

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2005-037. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-037 and should be submitted on or before May 24, 2005.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51616; File No. SR-Amex-2005-034]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade ETFs Based on the Dow Jones STOXX 50 and the Dow Jones EURO STOXX 50 Indexes Pursuant to Unlisted Trading Privileges

April 26, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 21, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposal on an accelerated basis.

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

The Exchange is proposing to trade shares of two exchange-traded funds ("ETFs")—the streetTRACKS® Dow Jones STOXX 50 Fund (ticker symbol: FEU) and streetTRACKS® Dow Jones EURO STOXX 50 Fund (ticker symbol: FEZ)—pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available from the Exchange's Web site (<http://www.amex.com/>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### 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 III 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

The Exchange proposes to trade FEU and FEZ, which are Index Fund Shares under Amex Rules 1000A *et seq.*, pursuant to UTP. Each fund is a separate series of the streetTRACKS Index Shares Funds. STOXX Ltd., a joint venture between Deutsche Börse AG, Dow Jones & Company ("Dow Jones"), and the SWX Group, services the Dow Jones STOXX 50 Index and Dow Jones EURO STOXX 50 Index. Both indexes track the large-cap markets of the European and Eurozone regions. Their components have a high degree of liquidity and represent the largest companies across all 18 market sectors defined by the Dow Jones Global Classification standard. The Commission previously approved the original listing and trading of FEU and FEZ on the New York Stock Exchange, Inc. ("NYSE").<sup>3</sup>

The Exchange deems the shares of these ETFs to be equity securities, thus rendering trading in these shares subject to the Exchange's existing rules governing the trading of equity securities.<sup>4</sup> The trading hours for these ETFs on the Exchange would be 9:30 a.m. to 4:15 p.m. Eastern time ("ET").<sup>5</sup>

Quotations for and last sale information regarding these ETFs are disseminated through the Consolidated Tape Association ("CTA"). The NAV of each ETF is calculated by the funds' custodian, State Street Bank and Trust Company, and determined each business day, normally at the close of regular trading on the NYSE. To provide updated information relating to these ETFs for use by investors, professionals, and persons wishing to create or redeem shares in creation unit aggregations ("creation units"), Bloomberg calculates an indicative optimized portfolio value

<sup>3</sup> See Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002) ("NYSE Approval Order"). Shares of these ETFs commenced trading on the NYSE in October 2002.

<sup>4</sup> This includes Amex Rule 154, Commentary .04(c), which provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i-v).

<sup>5</sup> In its initial proposal to list and trade FEU and FEZ, the NYSE stated incorrectly that the close of trading in these ETFs would be 4:00 p.m. See NYSE Approval Order, 67 FR at 65391. The NYSE later corrected the misstatement and specified that the ETFs may be traded until 4:15 p.m. See Securities Exchange Act Release No. 49776 (May 26, 2004), 69 FR 31439 (June 3, 2004).

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

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

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

("IOPV"). The NYSE disseminates through the facilities of CTA an updated IOPV every 15 seconds during the regular trading hours of 9:30 a.m. to 4:15 p.m. ET. Amex represents that, if the IOPV is not calculated on a periodic basis or ceases to be widely disseminated, Amex would cease trading shares of these ETFs.

The IOPV may not reflect the value of all securities included in an underlying index. In addition, the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by each fund at a particular point in time. The Exchange believes that dissemination of the IOPV provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the trading of these ETFs or the creation or redemption of ETF shares.

The currency exchange rate used in the calculation of the IOPV also may differ from that used by the funds' custodian in the calculation of each fund's NAV. Therefore, the IOPV for each fund on a per-share basis disseminated during the Exchange's trading hours should not be viewed as a real-time update of the NAV of each fund, which is calculated only once a day. While the IOPV disseminated immediately prior to the opening of business of the Exchange (currently 9:30 a.m. e.t.) is expected to be close to the previous day's NAV on a per-share basis, it is possible that the IOPV may diverge from the NAV during any trading day. In such case, the IOPV would not precisely reflect the value of the relevant fund's portfolio.

During the trading day, however, it is expected that the IOPV closely approximates the value of a fund's portfolio of securities, except under unusual circumstances (e.g., in the case of extensive rebalancing of multiple securities in a fund at the same time by the fund's advisor). The circumstances that might cause the IOPV to be different from a fund's NAV would not be different from circumstances causing any index fund or trust to diverge from its underlying benchmark index.

In connection with the trading of FEU and FEZ, Amex will inform its members in an Information Circular of the special characteristics and risks associated with trading of these ETFs, including a description of each fund and the associated shares, how fund shares are created and redeemed in creation units, foreign currency risks, foreign securities characteristics, applicable foreign country laws and restrictions, applicable Exchange rules, dissemination information, trading

information, the applicability of suitability rules, and a discussion of any relief provided by the Commission or the staff from any rules under the Act. The Exchange will also require its members to deliver a prospectus or product description to investors purchasing shares of the ETF prior to or concurrently with the confirmation of a transaction in such shares.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of shares of these ETFs. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Amex Rule 190 generally precludes certain business relationships between an issuer and the specialist in the issuer's securities. Exceptions in the rule permit specialists in ETF shares to enter into creation unit transactions to facilitate the maintenance of a fair and orderly market. Commentary .04 to Amex Rule 190 specifically applies to Index Fund Shares listed on the Exchange, and would apply to FEU and FEZ. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

## 2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities; and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Act<sup>8</sup> because it deems the shares of FEU and FEZ to be equity securities, thus rendering such shares subject to the Exchange's existing rules governing the trading of equity securities.

<sup>6</sup> 15 U.S.C. 78s(b).

<sup>7</sup> 15 U.S.C. 78s(b)(5).

<sup>8</sup> 17 CFR 240.12f-5.

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

The proposed rule change would impose no 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 written comments were solicited or received with respect to 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. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-034 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2005-034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-034 and should be submitted on or before May 24, 2005.

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

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.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal will benefit investors by increasing competition among markets that trade FEU and FEZ.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,<sup>11</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>12</sup> The Commission notes that it previously approved the listing and trading of FEU and FEZ on the NYSE.<sup>13</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>14</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. Amex has represented that it meets this requirement because it deems the shares of FEU and FEZ to be an equity securities, thus rendering trading in such shares subject to the Exchange's

existing rules governing the trading of equity securities.<sup>15</sup>

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>16</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding FEU and FEZ are disseminated through the Consolidated Quotation System. Furthermore, the NYSE disseminates through the facilities of CTA an updated IOPV every 15 seconds from 9:30 a.m. to 4:15 p.m. e.t. The Exchange has represented that, if the IOPV is not calculated on a periodic basis or ceases to be widely disseminated, it would cease trading shares of these ETFs.

The Commission notes that, if FEU or FEZ should be delisted by the NYSE, Amex would no longer have authority to trade the shares of the respective fund pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. Amex surveillance procedures are adequate to properly monitor the trading of FEU and FEZ shares on the Exchange.

2. Amex will distribute an information circular to its members prior to the commencement of trading of FEU and FEZ shares on the Exchange that explains the terms, characteristics, and risks of trading such shares.

3. Amex will require a member with a customer that purchases FEU or FEZ shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the information circular.

This approval order is conditioned on Amex's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these ETFs on the NYSE is consistent with the Act.<sup>17</sup> The

Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for these ETFs.

#### V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-Amex-2005-034) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

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

[FR Doc. E5-2126 Filed 5-2-05; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51612; File No. SR-BSE-2004-24]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change By the Boston Stock Exchange, Inc. Relating to Remote Floor Brokers

April 26, 2005.

#### Introduction

On June 28, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with 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> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to permit Remote Floor Brokers to conduct their business from remote locations off of the Exchange floor. The proposed rule change was published in the **FEDERAL REGISTER** on November 30, 2004.<sup>3</sup> No comments were received on the proposed rule change. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>4</sup> particularly

<sup>9</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>11</sup> 15 U.S.C. 78l(f).

<sup>12</sup> Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

<sup>13</sup> See *supra* note 3.

<sup>14</sup> 17 CFR 240.12f-5.

<sup>15</sup> The Commission notes that Commentary .04 to existing Amex Rule 190 will permit a specialist in FEU or FEZ to create or redeem creation units of these funds to facilitate the maintenance of a fair and orderly market. The Commission previously has found Commentary .04 to Amex Rule 190 to be consistent with the Act. See Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10106, 10612 (March 14, 1996).

<sup>16</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>17</sup> See *supra* note 3.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 50715 (November 22, 2004), 69 FR 69650.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).