

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-Amex-97-01), as amended, is approved for a pilot period ending on March 7, 1997.

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

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-38310; International Series Release No. 1054; File No. SR-AMEX-96-36]

### Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to the Policy of the Amex Regarding Information Obtained Pursuant to the SEC's Memorandum of Understanding With the CONSOB

February 19, 1997.

## I. Introduction

On October 2, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> a proposed rule change to adopt an official Exchange policy concerning the circumstances and conditions under which the Exchange, in order to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities, may obtain access to information regarding activity on the Italian securities markets obtained by the SEC pursuant to the Commission's Memorandum of Understanding ("MOU") with the Commissione Nazionale per le Società e la Borsa ("CONSOB"). Amex submitted Amendment No. 1 to the filing on November 12, 1996,<sup>2</sup> which made several clarifications to the original filing.

The proposed rule change was published for comment in the Federal

Register on December 2, 1996.<sup>3</sup> No comments were received on the proposal. This order approves the proposal, as amended.

## II. Description of the Proposal

The Amex does not have a surveillance sharing agreement with the Milan exchange, which is an unincorporated association and is not able under Italian law to enter into such an arrangement. Therefore, Amex submitted this rule filing to enable the Exchange to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities by seeking the necessary information about activity on the Italian securities markets from the SEC pursuant to the SEC's MOU with CONSOB. The Exchange's proposed policy details the circumstances and conditions under which the Exchange may obtain access to such information from the SEC. By adopting this policy, therefore, the Exchange believes it will be in a position to list derivative products containing Italian component securities because it will be able to have access to information on the underlying securities which it may need for enforcement or market surveillance purposes.<sup>4</sup>

The Exchange's proposed policy provides that the Exchange will advise the SEC of information it needs regarding activity on the Italian securities markets for market surveillance and enforcement purposes. The SEC, in turn, may request the CONSOB's assistance, pursuant to the MOU, in gaining access to such information. The Exchange will use such information it may receive from the SEC only for the purposes of conducting market surveillance and enforcement proceedings. The Exchange will limit distribution of such information to officers and directors of the Exchange and other employees directly responsible for conducting market surveillance and enforcement proceedings relating to the matter in connection with which the SEC provided the information to the Exchange. The Exchange also will undertake to maintain the confidentiality of the information and to take appropriate disciplinary action in the event it learns of a breach of such confidentiality, including referral to the SEC for any action the SEC deems necessary or appropriate.

By adopting a policy that provides access to information on the underlying securities for market surveillance and enforcement purposes, the Exchange will be able to list options and other derivative products containing Italian component securities, provided that all other applicable product listing standards are met. Therefore, the Exchange believes that the proposed rule change could potentially provide investors with the opportunity to invest in such products and hedge their exposure to the Italian securities market.

## III. Discussion

After careful review, 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. In particular, the Commission believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5),<sup>5</sup> in particular, as it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.<sup>6</sup>

Specifically, the Commission believes that, since the Amex does not and cannot have a surveillance sharing agreement with the Milan Exchange, the Amex's adoption of the proposed policy will enable the Exchange to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities by seeking the necessary information about activity on the Italian securities markets from the SEC per the latter's MOU with the CONSOB. The Commission believes that the Exchange's proposed policy adequately details the circumstances and conditions under which the Exchange may obtain access to such information from the SEC.

The Commission believes that, under the Exchange's proposed policy, the Exchange will advise the SEC of information it needs regarding activity on the Italian securities markets for market surveillance and enforcement purposes. The Commission, in turn, may request the CONSOB's assistance, pursuant to the MOU, in gaining access to such information. The Commission notes that the Exchange will use such information it may receive from the SEC only for the purposes of conducting market surveillance and enforcement proceedings. The Commission also

<sup>19</sup> *Id.*

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

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

<sup>2</sup> On November 12, 1996, Amex submitted Amendment No. 1 to its proposed rule filing, making several clarifications to the original filing. See Letter from Claire P. McGrath, Managing Director and Special Counsel, Amex, to Michael Walinskis, Senior Special Counsel, Division, Commission, dated November 7, 1996.

<sup>3</sup> Securities Exchange Act Release No. 37973 (November 22, 1996), 61 FR 63884.

<sup>4</sup> This filing only addresses trading requirements relating to necessary surveillance sharing procedures.

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

<sup>6</sup> In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

notes that the Exchange will limit distribution of such information to officers and directors of the Exchange and other employees directly responsible for conducting market surveillance and enforcement proceedings relating to the matter in connection with which the SEC provided the information to the Amex. In view of the importance of maintaining the confidentiality of this information, the SEC believes that the officers and/or directors overseeing the exchange employees conducting the relevant market surveillance and enforcement proceedings would be responsible for ensuring the confidentiality of the information provided by the SEC pursuant to the MOU with the CONSOB and should take reasonable measures to ensure that the information does not become available to unauthorized persons. Thus, the Commission believes that the Exchange will undertake to maintain the confidentiality of such information and to take appropriate disciplinary action in the event it learns of a breach of such confidentiality, including referral to the SEC for any action the SEC deems necessary or appropriate.

The Commission believes that the Amex, by adopting a policy that provides access to information on the underlying securities for market surveillance and enforcement purposes, will be in a position to list options and other derivative products containing Italian component securities, provided that all other applicable product listing standards are met. Therefore, the Exchange's proposed rule change could potentially provide investors with the opportunity to invest in such products and hedge their exposure to the Italian securities market. Accordingly, the Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-AMEX-96-36) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:<sup>8</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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[Release No. 34-38308; File No. SR-Amex-96-44]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange, Inc. Relating to the Listing and Trading of Options on Exchange-Traded Fund Shares**

February 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 21, 1996, the American Stock Exchange, Inc. ("Amex" 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 Amex. On January 16, 1997, the Exchange filed Amendment No. 1 to the proposal.<sup>1</sup> On February 19, 1997, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>2</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons.

<sup>1</sup> In Amendment No. 1, the Exchange states: (1) that the proposal is limited to the listing and trading of options on those exchange-traded fund shares that have received approval from the Commission; and (2) the Exchange will list and trade options on exchange-traded funds shares that hold foreign country securities only if: (i) the Exchange has a market information sharing agreement with the primary exchange for each of the securities held by the fund, or (ii) the fund is classified as a diversified fund as that term is defined by Section 5(b) of the Investment Company Act of 1940 and the securities held in the fund are issued by issuers based in five or more countries. See letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision ("OMS", Division of Market Regulation ("Division"), Commission, dated January 15, 1997. ("Amendment No. 1").

<sup>2</sup> Amendment No. 2 supersedes and replaces Amendment No. 1 to the extent that it modifies proposed Commentary .06(4) to state that the Amex will list and trade options on exchange-traded fund shares that hold foreign country securities only if: (i) the exchange has an effective surveillance sharing agreement with the primary exchange for each of the securities held by the fund, or (ii) the fund is classified as a diversified fund as that term is defined by Section 5(b) of the Investment Company Act of 1940 and the securities held in the fund are issued by issuers based in five or more countries. The Exchange defines an "effective surveillance sharing agreement" as an agreement that would permit the Exchange to obtain trading information relating to the securities held by the fund including the identity of the customers transacting in those securities. See letter from Claire P. McGrath, Managing Director and Special Counsel, Amex, to Ivette Lopez, Assistant Director, OMS, Division, Commission, dated February 18, 1997 ("Amendment No. 2").

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

The Amex proposes the adoption of rules to permit the trading of options on securities representing interests in open-end, exchange-listed investment companies that hold securities constituting or based on an index or a portfolio of securities.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, 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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### **1. Purpose**

The purpose of the proposed rule change is to provide for the trading of options on exchange-listed securities representing interests in open-end unit investment trusts or open-end management investment companies that hold securities based on an index or a portfolio of securities (referred to hereinafter as "Exchange-Traded Fund Shares" or "Fund Shares").<sup>3</sup>

As noted above, a characteristic of all Exchange-Traded Fund Shares is that they are open-ended, and new shares may be created on any business day at a cost related to the net asset value in a transaction with the fund itself. The ability of the seller of a call on any of these Fund Shares to deliver upon exercise will thus be a function of the

<sup>3</sup> Currently, the Exchange trades unit investment trust securities known as Portfolio Depositary Receipts<sup>SM</sup> ("PDRs") based on the Standard & Poor's 500<sup>®</sup> Composite Stock Price Index and the Standard & Poor's MidCap 400 Index<sup>TM</sup>. In addition, the Exchange trades Index Fund Shares which are issued by an open-end management investment company consisting of seventeen separate series known as World Equity Benchmark Shares<sup>SM</sup> ("WEBS") based on seventeen foreign equity market indexes. PDRs and WEBS are listed on the Amex pursuant to Rule 1000, et seq. and Rule 1000A et seq., respectively, and trade like shares of common stock.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).