should be submitted by July 1, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41471; File No. SR-BSE-99-1]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. To Allow Specialist Remote Access to the BEACON System

June 2, 1999.

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 March 26, 1999, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") 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.<sup>3</sup> 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 adopt a one-year pilot program for remote specialist trading on the BEACON trading system, under which BSE specialists will be permitted to conduct regular trading activities off the BSE's trading floor. Proposed new language is italicized.

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<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The proposed rule change's purpose was clarified and technical changes were made during a conversation between George Mann, General Counsel, BSE, and Joshua Kans, Attorney, Division of Market Regulation ("Division"), Commission, May 26, 1999.

<sup>4</sup> 15 U.S.C. 78f(b).

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