

# SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23883]

## Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940

June 23, 1999.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June, 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549-0102 (tel. 202-942-8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549-0609. For Further Information Contact: Diane L. Titus, at (202) 942-0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 0506, 450 Fifth Street, NW, Washington, DC 20549-0506.

**Pinnacle Fund** [File No. 811-4188]  
**SUMMARY:** Applicant seeks an order declaring that it has ceased to be an investment company. On March 9, 1998, applicant transferred all of its assets to Fountain Square Pinnacle Fund, a series of Fountain Square Funds, in exchange for shares of the acquiring fund based on net asset value. Approximately \$46,000 in expenses were incurred in connection with the reorganization and were paid by Fifth Third Bank, investment adviser to certain portfolios of Fountain Square Funds and a control affiliate of applicant's investment adviser.

**Filing Dates:** The application was filed on February 16, 1999, and amended on June 1, 1999.

**Applicant's Address:** 36 South Pennsylvania Street, Suite 610, Indianapolis, Indiana 46204.

The Crabbe Huson Funds [File No. 811-7427]

The Crabbe Huson Special Fund, Inc. [File No. 811-5302]

**Summary:** Each applicant seeks an order declaring that it has ceased to be an investment company. On October 19, 1998, The Crabbe Huson Funds transferred all of the assets of (a) six of its series, Crabbe Huson Real Estate Investment Fund, Crabbe Huson Oregon Tax-Free Fund, Crabbe Huson Income Fund, Crabbe Huson Equity Fund, Crabbe Huson Small Cap Fund, and Crabbe Huson Asset Allocation Fund to corresponding series of Colonial Trust III based on net asset value; and (b) its two remaining series, Crabbe Huson U.S. Government Income Fund and Crabbe Huson U.S. Government Money Market Fund to corresponding series of Colonial Trust II based on net asset value. On December 22, 1998, The Crabbe Huson Special Fund, Inc. transferred all of its assets to the Crabbe Huson Special Fund series of Colonial Trust III based on net asset value. Expenses of approximately \$1,112,235 were incurred in connection with the reorganizations and were paid by Liberty Financial Companies, Inc., the parent company of applicant's investment adviser, or its affiliates.

**Filing Date:** Each application was filed on May 25, 1999.

**Applicants' Address:** 121 SW Morrison, Suite 1400, Portland, Oregon 97204.

**Templeton American Trust, Inc.** [File No. 811-6204]

**Summary:** Applicant seeks an order declaring that it has ceased to be an investment company. On April 15, 1999, applicant transferred its assets to the Franklin Equity Fund ("Equity Fund") based on net asset value. Expenses of approximately \$60,000 were incurred in connection with the reorganization and were paid equally by the Equity Fund, applicant, and their respective advisers.

**Filing Date:** The application was filed on May 26, 1999.

**Applicant's Address:** 500 East Broward Boulevard, Ft. Lauderdale, Florida 33394-3091.

**Morgan Stanley Dean Witter Capital Appreciation Fund** [File No. 811-7333]

**Summary:** Applicant seeks an order declaring that it has ceased to be an investment company. On March 15, 1999, applicant transferred its assets and liabilities to Morgan Stanley Dean Witter American Value Fund based on net asset value. Expenses of approximately \$182,000 were incurred in connection with the reorganization and were paid by applicant.

**Filing Date:** The application was filed on May 25, 1999.

**Applicant's Address:** Two World Trade Center, New York, New York 10048.

**Neuberger & Berman Municipal Securities Trust** [File No. 811-5107]

**Neuberger & Berman Municipal Money Fund** [File No. 811-4102]

**Neuberger & Berman Ultra Short Bond Fund** [File No. 811-4812]

**Neuberger & Berman Limited Maturity Bond Fund** [File No. 811-4560]

**Neuberger & Berman Cash Reserves** [File No. 811-5467]

**Summary:** Each applicant seeks an order declaring that it has ceased to be an investment company. On July 2, 1993, applicants transferred all of their assets and liabilities to corresponding series of Neuberger & Berman Income Funds based on net asset value per share. Each applicant bore its expenses related to the reorganization which amounted to approximately \$28,000 for Neuberger & Berman Municipal Securities Trust, \$30,000 for Neuberger & Berman Municipal Money Fund, \$40,000 for Neuberger & Berman Ultra Short Bond Fund and Neuberger & Berman Limited Maturity Bond Fund, respectively, and \$50,000 for Neuberger & Berman Cash Reserves.

**Filing Dates:** The applications were filed on June 19, 1998, and were amended on May 28, 1999.

**Applicants' Address:** 605 Third Avenue, New York, New York 10158-0180.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-16578 Filed 6-29-99; 8:45 am]

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# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41546; File No. SR-Amex-99-15]

**Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing of Amendment No. 2, by the American Stock Exchange LLC Relating to the Listing and Trading of Notes and Warrants on the 10 Uncommon Values Index of Lehman Brothers Inc.**

June 22, 1999.

## I. Introduction

On April 19, 1999, the American Stock Exchange LLC ("Exchange" or

"Amex"), submitted to the Securities and Exchange Commission ("Commission" or "SEC"), 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> a proposed rule change relating to the listing and trading of notes and warrants on the 10 Uncommon Values Index of Lehman Brothers Inc. ("Lehman"). The Exchange filed Amendment No. 1<sup>3</sup> to the proposed rule change on May 17, 1999. The proposed rule change, as amended, was published for comment in the **Federal Register** on June 1, 1999.<sup>4</sup> The Commission received no comments on the proposal. On June 21, 1999, the Exchange submitted Amendment No. 2 to the proposed rule change.<sup>5</sup> This order approves the proposal, as amended.

## II. Description of the Proposal

The Exchange proposes to trade stock index warrants, pursuant to Section 106, and index term notes, pursuant to Section 107, of the *Amex Company Guide* based upon Lehman's 10 Uncommon Values® Index, an index consisting of ten actively traded equity securities ("Index"). The Warrants (as hereinafter defined) and Notes (as hereinafter defined) will be cash-settled. The Index will be equal-dollar weighted with respect to the ten component stocks and, under Amex rules, is considered a narrow-based stock index. The issuer of the Warrants and Notes will be Lehman Brothers Holdings Inc. ("LB Holdings").

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

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

<sup>3</sup> Letter from Scott Van Hatten, Amex to Richard Strasser, Division of Market Regulation ("Division"), Commission, dated May 14, 1999 ("Amendment No. 1"). Amendment No. 1 clarifies that the Notes (as hereinafter defined) will be principal protected if held to maturity or if called by the issuer. Amendment No. 1 also provides three sample calculations of payment amounts that investors holding Notes may receive.

<sup>4</sup> See Securities Exchange Act Release No. 41436 (May 21, 1999), 64 FR 29367.

<sup>5</sup> Letter from Scott Van Hatten, Amex to Nancy Sanow, Division, Commission, dated June 21, 1999 ("Amendment No. 2"). Amendment No. 2 clarifies that the Index will be defined as a Stock Index Industry Group, commonly referred to as a narrow-based index, under Amex Rule 900C(b)(1) and that LB Holdings satisfies the net worth and earnings requirements set forth in Sections 106 and 107 of the *Amex Company Guide*. The Exchange also represents that if the Index is comprised of foreign securities or American Depositary Receipts ("ADRs"), at any time during the term of the proposed Warrants, that: (i) Are not subject to comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, those foreign securities or ADRs will not, in the aggregate, represent more than 20% of the weight of the Index, unless the index is otherwise approved for warrant or option trading. Lastly, Amendment No. 2 clarifies the procedures for valuing foreign securities.

### A. Index Design and Stock Selection Criteria

The securities comprising the Index will be selected annually by the Investment Policy Committee ("Committee") of Lehman's Equity Research group, a division of Lehman, and announced on or about July 1 of each year. The Committee will select ten securities that it believes will outperform the stock market during the succeeding twelve months. To determine the ten selections each year, various Lehman's Equity Research analysts appear before the firm's Investment Policy Committee to present their proposed equity selections to be included in the Index for the next twelve months. The Committee analyzes and screens each proposal after which the list of stocks is reviewed to determine those stocks that offer the best potential to outperform the market. The Committee then selects those stocks that it believes will be the best ten stocks for the next twelve months' 10 Uncommon Values Index. Immediately thereafter, on or about July 1 of each year, the ten securities to be included in the Index for a twelve month period are announced. Each subsequent year's 10 Uncommon Value stocks ("New Components") will replace the preceding year's 10 Uncommon Value stocks ("Old Components") in their entirety in the Index.<sup>6</sup> The New Components will be added to the Index on or about July 1 ("Announcement Date") of each year, and the Old Components will be removed from the Index on the last business day immediately preceding the Announcement Date ("Closing Date").

Consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading of the Notes and Warrants, providing guidance on member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines. Lastly, as with other structured products, the Exchange will closely monitor activity in the Notes and Warrants to identify and deter any potential improper trading activity in the Notes and Warrants.

#### 1. Description of the Index Notes

Under Section 107 of the *Amex Company Guide*, the Exchange may approve for listing and trading securities that cannot be readily categorized under

<sup>6</sup> The Committee may select an Old Component to be a New Component, but the Old Component would be reevaluated and would have to satisfy the eligibility standards for index components outlined *infra* in Section 11.C.

the listing criteria for common and preferred stocks, bonds, debentures, or warrants.<sup>7</sup> The Amex now proposes to list for trading under Section 107 of the *Amex Company Guide*, indexed term notes ("Notes") whose value in whole or in part will be based on the Index.

The Notes will be debt securities and will conform to the listing guidelines under Section 107A of the *Amex Company Guide*. Consistent with Section 107A of the *Amex Company Guide*, the Notes will provide for a maturity of not less than one nor more than ten years from the date of issue. LB Holdings anticipates that the Notes will provide for a maturity of five years. The price of each Note may be par or less than par, in which case the Notes will accrue original issue discount. The Notes may or may not provide for periodic coupon payments (at a fixed rate).

Beginning on a specified date ("Conversion Date"), holders have the right to tender the Notes in exchange for the cash equivalent ("Exchange Amount") of the current component securities in the Index in proportion equal to their weighting in the Index, according to the following formula:

$(\text{Par/Strike} \times \text{Index}_t)$

Where:

Index<sub>t</sub>: Closing Price of the Index on the earlier of Conversion Date or Maturity

Index<sub>i</sub>: Initial Index Value (i.e., 100)

Strike: Specified % of Index<sub>i</sub> (anticipated by LB Holdings to be 125%)

Investors in the Notes may receive varying payment amounts depending upon whether the notes are held to maturity, called by the issuer prior to maturity, or redeemed by the investor prior to maturity. Below are examples of calculations of payment amounts that investors holding the Notes may receive.<sup>8</sup>

To determine payment amounts given each of the three separate events, a Par Value (Issue Price) of \$1000, Strike of 125, and Initial Value of the Index of 100 are assumed. The maturity of the Notes is assumed to be five years and the issuer may not call the Notes prior to three years after their issuance (i.e., the Notes will have a non-call life of three years).

1. The investor holds the Notes until maturity. At maturity, the investor will receive the greater of:

Par (\$1000), and  
(Par/Strike × Final Index Value)

<sup>7</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

<sup>8</sup> See Amendment No. 1, *supra* n. 3.

2. The investor converts the Notes prior to maturity. Investors may convert their Notes at any time after the one-month anniversary of the issue date in exchange for cash. The amount the investor would receive in the event of early conversion is determined by the following formula:

$(\text{Par/Strike} \times \text{Current Index Value})$

3. The issuer has the right to call the notes at any point beginning three years after the trade date by publishing such call with 30-days notice to investors. If the issuer calls the notes, the investor will receive the greater of Par and the Exchange Amount.

*Example 1:* Assume an Index value equal to 150 (i.e., greater than the initial Index value of 100). Payment to investors under the above three events would be as follows:

1. Greater of  $[\$1000 \text{ and } (\$1000/125 \times 150)] = \$1,200$
2.  $(\$1000/125 \times 150) = \$1,200$
3.  $(\$1,000/125 \times 150) = \$1,200$

*Example 2:* Assuming an Index value of 90 (i.e., less than the initial index value of 100). Payment to investors under the above three events would be as follows:

1. Greater of  $[\$1,000 \text{ and } (\$1,000/125 \times 90)] = \$1,000$
2.  $(\$1,000/125 \times 90) = \$720$
3. The Note may or may not be called by the issuer in this case. If the Note is called, payment would equal Par (\$1,000).

Beginning on a specified date the issuer may or may not have the right to call all of the Notes at a call price equal to the issue prices of the Notes plus accrued original issue discount, if any, to the call date. If the market value of the basket of component securities on the last trading before the issuer sends its call notice is equal to or greater than the call price, the issuer will deliver to holders the Exchange Amount instead. If the issuer notifies holders it will be calling the Notes for the Exchange Amount, a holder may still exercise its exchange right on any day prior to the call date. If the Notes have not been exchanged or called prior to maturity, they will be paid in cash at maturity in an amount equal to par plus accrued interest, if any.

LB Holdings, the issuer of the Notes, satisfies the criteria of Section 107 of the *Amex Company Guide*. Specifically, LB Holdings has assets in excess of \$100 million and stockholders' equity of at least \$10 million and satisfies the earnings criteria set forth in Section 101 of the *Amex Company Guide*. If LB Holdings is unable to satisfy the minimum earnings requirements of

Section 101 prior to issuance of the proposed warranties and notes, the Exchange generally will require LB Holdings 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.

## 2. Exchange Rules Applicable to the Index Notes

Because the Notes are linked to a basket of equity securities, the Amex's existing equity floor trading rules and standard equity trading hours (9:30 a.m. to 4:00 p.m. Eastern Time) will apply to the trading of the Notes. Pursuant to Exchange Rule 411, 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 effecting a transaction in the Notes. Further, the Notes will be subject to the equity margin rules of the Exchange.<sup>9</sup>

## B. Description of Index Warrants

Under Section 106 of the *Amex Company Guide*, the Exchange may approve for listing and trading index warrants. The Amex proposes to list for trading, under Section 106 of the *Amex Company Guide*, index warrants ("Warrants") whose value in whole or in part will be based upon the Index. The Warrants will conform to the listing guidelines under Section 106 of the *Amex Company Guide*. Specifically, the Warrants will have a term of between one and five years from date of issuance (LB Holdings anticipates a term of three years), a minimum public distribution of 1,000,000 Warrants together with a minimum of 400 public Warrantholders, and an aggregate market value of \$4,000,000. The Warrant will be cash-settled in U.S. dollars. Further, pursuant to Section 106(e), the Exchange expects that the terms of the Warrants for which 25% or more of the value of the Index is represented by securities that are traded primarily in the United States must provide that opening prices of the stocks traded primarily in the United States which comprise the Index will be used to determine: (i) The final settlement value (i.e., the settlement value for Warrants that are exercised at expiration), and (ii) the settlement value for such Warrants that are exercised on either of the two business days preceding the day on which the final settlement value is to be determined. Under Section 106(f) the Warrants must include in their terms provisions specifying: (i) The time by which all

exercise notices must be submitted, and (ii) that all unexercised Warrants that are in the money will be automatically exercised on their expiration date or on or promptly following the date on which such Warrants are delisted by the Exchange (if the Warrant have not been listed on another organized securities market in the United States).

Under Section 106(g), at any time during the term of the Warrants, if the Index is comprised of foreign securities or ADRs that: (i) Are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, those foreign securities or ADRs shall not, in the aggregate, represent more than 20% of the weight of the Index, the Index is otherwise approved for warrant or option trading.

Under Section 106(h), the Exchange expects that the issuer of the Warrants either will make arrangements with transfer agents to advise the Exchange immediately of any change in the number of Warrants outstanding due to the early exercise of the Warrants or will provide this information themselves. If 25% or more of the value of the Index is represented by securities traded primarily in the United States, such notice shall be filed with the Member Firm Regulation Division of the Exchange no later than 4:30 p.m. New York City time, on the date when the settlement value for such Warrants is determined. Such notice shall be filed in such form and manner as may be prescribed by the Exchange from time to time.

## 1. Expiration and Settlement of Index Warrants

The Warrants will be direct obligations of their issuer, LB Holdings, 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). LB Holdings anticipates that the Warrants will be American style. Upon exercise, or at the Warrant's expiration date (if not exercised prior to such date), the holder of a Warrant structured as a "put" will receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated index level (i.e., the put strike). Conversely, holders of a Warrant structured as a "call" will, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated index level (i.e., the call strike). If "out-of-the-money" at the time of expiration, then the Warrants will expire worthless. In addition, the Amex,

<sup>9</sup> See Exchange Rule 462.

prior to the commencement of trading, will distribute a circular to its membership calling attention to the specific risks associated with the Warrants.

## 2. Exchange Rules Applicable to Index Warrants

The listing and trading of Warrants on the Index will comply in all respects with Exchange Rules 1100 through 1110 for the trading of stock index and currency warrants. These rules cover issues such as exercise and position limits and reporting requirements. Surveillance procedures currently used to monitor trading in each of the Exchange's other index warrants will also be used to monitor trading in the Warrants. The Index will be deemed to be a Stock Index Industry Group (defined below) under Exchange Rule 900C(b)(1). The Exchange expects that the review required by Exchange Rule 1107(b)(ii) will result in a position limit of 9,000,000 Warrants.

### C. Eligibility Standards for Index Components

Components stocks of the Index will be required to meet the following criteria: (1) A minimum market value of at least \$75 million, except that the lowest weighted components security in the Index may have a market value of \$50 million; (2) trading volume in each of the last six months of not less than 1,000,000 shares, except that the lowest weighted component security in the Index may have a trading volume of 500,000 shares or more in each of the last six months; (3) 90% of the weight of the Index and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; (4) all component stocks will either be listed on the Amex, the New York Stock Exchange ("NYSE"), or traded through the facilities of the Nasdaq Stock Market ("Nasdaq") and reported National Market System securities ("Nasdaq/NMS securities"); and (5) if the Index is comprised of foreign securities or ADRs, at any time during the term of the Warrants, that: (i) Are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, those foreign securities or ADRs will not, in the aggregate, represent more than 20% of the weight of the Index, unless such index is otherwise approved for warrant or option trading.

### D. Index Calculation

The Index will be calculated using an "equal-dollar weighting" methodology designed to ensure that each of the component securities is represented in an approximately "equal" dollar amount in the Index. To create the Index, a portfolio of equity securities will be established by the LB Holdings representing an investment of \$10,000 in each component security (rounded to the nearest whole share). The value of the Index will equal the current market value of the sum of the assigned number of shares of each of the component securities divided by the current Index divisor. The Index divisor will initially be set to provide a benchmark value of 100.00 at the close of trading on the day proceeding the establishment of the Index.

Lehman will serve as calculation agent ("Calculation Agent") for the Notes and Warrants. As Calculation Agent for the Notes, Lehman will determine the amount investors receive at the stated maturity of the Notes or on their earlier redemption or repurchase by LB Holdings. As calculation Agent for the Warrants, Lehman will determine the amount investors receive on exercise of the Warrants by determining the cash settlement amount.

The Exchange will calculate the value of the Index and, similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The number of shares of each component stock in the Index will remain fixed between Announcement Dates except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. The number of shares of each component stock may also be adjusted, if necessary in the event of a merger, consolidation, dissolution or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of a foreign issuer or the imposition of certain foreign taxes on shareholders of a foreign issuer. Shares of a component stock may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component stock into

another class of security, the termination of a depositary receipt program or the spin-off of a subsidiary. If the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

## III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act.<sup>10</sup> Specifically, the Commission finds that the listing and trading of Warrants and Notes on the Index will promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with a portion of the equity markets<sup>11</sup> and promote efficiency, competition and capital formation.<sup>12</sup>

Nevertheless, the trading of Warrants and Notes on the Index raised several concerns related to the design and maintenance of the Index, customer protections, surveillance and market impact. The Commission believes, however, for the reasons discussed below, that the Amex has adequately addressed these concerns.

### A. Design and Maintenance of the Index

The Commission finds that it is appropriate and consistent with the Act for the Amex to consider the Index as a stock index industry group ("Stock Index Industry Group") under Rule 900C(b)(1) (i.e., a "narrow-based" stock index) for purposes of margin requirements for the Notes and Warrants as well as for other purposes under the Exchange's rules. The Index will be composed of ten actively traded common stocks that will be listed on the Amex or NYSE or through the facilities

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult for a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

<sup>12</sup> See 15 U.S.C. 78c(f).

of Nasdaq and reported as Nasdaq/NMS securities.

The Commission notes that the Amex has implemented several safeguards in connection with the listing and trading of the Warrants and Notes that will serve to ensure that the Index's component securities are relatively highly capitalized and actively traded. In this regard, the Amex represents that the Index and its component stocks will meet the criteria of Sections 106 and 107 of the *Amex Company Guide* and the generic criteria for the component securities of a Stock Index Industry Group prior to trading.

The Commission further notes that the issuer, LB Holdings, satisfies the net worth and earnings requirements set forth in Sections 106 and 107 of the *Amex Company Guide*. Specifically, for purposes of the proposed Warrants and with respect to Section 106, LB Holdings satisfies subparagraph (a), governing the size and earnings requirements of the Warrant's issuer. Pursuant to paragraph (a) of Section 106, LB Holdings possesses a minimum tangible net worth in excess of \$250,000,000, and otherwise substantially exceeds the earnings requirements set forth in Section 101(A) of the *Amex Company Guide*.<sup>13</sup> In the event that the issuer's minimum tangible net worth changes prior to the issuance of the Warrants, or, in the alternative, prior to the Exchange's listing of the Warrants, LB Holdings will be required to have: (i) A minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Section 101(A), and (ii) not to have issued warrants where the original issue price of all of its index and currency warrant offerings (combined with index and currency offerings of its affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of its net worth.

Moreover, the Commission notes that the Exchange has represented that the Warrants will conform to the listing guidelines under Section 106 of the *Amex Company Guide*. Specifically, the Warrants will have a term of between one and five years from the date of their issuance, a minimum public distribution of 1,000,000 Warrants together with a minimum of 400 public Warrantholders, and an aggregate market value of \$4,000,000. The Warrants will be cash-settled in U.S. dollars. Further, pursuant to Section

106(e), the Exchange expects that the terms of the Warrants for which 25% or more of the value of the Index is represented by securities that are traded primarily in the United States must provide that opening prices of the stocks traded primarily in the United States that comprise the Index will be used to determine: (i) The final settlement value (i.e., the settlement value for Warrants that are exercised at expiration), and (ii) the settlement value for such Warrants that are exercised on either of the two business days preceding the day on which the final settlement value is to be determined. Under Section 106(f), all Warrants will be required to include in their terms provisions specifying: (i) The time by which all exercise notices must be submitted, (ii) that all unexercised Warrants that are in the money will be automatically exercised on their expiration date or on or promptly following the date on which such Warrants are delisted by the Exchange (if the Warrants have not been listed on another organized securities market in the United States).

With respect to the listing of the Notes, the Commission also notes that LB Holdings satisfies the requirements of Section 107 of the *Amex Company Guide*. Specifically, LB Holdings has assets in excess of \$100 million and stockholders' equity of at least \$10 million and satisfies the earnings criteria set forth in Section 101 of the *Amex Company Guide*. Should LB Holdings be unable to satisfy the minimum earnings requirements of Section 101 prior to issuance of the proposed Warrants and Notes, the Exchange generally will require LB Holdings 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.

In addition, the Exchange has indicated that the Index's component stocks must meet the following criteria: (1) A minimum market value of at least \$75 million, except that the lowest weighted component security in the Index may have a market value of \$50 million; (2) trading volume in each of the last six months of not less than 1,000,000 shares, except that the lowest weighted component security in the Index may have a trading volume of 500,000 shares or more in each of the last six months; (3) 90% of the weight of the Index and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; (4) all component stocks will either be listed on the Amex,

the New York Stock Exchange NYSE, or traded through the facilities of the Nasdaq and reported as Nasdaq/NMS securities; and (5) if the Index is comprised of foreign securities or ADRs, at any time during the term of the Warrants, that: (i) Are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, those foreign securities or ADRs will not, in the aggregate, represent more than 20% of the weight of the index, unless such Index is otherwise approved for Warrant or option trading.

The Commission notes that the Index will be calculated using "equal-dollar" weighting methodology designed to ensure that each component security is represented in an approximately "equal" dollar amount in the Index. Although the Index will not be rebalanced quarterly,<sup>14</sup> the Commission notes that the component securities are replaced entirely each year. In the unusual situation where a component stock is carried over to the following year's Index, that security must again meet the eligibility criteria for component stocks.

#### B. Customer Protection

The Commission notes that the rules and procedures of the Exchange adequately address the special concerns relating to the trading of Warrants and Notes on the Index. Specifically, the applicable suitability, account approval, disclosure and compliance requirements of the Amex listing standards governing warrants and notes satisfactorily address potential concerns. Moreover, the Amex plans to distribute a circular to its membership calling attention to specific risks associated with Warrants and Notes on the Index. Further, pursuant to sections 106 and 107 of the *Amex Company Guide*, only those issuers capable of meeting the Amex's issuer standards are eligible to issue Warrants and Notes. These standards, among other things, help to ensure that the issuer is sufficiently creditworthy to be able to meet its obligations at the expiration of the Warrants and Notes.

#### C. Surveillance

In evaluating new derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the exchange sponsoring the derivative instrument has the ability to obtain

<sup>13</sup> The earnings requirements set forth in Section 101A of the *Amex Company Guide* require that the issuer have pre-tax income of least \$750,000 in its last fiscal year, or in two of its last three fiscal years.

<sup>14</sup> See Commentary .02(b) to Amex Rule 901(C), which requires that, for the Amex to list options on Stock Index Industry Groups under Rule 19b-4(e) under the Act, 17 CFR 240.19b-4(e) an equal-dollar weighted index must be rebalanced quarterly.

information necessary to detect and deter market manipulation and other trading abuses. It is for this reason that the Commission requires that there be a comprehensive surveillance agreement in place between an exchange listing or trading a derivative product and the primary exchanges trading the stocks underlying the derivative instrument to enable regulators to monitor and surveil trading in the derivative product and its underlying stocks.<sup>15</sup> Such agreements facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. In this regard, the Commission notes that the Exchange and the other markets for the stocks underlying the Index—the NYSE and the NASDR (the self-regulatory organization that oversees Nasdaq)—are members of the Intermarket Surveillance Group, which provides for the sharing of all necessary surveillance information among members.

In addition, the Exchange has represented that if any foreign securities or ADRs represented in the Index are not subject to a comprehensive surveillance agreement, those foreign securities or ADRs will not, in the aggregate, represent more than 20% of the weight of the Index.

The Commission notes that certain concerns are raised when a broker-dealer, such as Lehman, is involved in the development, maintenance, and calculation of a stock index that underlies an exchange-traded derivative product. In this case, not only is LB Holdings the issuer of the Notes and Warrants, but also its affiliate, Lehman, will develop the Index, replace component stocks annually, and serve as Calculation Agent. For several reasons, however, the Commission believes that the Exchange has adequately addressed these concerns with respect to Warrants and Notes on the Index.

First, Lehman has established informational barriers around the Lehman personnel who have access to information regarding changes and

adjustments to the Index.<sup>16</sup> The Commission believes that these barriers will help prevent the improper use of material non-public information concerning the Index and strengthen the proposal by maintaining the integrity of changes made to the Index. Second, Lehman currently has in place internal review procedures to monitor trading activity in Index component securities, particularly prior to the announcement of New Component Stocks. Finally, the Exchange's existing surveillance procedures will apply to the Warrants and Notes on the Index and should provide the Exchange with adequate information to detect and deter trading abuses.

With respect to Lehman's serving as Calculation Agent, the Commission indicates that the prospectuses for the Notes and Warrants will inform investors of the formulas used to calculate the payout on the conversion, redemption, repurchase, maturity of the Notes, or on the exercise of the Warrants. Moreover, the Exchange has represented that Lehman or the Exchange will, upon request, provide investors with the values used in the formula to determine payout amounts.<sup>17</sup> Finally, the Commission notes that the Exchange is responsible for monitoring and surveilling trading in the Index and component stocks to detect and deter trading abuses, including at the time of the derivative instrument's stated maturity. In sum, the Commission believes that the procedures discussed above will help to ensure that Lehman does not unfairly use any information regarding the Index that it obtained through its role in developing and maintaining the Index or does not unfairly administer calculating the Index.

For the reasons discussed above, the Commission finds good cause to approve the proposed rule change and Amendment Nos. 1 and 2 thereto prior to the thirtieth day after the date of publication of notice of their filing in the **Federal Register**. Specifically, Amendment No. 2 clarifies (i) the method by which foreign components will be valued; (ii) that LB Holdings, the issuer, satisfies all the net worth and earnings requirements set forth in Section 106 and 107 of the *Amex*

*Company Guide*; (iii) that the Warrants will conform to the listing guidelines of Section 106 of the *Amex Company Guide*; and (iv) the procedures by which component securities will be replaced or supplemented in the event of a merger, consolidation, spin-off, termination of an ADR program, or conversion into another class of securities.<sup>18</sup> Amendment No. 2 also states that the Index will not be rebalanced on a quarterly basis. The Commission believes that completely reconstituting the Index each year results in an annual rebalancing and that quarterly rebalancing is not practicable or in the public interest given the nature of the Index. The Commission received no comments on the proposed rule change as originally published and believes that no new regulatory issues are presented in Amendment No. 2.

Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2)<sup>19</sup> of the Act, to find good cause exists to approve the proposed rule change and Amendment Nos. 1 and 2 on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Security, 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

<sup>15</sup> The Commission believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance agreement. A comprehensive surveillance agreement should provide its parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a comprehensive surveillance agreement stipulate that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity and customer identity. See Securities Exchange Act Release No. 31529 (Nov. 27, 1992), 57 FR 57248 (Dec. 3, 1992).

<sup>16</sup> Details of the Lehman informational barriers have been submitted to the Commission under separate cover. See Letter from John R. Wickman, Equity Derivatives Managing Director, Lehman, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 18, 1999.

<sup>17</sup> Telephone conversation between Nancy J. Sanow, Senior Special Counsel, Division, Commission and Scott Van Hatten, Amex, on June 22, 1999.

<sup>18</sup> The Exchange will adhere to the following procedures: (i) In the event of a merger or consolidation (whether between component stocks or between one component stock and one non-component stock), the original component stock will be replaced by the new security; (ii) in the event of a conversion into another class of security, the original component stock will be replaced by the new security; (iii) in the event of a spin-off of a subsidiary, both the subsidiary issue and the original parent security will be included in the Index; and (iv) should a depositary receipt program be terminated, for any reason, after an ADR had already been included in the Index, the underlying foreign stock will be included in the Index. No attempt will be made to find a replacement stock or to otherwise compensate for a stock which is extinguished due to a bankruptcy or similar circumstances.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

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 Amex. All submission should refer to File No. SR-Amex-99-15 and should be submitted by July 21, 1999.

For the foregoing reasons, the Commission finds that the Amex's proposal to list and trade Warrants and Notes on the Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-99-15), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-16645 Filed 6-29-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41550; File No. SR-MBSCC-99-4]

### Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying MBSCC's Schedule of Charges Relating To the Electronic Pool Notification Service

June 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 30, 1999, MBS Clearing Corporation ("MBSCC") 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 primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies the schedule of charges relating to MBSCC's Electronic Pool Notification ("EPN") service.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add new fees for dial-up circuits and modems relating to MBSCC's EPN service. EPN participants currently are required to own the circuits and modems necessary for dial-up connectivity to EPN. Participant ownership of circuits and modems at EPN data centers makes installation, service, and deinstallation cumbersome because circuit providers and modem vendors typically require the participant to become involved in the process. The proposed rule change will allow MBSCC to own the dial-up circuits and modems at EPN data centers which MBSCC believes will streamline the process of installation, service, and deinstallation.

The new fees will offset the cost of MBSCC ownership of the dial-up circuits and modems. The new dial-up circuit wage fee will be \$30.00 per month (per circuit to MetroTech and Water Street) and the new dial-up modem usage fee will be \$30.00 per month (per circuit to MetroTech and Water Street) and the new dial-up modem usage fee will be \$15.00 per month (per modem at MetroTech and Water Street). These fees are in addition to the existing monthly access fees that cover port charges for dial-up connectivity to the EPN data centers.

EPN participants that currently own dial-up modems and circuits will not be affected by the new fees. Participants with new dial-up connectivity to EPN will not be required to purchase circuits or modems for the EPN data centers but will be charged the new fees.

The proposed rule change also makes a conforming change to the statement in the EPN schedule of charges that "telecommunication circuit charges from Sector (or vendor of choice) will apply." The word "will" is changed to

"may" because EPN participants will not receive circuit charges from vendors when MBSCC owns the circuit.

The proposed rule change is consistent with the requirements of Section 17A of the Act<sup>3</sup> and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among MBSCC's participants.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change 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

No comments on the proposed rule change were solicited or received.

#### 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)(ii)<sup>4</sup> of the Act and pursuant to Rule 19b-4(f)(2)<sup>5</sup> promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by MBSCC. At any time within sixty 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.

#### 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. 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

<sup>3</sup> 15 U.S.C. 78q-1.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by MBSCC.