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, as amended, 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–2002–81 and should be submitted by December 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28604 Filed 11–8–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46769; File No. SR–Amex–2002–80]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Principal Protected Sector Selector Notes

November 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 30, 2002, the American Stock Exchange LLC (the ''Exchange'' or ''Amex''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

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

The Exchange proposes to approve for listing and trading principal protected notes the return on which is based upon the performance of a basket of ten (10) specified U.S. sector exchange-traded funds[4] pursuant to the methodology set forth below.

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[5] The Amex proposes to list for trading under Section 107A of the Company Guide principal protected sector selector notes (the ''Notes''), the return on which is based upon the performance of the ETF Basket.

The Notes will conform to the initial listing guidelines under section 107A[6] and continued listing guidelines under sections 1001–1003[7] of the Company Guide. The Notes are senior non-convertible debt securities of The Bear Stearns Companies Inc. (''the ''Issuer''). The Notes will have a term of five (5) years. The Notes, at maturity, will provide for a minimum principal amount that will be repaid plus a variable return amount (the ''Variable Return'') based on the performance of the ETF Basket. The Notes will not be subject to redemption prior to maturity and are not callable by the issuer.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio of securities comprising the ETF Basket. The Notes are designed for investors who want to participate or gain exposure to a variety of U.S. market sectors and who are willing to forego market interest payments on the Notes during such term. The calculation agent for the Notes will be Bear Stearns & Co., Inc., an affiliate of the Issuer (''Bear Stearns'').

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[13] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b-4.

[3] The Commission corrected a typographical error in the description of the proposed rule change, with the consent of the Exchange, to reflect the proper term of the Notes. Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission (October 22, 2002).

[4] The U.S. sector exchange-traded funds (''Sector ETFs'') that will be included in the basket (the ''ETF Basket'') are as follows: (1) iShares Dow Jones U.S. Basic Materials Index Fund; (2) iShares Dow Jones U.S. Consumer Cyclical Sector Index Fund; (3) iShares Dow Jones U.S. Consumer Non-Cyclical Sector Index Fund; (4) iShares Dow Jones U.S. Energy Sector Index Fund; (5) iShares Dow Jones U.S. Financial Sector Index Fund; (6) iShares Dow Jones U.S. Healthcare Sector Index Fund; (7) iShares Dow Jones U.S. Industrial Sector Index Fund; (8) iShares Dow Jones U.S. Technology Sector Index Fund; (9) iShares Dow Jones U.S. Telecommunications Sector Index Fund; and (10) iShares Dow Jones U.S. Utilities Sector Index Fund. The ETFs are trademarks of Dow Jones & Company and have been licensed for use by The Bear Stearns Companies Inc.

[5] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex-89–29) (''Hybrid Approval Order''). *See also* Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (approving the listing and trading of notes linked to a basket of no more than twenty equity securities).

[6] The initial listing standards for the Notes require: (1) A market value of at least $4 million; and (2) a term of at least one year. Because the Notes will be issued in $1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 holders do not apply. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

The Sector ETFs that comprise the ETF Basket are issued by iShares Trust, a registered investment company. The Sector ETFs are investment portfolios that seek investment results that correspond generally to the price and yield performance, before fees and expenses, of a particular U.S. sector equity market index compiled by Dow Jones & Company (''Dow Jones''). Each of the Sector ETFs is listed and traded on the Amex.

The Variable Return of the Notes is linked to the performance of the ETF Basket. This amount is designed to reflect the selection of the best performing ETF Sector remaining in the ETF Basket every six (6) months during the term of the Notes. Individual Sector ETFs will be removed from the ETF Basket once their performance has been used on an observation date. The Variable Return will be calculated as follows:

• The individual Sector ETF in the ETF Basket which has the most positive or least negative percentage change since the issue date will be selected and used to establish the performance rate for that particular observation date. Once the performance of an individual Sector ETF has been used on an observation date, such Sector ETF will then be removed from the ETF Basket and will not be utilized in the calculation of performance rates for any subsequent observation date.

• At maturity, the Variable Return will equal the average of the performance rates of the ten (10) selected Sector ETFs multiplied by the principal amount of such Note.

• The average performance is calculated at maturity by summing the selected performance rates of each Sector ETF and then dividing by the number of Sector ETFs that comprised the basket (ten).

If the Variable Return for the term of the Notes is less than or equal to zero, the Variable Return will be zero. If the Variable Return is zero, investors will receive only the principal amount of the Notes. The Variable Return cannot be less than zero.

As of September 26, 2002, the market capitalization of the Sector ETFs that would comprise the ETF Basket ranged from a high of $302.84 million shares (iShares Dow Jones U.S. Healthcare Sector Index Fund (IYH)) to a low of $45 million (iShares Dow Jones U.S. Telecommunications Sector Index Fund (IYZ)). The average monthly trading volume of these Sector ETFs comprising the ETF Basket for the last six months, as of the same date, ranged from a high of 1.68 million shares (iShares Dow Jones U.S. Consumer Cyclical Sector Index Fund (IYC)) to a low of 389,183 shares (iShares Dow Jones U.S. Financial Sector Index Fund (IYF)). Moreover, as of September 26, 2002, all of the Sector ETFs that would comprise the ETF Basket were eligible for standardized options trading pursuant to Commentary .06 to Amex Rule 915. The Amex currently lists and trades option contracts on iShares Dow Jones U.S. Financial Sector Index Fund (IYF), iShares Dow Jones U.S. Technology Sector Index Fund (IYW) and iShares Dow Jones U.S. Telecommunications Sector Index Fund (IYZ).

During the term of the Notes, the performance rate for each of the Sector ETFs will be calculated every six (6) months as follows: (reference value—initial value)/initial value. The individual Sector ETF in the ETF Basket which has the most positive or least negative percentage change since the issue date will be selected and used to set the performance rate for that observation date. The ''reference value'' is the closing value of each of the Sector ETFs that comprise the ETF Basket on each observation date or, if that day is not a business day, on the next business day. An ''observation date'' occurs semi-annually throughout the terms of the Notes. For the first observation date, the ''initial value'' will equal the closing value of each of the Sector ETFs on the issue date of the Notes.

If any of the Sector ETFs is de-listed from the Amex or ceases to be issued by the iShares Trust prior to removal from the ETF Basket, Bear Stearns will substitute a corresponding Dow Jones U.S. Sector Index compiled by Dow Jones for the discontinued Sector ETF. If the corresponding Dow Jones U.S. Sector Index ceases to be compiled by Dow Jones and Dow Jones or another entity compiles a successor or substitute sector index that Bear Stearns determines, to be comparable to the discontinued Dow Jones U.S. Sector Index, then such successor or substitute sector index will be used to calculate the Variable Return. Upon selection by Bear Stearns of a corresponding, successor or substitute sector index, notice of such fact will be provided to the holders of the Notes.

If Bear Stearns determines that any successor or substitute sector index is discontinued and there is not a successor or substitute sector index available, Bear Stearns will determine the Variable Return based on a methodology that attempts to replicate closely the Sector ETF. Bear Stearns may similarly determine the performance rate to be used if the level of any successor or a substitute sector index is not available on an observation date.

Bear Stearns as the calculation agent will be permitted (but not required) to make adjustments in any successor or substitute sector index or concerning the method of such index calculation as it deems appropriate to ensure that the performance rates used to determine the Variable Return are equitable.

Discontinuance of any of the Sector ETFs may adversely affect the value of the Notes. All determinations made by Bear Stearns as calculation agent will be at its discretion and will be conclusive for all purposes, absent manifest error.

If there is a market disruption event [8] on any observation date, the observation date will be the first succeeding business day on which there is no market disruption event, unless there is a market disruption event on each of the five business days following the original date that, but for the market disruption event, would have been the observation date. In that case, the fifth business day will be deemed to be the observation date and Bear Stearns will determine the performance rate of the Sector ETFs as of the valuation time on that fifth business day.

Because the Notes are issued in $1,000 denominations, the Amex's existing floor trading rules will apply to the issuing and trading of the Notes. First, pursuant to Amex 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 trading the Notes.[9] Second, even though the Exchange's debt trading rules apply, the Notes will be subject to the equity margin rules of the Exchange.[10] Third, in conjunction with the Hybrid Approval Order, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including

[8] A market disruption event means the occurrence or existence on any business day during the one-half hour prior to the valuation time of any suspension of, or limitation imposed on, trading (by reason of movements in price exceeding limits permitted by any relevant exchange or market or otherwise) of (i) the Sector ETFs on the Amex or of the securities that comprise 20% or more of any Dow Jones U.S. Sector Index or any successor or substitute index on any relevant exchange; or (ii) in options or futures contracts on the Sector ETFs, any corresponding Dow Jones U.S. Sector Index or any successor or substitute index on any relevant exchange if, any such suspension or limitation is material.

[9] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[10] *See* Amex Rule 462 and Section 107B of the Company Guide.

suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, the Issuer will deliver a prospectus in connection with the initial purchase of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [11] in general and furthers the objectives of section 6(b)(5) [12] 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 receive any written comments on the proposed rule change.

III. 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-2002–80 and should be submitted by December 3, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that implementation of 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, with the requirements of Section 6(b)(5).[13] Pursuant to Section 19(b)(2) of the Act,[14] the Commission further finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The Commission believes that the availability of the Notes will provide an additional choice for investors to achieve desired investment objectives through the purchase of an exchange-traded debt product linked to the performance of the basket of ETFs described above. These objectives include participating in or gaining exposure to the ETF basket's components, while limiting downside risk. The Notes are principal protected—they provide for a minimum principal amount that will be repaid. They also provide for a variable return based upon the performance of the components of the ETF basket. For the reasons discussed below, the Commission has concluded that the Amex listing standards applicable to the Notes are consistent with the Act.

The Notes are senior, non-convertible debt securities and will conform to the initial listing guidelines under Section 107A, and the continued listing guidelines under Sections 1001–1003 of the Amex Company Guide. The notes will have a term of five years. The Notes will entitle the owner at maturity to receive a minimum principal amount, plus a variable return amount based upon the performance of the ETFs in the ETF basket. Each of the Sector ETFs that comprise the ETF basket is listed and traded on Amex; thus, the Commission notes that each of the components would satisfy the Exchange's listing standards for Index Fund Shares (or alternatively for Portfolio Depositary Receipts). The Notes are cash-settled in U.S. dollars and may not be called by the issuer.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately any potential problems that could arise from the hybrid nature of the Notes. The Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer, and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics, and bear the financial risks, of such transaction.

In addition, the Amex equity margin rules and debt trading rules will apply to the Notes. The Exchange's debt trading rules are applicable because the notes are issued in $1,000 denominations. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Notes, the Commission believes that the potential for manipulation of the Notes is minimal, thereby protecting investors and the public interest. The Commission further notes that the underlying indices on which the ETFs are based are compiled by Dow Jones, an entity independent of both the Exchange and the Issuer, and thus, a factor which the Commission believes should act to minimize the possibility of manipulation.

The Commission also notes that the Amex will issue a circular on the Notes. The circular would include, among

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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

[14] 15 U.S.C. 78s(b)(2).

other things, a discussion of the risks that may be associated with the Notes in addition to details on the composition of the Index and how the rates of return will be computed. Further, 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 trading the Notes. Based on these factors, the Commission finds that the proposal to trade the Notes is consistent with section 6(b)(5) of the Act.[15]

Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently traded on the Amex. In determining to grant the accelerated approval for good cause, the Commission notes that the ETFs comprising the ETF basket are based on indices composed of a portfolio of highly capitalized and actively traded securities similar to component securities in hybrid securities products that have been approved by the Commission for U.S. exchange trading. Additionally, the Notes will be listed pursuant to the existing hybrid security listing standards as described above. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR-Amex-2002–80) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

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[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46772; File No. SR–DTC–2002–15]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Eliminate the FAST Certificates-on-Demand Service

November 5, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 4, 2002, The Depository Trust Company (''DTC'') 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 the DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of the proposed rule change is to eliminate the FAST Certificate-on-Demand (''FAST COD'') 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, DTC 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 DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

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

Currently DTC's FAST COD service allows participants to request for same day availability a physical certificate in the participants' or its nominee's name for issues which are held in DTC's nominee name, Cede & Co., at the transfer agent under DTC's FAST program. After consultation with the largest users of the service, DTC is proposing to eliminate the FAST COD service due to decreasing demand for the service. Currently there is an average of approximately five FAST COD requests per day. In the place of FAST COD, participants may continue to use the Rush Withdrawals-by-Transfer (''RWT'') service[3] or the Deposit/Withdrawal at Custodian (''DWAC'') service.[4] RWT allows participants to quickly obtain physical certificates, which can be registered in either the participant's name or its customer's name. Using DWAC, participants can request certificates in client name directly from the transfer agents.

DTC believes that the proposed rule filing is consistent with section 17A of the Act because it will eliminate a little-used service but will retain functionally similar services thereby promoting the prompt and accurate clearance and settlement of securities transactions.

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

DTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC consulted orally with the largest users of the FAST COD service and circulated an Important Notice to Participants, which invited public comment on this proposal.[5] DTC has received no written comment on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 self-regulatory organization consents, the Commission will:

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

[2] The Commission has modified the text of the summaries prepared by the DTC.

[3] For more information about the RWT service, see Securities Exchange Act Release Nos. 30505 (March 20, 1992) [SR–DTC–91–23](order approving implementation of the RWT service on permanent basis); 27518 (December 7, 1989)(order granting temporary extension of the RWT service); 26960 (June 23, 1989) [SR–DTC–89–11] (order granting approval of the RWT service procedures); 27052 (July 21, 1989) [SR–DTC–89–1] (order granting temporary approval of the RWT service).

[4] For more information about the DWAC service, see Securities Exchange Release No. 30283 (January 23, 1992) [SR–DTC–91–16] (order granting approval of the DWAC service).

[5] Important Notice to Participants #3624 is available through the Commission's Public Reference Room or through DTC.