

20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 3, 2002.

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

[FR Doc. 02-14524 Filed 6-7-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-2116]

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (Armstrong Holdings, Inc., Common Stock, \$1.00 par value)

June 5, 2002.

Armstrong Holdings, Inc., a Pennsylvania corporation, ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its Common Stock, \$1.00 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on February 25, 2002 to withdraw its Security from listing on the Exchange. The Board determined that its interest and those of its shareholders no longer require listing of the Security on the PCX. The Issuer will continue to list its Security on the New York Stock Exchange, Inc. ("NYSE").

The Issuer stated in its application that it has complied with the rules of the PCX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing on the PCX and shall have no effect upon the Security's continued listing on the NYSE and registration under Section 12(b) of the Act.<sup>3</sup>

Any interested person may, on or before June 25, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information

submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 02-14525 Filed 6-7-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46015/May 31, 2002]

### Order Granting Temporary Exemption of Broker-Dealers that are Futures Commission Merchants from the Disclosure Requirements of Rule 10b-10 Promulgated under the Securities Exchange Act of 1934 and the Disclosure Requirements of Section 11(d)(2) of the Securities Exchange Act of 1934 in Connection with Security Futures Transactions Effected in Futures Accounts

The Commodity Futures Modernization Act of 2000 ("CFMA") permits the trading of securities futures, *i.e.*, futures contracts on individual securities and on narrow-based security indexes ("security futures").<sup>1</sup> The CFMA regulates security futures both as "securities" under the federal securities laws,<sup>2</sup> and as futures contracts for purposes of the Commodity Exchange Act ("CEA").<sup>3</sup> As a result, the Securities and Exchange Commission ("Commission") and the Commodity Futures Trading Commission ("CFTC") have joint jurisdiction over security futures products ("SFPs").

The CFMA also amended the CEA and the Securities Exchange Act of 1934 ("Exchange Act") to require that the CFTC and the SEC provide notice registration procedures for trading facilities and intermediaries that are

already registered with either the Commission or the CFTC to register with the other agency on an expedited basis for the limited purpose of trading security futures products.<sup>4</sup> Section 15(b)(11)(A) of the Exchange Act permits futures commission merchants and introducing brokers that are registered with the CFTC to register with the Commission as broker-dealers for the limited purpose of effecting transactions in certain security futures products by filing a written notice that is effective upon filing ("Notice BDs").<sup>5</sup> Similarly, Section 4f(a)(2) of the CEA (7 U.S.C. 6f(a)(2)) permits a broker-dealer registered with the Commission to register with the CFTC for the limited purpose of effecting transactions in certain security futures products by filing a written notice that is immediately effective ("Notice FCMs").

Further, the CFMA amended the CEA and the Exchange Act to exempt Notice BDs<sup>6</sup> from certain provisions of the Exchange Act and Notice FCMs<sup>7</sup> from certain provisions of the CEA (including CFTC segregation requirements),<sup>8</sup> so that they would not be subject to conflicting or duplicative regulation. Firms that are fully-registered with both the CFTC and the Commission (Full CFM/Full BDs) do not have these exemptions. Instead, under the CFMA, the CFTC and the Commission are required to consult with each other and issue such rules, regulations, or orders as are necessary to avoid certain duplicative or conflicting regulations applicable to such Full FCM/Full BDs.

The CFMA, however, did not exempt Notice BDs from Exchange Act Section 10<sup>9</sup> and the rules promulgated under that section. In addition, as stated previously, the CFMA did not exempt Full FCM/Full BDs from any provisions of the Exchange Act or the rules promulgated thereunder. Accordingly, under the CFMA, both Notice BDs and Full FCM/Full BDs effecting SFP transactions in futures accounts currently are required to meet the

<sup>4</sup> 17 CFR 200.30-3(a)(1).

<sup>1</sup> Pub. L. 106-554, 114 Stat. 2763. Under Section 3(a)(55)(A) of the Securities Exchange Act of 1934 ("Exchange Act"), the term "security future" is defined as a contract of sale for future delivery of a single security or of a narrow-based security index. 15 U.S.C. 78c(a)(55)(A). Under Exchange Act Section 3(a)(56), the term "security futures product" is defined as a security future or an option on a security future. 15 U.S.C. 78c(a)(56).

<sup>2</sup> See, e.g., Exchange Act Section 3(a)(10), 15 U.S.C. 78c(a)(10).

<sup>3</sup> The term "security future" is defined in CEA Section 1a(31) (7 U.S.C. 1a(31)) as a contract of sale for future delivery of a single security or of a narrow-based security index. Under CEA Section 1a(33) (7 U.S.C. 1a(33)), the term "security futures product" is defined as a security future or an option on a security future.

<sup>4</sup> Section 4f(a)(2) of the CEA (7 U.S.C. 6f(a)(2)) and rules adopted by the CFTC (*see* 66 FR 43080 (August 17, 2001)), and Section 15(b)(11)(A)(i) of the Exchange Act (15 U.S.C. 78o(b)(11)(A)(i)) and the rules adopted by the SEC (*see* Exchange Act Release No. 44730 (August 21, 2001), 66 FR 45137 (August 27, 2001)).

<sup>5</sup> 15 U.S.C. 78o(b)(11)(A).

<sup>6</sup> An FCM registered with the SEC pursuant to Section 15(b)(11)(A)(i) of the Exchange Act (15 U.S.C. 78o(b)(11)(A)(i)) and the rules adopted by the SEC (*see* Exchange Act Release No. 44730 (August 21, 2001), 66 FR 45137 (August 27, 2001)).

<sup>7</sup> A broker-dealer registered with the CFTC pursuant to Section 4f(a)(2) of the CEA (7 U.S.C. 6f(a)(2)) and rules adopted by the CFTC (*see* 66 FR 43080 (August 17, 2001)).

<sup>8</sup> CEA section 4f(a)(4)(A) (7 U.S.C. 6f(a)(4)(A)).

<sup>9</sup> 15 U.S.C. 78j.

<sup>1</sup> 15 U.S.C. 781(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 781(b).

disclosure requirements of both the CEA and the Exchange Act and the rules thereunder. In particular, Notice BDs and Full FCM/Full BDs are required to meet the disclosure requirements of Exchange Act Rule 10b-10<sup>10</sup> and CEA Rule 1.33(b).<sup>11</sup> Also, unlike Notice BDs, Full FCM/Full BDs, are not automatically exempt from Exchange Act Section 11.<sup>12</sup> Accordingly, Full FCM/Full BDs are subject to the disclosure requirements of Exchange Act Section 11(d)(2).<sup>13</sup>

In an effort to avoid duplicative and conflicting regulation, the Commission has proposed amendments to Exchange Act Rule 10b-10<sup>14</sup> that, if adopted, would alter the disclosure requirements for Notice BDs and Full FCM/Full BDs effecting SFP transactions in customers' futures accounts. Similarly, the Commission has proposed Rule 11d2-1 that will grant an exemption from Exchange Act Section 11(d)(2)<sup>15</sup> for Full FCM/Full BDs effecting SFP transactions in customers' futures accounts. These proposed amendments and the proposed rule are designed to provide the least amount of disruption to the confirmation systems Notice BDs and Full FCM/Full BDs use when providing confirmations of transactions in customers' futures accounts while, at the same time, providing customers with adequate information about the SFP transactions effected in their futures accounts.

The proposed amendments and the proposed new rule, however, may not be acted on by the Commission at the time trading in SFPs begins. Therefore, the Commission, through this order, is providing a period of exemption from Exchange Act Rule 10b-10<sup>16</sup> for Notice BDs and Full FCM/Full BDs effecting SFP transactions in customers' futures accounts and a period of exemption from Exchange Act Section 11(d)(2)<sup>17</sup> for FCM/Full BDs effecting SFP

transactions in customers' futures accounts.

This exemptive period will allow the Commission to receive and consider comments and adopt appropriate amendments and rules while, at the same time, preventing any possible application of duplicative and conflicting regulation by the Commission or the CFTC regarding confirmations of SFP transactions effected in customers' futures accounts. In the absence of an exemptive period, the Commission believes that many Notice BDs and Full FCM/Full BDs would be precluded from commencing trading in SFPs only because their confirmation systems would be unable to process confirmations in accordance with the full disclosure requirements of Exchange Act Rule 10b-10.<sup>18</sup> We believe the absence of many potential market participants at this critical time could affect the liquidity, and perhaps even the viability, of this new market. The Commission, therefore, finds that it is in the public interest to assure that all potential market participants are able to participate at the start of this new market. Accordingly, the Commission believes that it is consistent with the public interest and the protection of investors to provide this temporary exemptive relief.

Accordingly, pursuant to Section 36(a)(1) of the Exchange Act,<sup>19</sup>

*It is hereby ordered that* Notice BDs and Full FCM/Full BDs are exempted from the requirements of Exchange Act Rule 10b-10<sup>20</sup> and Full FCM/Full BDs are exempted from the requirements of Exchange Act Section 11(d)(2)<sup>21</sup> with respect to any SFP transaction effected in a customer's futures account until amendments to Exchange Act Rule 10b-10 and a new Rule 11d2-1 become effective.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-14295 Filed 6-7-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46021; File No. SR-Amex-2002-40]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and No. 2 thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Based on the Select European 50 Index

June 3, 2002.

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 24, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 6, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On May 31, 2002, the Amex submitted Amendment No. 2 to the proposed rule change.<sup>4</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 Amex proposes to approve for listing and trading notes, the return on which is based upon the performance of the Dow Jones EURO STOXX 50 Return Index in U.S. dollars (the "U.S. Dollar DJ EURO STOXX 50 Index"), as reduced by an adjustment factor as described below (the "Select European 50 Index" or "Index").

#### 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

<sup>10</sup> 17 CFR 240.10b-10.

<sup>11</sup> 17 CFR 1.33(b). Specifically, CEA Rule 1.33(b)(1) requires FCMs that effect futures transactions for customers to provide, no later than the next business day after the transaction, "a written confirmation of each commodity futures transaction caused to be executed by it \* \* \*."

<sup>12</sup> 15 U.S.C. 78k.

<sup>13</sup> 15 U.S.C. 78k(d)(2). Exchange Act Section 11(d)(2) generally prohibits a broker-dealer from effecting any securities transaction with a customer unless "he discloses to such customer in writing at or before the completion of the transaction whether he is acting as a dealer for his own account, as a broker for such customer, or as a broker for some other person."

<sup>14</sup> 17 CFR 240.10b-10.

<sup>15</sup> 15 U.S.C. 78k(d)(2).

<sup>16</sup> 17 CFR 240.10b-10.

<sup>17</sup> 15 U.S.C. 78k(d)(2).

<sup>18</sup> 17 CFR 240.10b-10.

<sup>19</sup> 15 U.S.C. 78mm(a)(1).

<sup>20</sup> 17 CFR 240.10b-10.

<sup>21</sup> 15 U.S.C. 78k(d)(2).

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

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

<sup>3</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 3, 2002. Amendment No. 1 replaced the original proposal in its entirety and clarified certain descriptive language used in the original proposal.

<sup>4</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 30, 2002. In Amendment No. 2, the Amex further modified the proposed rule change by adding language clarifying the calculation of the Dow Jones EURO STOXX 50 Index.