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 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–2005–026 and should be submitted on or before July 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3178 Filed 6–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51840; File No. SR-Amex-2005–042]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of Notes Linked to the Performance of the CBOE DJIA BuyWrite Index(sm)

June 14, 2005.

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 April 20, 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to list and trade notes, the performance of which is linked to the DJIA BuyWrite Index(sm) (the ''BXD Index'' or ''Index''). The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the principal offices of the Amex, 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 Amex 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 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

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the BXD Index (the ''Notes''). The BXD Index is determined, calculated, and maintained solely by the Chicago Board Options Exchange, Inc. (''CBOE'').[4] JPMorgan Chase & Co. (''JPMorgan'') will issue the Notes.[5]

[6] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 27753 (Mar. 1, 1990), 55 FR 8626 (Mar. 8, 1990) (File No. SR-Amex-89–29).

[4] If the BXD Index is discontinued or suspended, the calculation agent, in its sole discretion, may substitute the BXD Index with an index substantially similar to the discontinued or suspended BXD Index (the ''Successor Index''). The Successor Index may be calculated and/or published by the CBOE or any other third party. If the CBOE discontinues publication of the BXD Index prior to, and such discontinuance is continuing on, the Final Valuation Date and the calculation agent determines, in its sole discretion, that no Successor Index is available at such time, then the calculation agent will determine the BXD Index closing level for such date. The BXD Index closing level will be computed by the calculation agent in accordance with the formula for and method of calculating the BXD Index last in effect prior to such discontinuance, using the closing price of the DJIA or the stocks underlying the DJIA at the discretion of the calculation agent (or, if trading in the relevant securities has been materially suspended or materially limited, its good faith estimate of the closing price that would have prevailed but for such suspension or limitation) at the close of the principal trading session on such date for the DJIA or for each security comprising the DJIA, the arithmetic average of the last bid and ask prices (or, if trading in the relevant call option has been materially suspended or materially limited, its good faith estimate of the arithmetic average of the last bid and ask prices that would have prevailed but for such suspension or limitation) of the relevant call option reported before 4:00 p.m. Eastern time and such other inputs as may reasonably be necessary. Notwithstanding these alternative arrangements, discontinuance of the publication of the BXD Index on the relevant exchange may adversely affect the value of the notes. If at any time the method of calculating the BXD Index, the DJIA, or a Successor Index, or the level thereof is changed in a material respect, or if the BXD Index, the DJIA, or a Successor Index is in any other way modified so that the BXD Index or a Successor Index does not, in the opinion of the calculation agent, fairly represent the level of the BXD Index or such Successor Index had such changes or modifications not been made, then, from and after such time, the calculation agent will, at the close of business in New York City on each date on which the BXD Index closing level is to be determined, make such calculations and adjustments as, in the good faith judgment of the calculation agent, may be necessary in order to arrive at a level of an index comparable to the BXD Index or such Successor Index, as the case may be, as if such changes or modifications had not been made, and the calculation agent will calculate the BXD Index closing level with reference to the BXD Index or such Successor Index, as adjusted. Accordingly, if the method of calculating the BXD Index, the DJIA, or a Successor Index is modified so that the level of the BXD Index or a Successor Index is a fraction of what it would have been if there had been no such modification (*e.g.*, due to a split in the index), then the calculation agent will adjust such index in order to arrive at a level of the BXD Index or such Successor Index as if there had been no such modification (*e.g.*, as if such split had not occurred).

J.P. Morgan Securities Inc., an affiliate of JPMorgan, has been appointed to act as the calculation agent. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and David Liu, Attorney, Division of Market Regulation (''Division''), Commission, on May 26, 2005.

[5] The Exchange states that JPMorgan and Dow Jones & Co. (''Dow Jones'') are negotiating a non-exclusive license agreement, with up to a 165-day exclusivity period, providing for the use of the BXD Index by JPMorgan in connection with certain securities, including the Notes. Dow Jones is not

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 a series of medium-term debt securities of JPMorgan that provide for a cash payment at maturity based on the performance of the BXD Index as adjusted by the Adjustment Amount.[8] The principal amount of each Note is expected to be $1,000. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payment on the Notes at maturity may be less than the original issue price of the Notes. In fact, the value of the BXD Index must increase for the investor to receive at least the $1,000 principal amount per security at maturity. If the value of the BXD Index decreases or does not increase sufficiently, the investor will receive less, and possibly significantly less, than the $1,000 principal amount per security. In addition, holders of the Notes will not receive any interest payments from the Notes. The Notes will have a term of at least one (1) but no more than ten (10) years.[9]

The cash payment that a holder or investor of a Note will be entitled to receive at maturity (the ''Payment Amount'') will depend on the relation of the level of the BXD Index at the close of the market on the Final Valuation Date [10] (the ''Final Index Level'') and the closing value of the Index on the date JPMorgan prices the Notes for initial sale to the public (the ''Initial Index Level'') less the Adjustment Amount. If there is a ''market disruption event'' [11] when determining the Final Index Level, the Final Index Level will be determined on the next available trading day during which no ''market disruption event'' occurs. For purposes of determining the amount payable at maturity of the Notes, the Payment Amount will be determined on the Final Valuation Date.

The Payment Amount per Note will equal:

$$\$1{,}000 \times \left(1 + \frac{\text{Final Index Level} - \text{Initial Index Level}}{\text{Initial Index Level}}\right) - \left(1.0\%\left(\frac{n}{365}\right)\right), \text{ where n is}$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive any of the component securities, dividend payments, or any other ownership right or interest in the securities comprising the BXD Index. The Notes are designed for investors who want to participate in the exposure to the DJIA that the BXD Index provides while limiting downside risk, and who are willing to forego principal protection and interest payments on the Notes during their term.

The Exchange notes that the Commission has previously approved the listing on the Amex of securities with structures similar to that of the proposed Notes.[12] *Description of the Index.* The BXD Index is a benchmark index designed to measure the

responsible for and will not participate in the issuance and creation of the Notes.

[6] The initial listing standards for the Notes require: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) 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) of the Company Guide. Section 1003(b)(iv)(A) of the Company Guide 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.

[8] The Adjustment Amount is an annual fee that accrues daily over the term of the Notes. The Adjustment Amount is equal to 1.0% multiplied by the number of days since the pricing date of the Notes divided by 365.

[9] The term of the Notes is expected to be one (1) year and will be disclosed in the pricing supplement.

[10] The Final Valuation Date will be the third scheduled trading day prior to the maturity date.

[11] A ''market disruption event'' means: (i) A suspension, absence, or material limitation of trading of stocks then constituting 20 percent or more of the level of the DJIA (or the relevant successor index) on the relevant exchanges (as defined below) for such securities for more than two hours of trading (or one hour of trading on any day that is a ''roll date'' for purposes of calculating the BXD Index) during, or during the one hour period preceding the close of, the principal trading session on such relevant exchange; or (ii) a breakdown or failure in the price and trade reporting systems of any relevant exchange as a result of which the reported trading prices for stocks then constituting 20 percent or more of the level of the DJIA (or the relevant successor index) (A) during the one hour preceding the close of the principal trading session on such relevant exchange or (B) during any one hour period of trading on such relevant exchange on any day that is a ''roll date'' for purposes of calculating the BXD Index; or (iii) a suspension, absence, or material limitation of trading of call options nominally sold in connection with the BXD Index (or the relevant successor index) on the CBOE for more than two hours of trading, or during the one hour period preceding, and including, the scheduled time at which the value of such options is calculated for purposes of calculating the BXD Index; or (iv) a breakdown or failure in the price and trade reporting systems of the CBOE as a result of which the reported trading prices for call options nominally sold in connection with the BXD Index during the one hour period preceding, and including, the scheduled time at which the value of such options is calculated for purposes of the BXD Index are materially inaccurate; or (v) the suspension, absence, or material limitation of trading on any major U.S. securities market for trading in futures or options contracts related to the DJIA or the BXD Index (or the relevant successor index) for more than two hours of trading during, or during the one hour period preceding the close of, the principal trading session on such market; or a decision to permanently discontinue trading in the relevant futures or options contract, in each case as determined by the calculation agent in its sole discretion; and a determination by the calculation agent in its sole discretion that the event described above materially interfered with its ability or the ability of any of JPMorgan's affiliates to adjust or unwind all or a material portion of any hedge with respect to the notes. ''Relevant exchange'' means the primary U.S. organized exchange or market of trading for any security (or any combination thereof) then included in the BXD Index or any successor index. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and David Liu, Attorney, Division, Commission, on May 26, 2005.

[12] *See* Securities Exchange Act Release Nos. 51634 (Apr. 29, 2005), 70 FR 24138 (May 6, 2005) (approving the listing and trading of notes linked to the BXM Index) (File No. SR–Amex–2005–036); 51426 (Mar. 23, 2005), 70 FR 16315 (Mar. 30, 2005) (approving the listing and trading of notes linked to the BXM Index) (File No. SR–Amex–2005–022); and 50719 (Nov. 22, 2004), 69 FR 69644 (Nov. 30, 2004) (approving the listing and trading of non-principal protected notes linked to the BXM Index) (File No. SR–Amex–2004–55). The BXM index is the CBOE S&P 500 Buy Write Index℠, while the BXD is a parallel index using the DJIA as the underlying index rather than the S&P 500. In addition, the Exchanges notes that the Commission has previously approved the listing and trading of a packaged buy-write option strategy known as ''BOUNDS.'' *See* Securities Exchange Act Release No. 36710 (Jan. 11, 1996), 61 FR 1791 (Jan. 23, 1996) (File Nos. SR–Amex–94–56, SR–CBOE–95–14, and SR–PSE–95–01).

performance of a hypothetical ''buy-write'' [13] strategy on the DJIA. Developed by the CBOE in cooperation with Dow Jones, the Index was initially announced in March 2005.[14] The BXD was set to an initial value of 100.00 as of October 16, 1997. The Exchange states that the CBOE developed the BXD Index in response to several factors, including the repeated requests by options portfolio managers that the CBOE provide an objective benchmark for evaluating the performance of buy-write strategies, one of the most popular option trading strategies. Further, the CBOE developed the BXD Index to provide investors with a relatively straightforward indicator of the risk-reducing character of options that otherwise may seem complicated and inordinately risky.

The BXD Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the DJIA, and (2) ''writing'' (or selling) near-term DJIA call options (DJX), generally on the third Friday of each month. This strategy consists of a hypothetical portfolio consisting of a ''long'' position indexed to the DJIA on which are deemed sold a succession of one-month, at-the-money call options on the DJIA (DJX) listed on the CBOE. Dividends paid on the component stocks underlying the DJIA and the dollar value of option premium deemed received from the sold call options are functionally ''re-invested'' in the covered DJIA portfolio.

The value of the BXD Index on any given date will equal (1) the value of the BXD Index on the previous day multiplied by (2) the daily rate of return [15] on the covered DJIA portfolio on that date. Thus, the daily change in the BXD Index reflects the daily changes in value of the covered DJIA portfolio, which consists of the DJIA (including dividends) and the component DJIA call option (DJX). The daily closing price of the BXD Index is calculated and disseminated by the CBOE on its Web site at *www.cboe.com* and via the Options Pricing and Reporting Authority (''OPRA'') at the end of each trading day.[16] The value of the DJIA is widely disseminated at least once every fifteen (15) seconds throughout the scheduled trading day. The Exchange believes that the intraday dissemination of the DJIA, along with the ability of investors to obtain real-time, intraday DJIA call option (DJX) pricing, provides sufficient transparency regarding the BXD Index.[17] In addition, as indicated above, the value of the BXD Index is calculated once every scheduled trading day, thereby providing investors with a daily value of such ''hypothetical'' buy-write options strategy on the DJIA.

The Exchange states that the CBOE has represented that the BXD Index value will be calculated and disseminated by the CBOE once every scheduled trading day after the close. The daily change in the BXD Index reflects the daily changes in the DJIA and related options positions. The Exchange states that JPMorgan has represented that it will seek to arrange to have the BXD Index calculated and disseminated on a daily basis through a third party if the CBOE ceases to calculate and disseminate the Index.[18] If, however, JPMorgan is unable to arrange the calculation and dissemination of the BXD Index (or a Successor Index) as indicated above, the Exchange will undertake to delist the Notes.[19]

In order to provide an updated value of the Payment Amount for use by investors, the Exchange will disseminate over the Consolidated Tape Association's Network B, a daily indicative value (the ''Indicative Value'') of the Notes. The Indicative Value will equal the performance of the BXD less the Adjustment Amount. The Indicative Value will be calculated by the Amex after the close of trading and after the CBOE calculates the BXD Index for use by investors the next scheduled trading day. It is designed to provide investors with a daily reference value of the adjusted BXD Index. The Indicative Value may not reflect the precise value of the Notes or Payment Amount. Therefore, the Indicative Value disseminated by the Amex during trading hours should not be viewed as a real time update of the BXD Index, which is calculated only once a day. While the Indicative Value that will be disseminated by the Amex is expected to be close to the current BXD Index value, the values of the Indicative Value and the BXD Index will diverge due to the application of the Adjustment Amount.

From October 31, 1997 through March 31, 2005, the annualized returns for the BXD Index and the DJIA were 7.15% and 6.76%, respectively, with a total deviation of the returns during the same time period of 4.43%. As the chart

[13] A ''buy-write'' is a conservative options strategy in which an investor buys a stock or portfolio and writes call options on the stock or portfolio. This strategy is also known as a ''covered call'' strategy. A buy-write strategy provides option premium income to cushion decreases in the value of an equity portfolio, but will underperform stocks in a rising market. A buy-write strategy tends to lessen overall volatility in a portfolio.

[14] The BXD Index consists of a long position in the component securities of the DJIA and options on the DJIA (DJX). *See www.cboe.com/bxd.* The Exchange notes that the Commission has approved the listing of numerous securities linked to the performance of the DJIA as well as options on the DJIA. *See, e.g.*, Securities Exchange Act Release Nos. 39011 (Sep. 3, 1997), 62 FR 47840 (Sep. 11, 1997) (approving the listing and trading of options on the DJIA) (File No. SR–CBOE–97–26); 39525 (Jan. 8, 1998), 63 FR 2438 (Jan. 15, 1998) (approving the listing and trading of DIAMONDS℠ Trust Units, portfolio depositary receipts based on the DJIA) (File No. SR–Amex–97–29); 46883 (Nov. 21, 2002), 67 FR 71216 (Nov. 29, 2002) (approving the listing and trading of Market Recovery Notes on the DJIA) (File No. SR–Amex–2002–88); 49453 (Mar. 19, 2004), 69 FR 15913 (Mar. 26, 2004) (approving the listing and trading of Contingent Principal Protected Notes linked to the DJIA) (File No. SR–Amex–2004–13); and 51133 (Feb. 3, 2005), 70 FR 7129 (Feb. 10, 2005) (approving the listing and trading of Notes linked to the DJIA) (File No. SR–Amex–2004–101).

[15] The daily rate of return on the covered DJIA portfolio is based on (a) the change in the closing value of the stocks in the DJIA portfolio, (b) the value of ordinary cash dividends on the stocks underlying the DJIA, and (c) the change in the market price of the call option. The daily rate of return will also include the value of ordinary cash dividends distributed on the stocks underlying the DJIA that are trading ''ex-dividend'' on that date (that is, when transactions in the stock on an organized securities exchange or trading system no longer carry the right to receive that dividend or distribution) as measured from the close in trading on the previous day.

[16] The Exchange notes that the Commission, in connection with Bond Index Term Notes and the Merrill Lynch EuroFund Market Index Target Term Securities, has previously approved the listing and trading of these products where the dissemination of the value of the underlying index occurred once per trading day. *See* Securities Exchange Act Release Nos. 41334 (Apr. 27, 1999), 64 FR 23883 (May 4, 1999) (approving the listing and trading of Bond Indexed Term Notes) (File No. SR–Amex–99–03); and 40367 (Aug. 26, 1998), 63 FR 47052 (Sep. 3, 1998) (approving the listing and trading of Merrill Lynch EuroFund Market Index Target Term Securities) (File No. SR–Amex–98–24). *See also supra* note 12.

[17] Call options on the DJIA (DJX) are traded on the CBOE, and both last sale and quotation information for the call options are disseminated in real-time through OPRA. The Exchanges states that the value of the BXD can be readily approximated as a function of observable market prices throughout the trading day. In particular, such a calculation would require information on the current price of the DJIA index and specific nearest-to-expiration call and put options on that index. These components trade in highly liquid markets, and real-time prices are available continuously throughout the trading day from a number of sources, including Bloomberg and CBOE. The Exchange notes that the ''Indicative Value'' (as discussed below) may be a more accurate indicator of the valuation of the Notes because it reflects the fees associated with the Notes (*e.g.*, on the initial principal amount and the Adjustment Amount); however, the ''Indicative Value'' is not adjusted intraday. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and David Liu, Attorney, Division, Commission, on May 26, 2005.

[18] Prior to such change in the manner in which the BXD Index is calculated, or in the event of any Index substitution, the Exchange will file a proposed rule change pursuant to Rule 19b–4, which must be approved by the Commission prior to continued listing and trading in the Notes. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and David Liu, Attorney, Division, Commission, on May 26, 2005.

[19] *See supra* note 4 (regarding discontinuation of the calculation and dissemination of the Notes).

attached as Exhibit 3 to the Exchange's Form 19b–4 indicates, the BXD Index will closely track the DJIA except in those cases where the market is significantly rising or decreasing.[20] In the case of a fast rising market, the BXD Index will trail the DJIA due to the limited upside potential of the Index because of the ''buy-write'' strategy. Due to the cushioning effect of the ''buy-write'' strategy, the BXD Index has in the past exhibited negative returns that are less than the DJIA during a down market. The Exchange expects the BXD Index to continue to display these characteristics.

The call options (DJX) included in the value of the BXD Index have successive terms of approximately one month. Each day that an option expires, which day is referred to as a ''roll'' date, that option's value at expiration is taken into account in the value of the BXD Index. At expiration, the call option (DJX) is settled against the ''Special Opening Quotation'' of the DJX used as the final settlement price of the DJX call options. The Special Opening Quotation is a special calculation of the DJIA that is compiled from the opening price of component stocks underlying the DJIA. The final settlement price of the call option at expiration is equal to the difference between the Special Opening Quotation and the strike price of the expired call option, or zero, whichever is greater, and is removed from the value of the BXD Index. Subsequent to the settlement of the expired call option, a new, ''short'' or sold at-the-money call option is included in the value of the BXD Index.[21] The initial value of the new call option is calculated by the CBOE and is based on the volume-weighted average of all the transaction prices of the new call option during a designated time period on the day the strike price is determined.[22]

The market capitalization of the DJIA is approximately $3.6 trillion. The Exchange states that, as of April 18, 2005, the market capitalization of the securities included in the DJIA ranged from a high of $381.59 billion to a low of $14.8 billion. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 292 million shares to a low of 368,900 shares.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[23]

The Exchange states that, because the Notes are issued in $1,000 denominations, the Amex's existing debt floor trading rules will apply to the 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.[24] Second, even though the Exchange's debt trading rules apply, the Notes will be subject to the equity margin rules of the Exchange.[25] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including 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[26] 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, JPMorgan will deliver a prospectus in connection with its sales 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 and options that include additional monitoring on key pricing dates,[27] which the Exchange states 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(b) of the Act[28] in general, and furthers the objectives of Section 6(b)(5) of the Act[29] 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 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

The Exchange states that 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*. Please include File Number SR–Amex–2005–042 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 No. SR–Amex–2005–042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[20] The Exchange states that buy-write strategies, such as the BXD Index, generally outperformed stocks in 2000–2002 when the DJIA achieved negative returns, but tended to underperform stocks in the late 1990s when the DJIA rose by more than 15% per year.

[21] Like the expired call option, the new call option will expire approximately one month after the date of sale.

[22] For this purpose, the CBOE excludes from the calculation those call options identified as having been executed as part of a spread (*i.e.*, a position taken in two or more options in order to profit through changes in the relative prices of those options).

[23] *See* 17 CFR 240.10A–3.

[24] Amex Rule 411 requires, among other things, that every member or member organization use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

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

[26] *See* Amex Rule 411.

[27] Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and David Liu, Attorney, Division, Commission, on May 26, 2005.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

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 the filing also will be available for inspection and copying at the principal office 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 No. SR–Amex–2005–042 and should be submitted on or before July 11, 2005.

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

The Amex has asked the Commission to approve the proposal on an accelerated basis to accommodate the timetable for listing the Notes. After careful consideration, 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, with the requirements of Section 6(b)(5) of the Act.[30] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[31] Accordingly, the Commission finds that the listing and trading of the Notes based on the BXD Index is consistent with the Act and will promote just and equitable principles of trade, and foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to and facilitating transactions in securities consistent with Section 6(b)(5) of the Act.[32]

The requirements of Section 107A of the Company Guide were designed to address the concerns attendant to the trading of hybrid securities, like the Notes. For example, Section 107A of the Company Guide provides that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have a market value of at least $4 million.[33] In any event, financial information regarding JPMorgan, in addition to the information on the component stocks, which are reporting companies under the Act, and the Notes, which will be registered under Section 12 of the Act, will be available.

In approving the product, the Commission recognizes that the Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the DJIA and (2) ''writing'' (or selling) near-term DJIA call options (DJX), generally on the third Friday of each month. Given the large trading volume and capitalization of the compositions of the stocks underlying the DJIA, the Commission believes that the listing and trading of the Notes that are linked to the BXD Index should not unduly impact the market for the underlying securities compromising the DJIA or raise manipulative concerns.[34] Moreover, the issuers of the underlying securities comprising the DJIA are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets.

The Commission also believes that any concerns that a broker-dealer, such as JPMorgan, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the Notes issuance in relation to the net worth of JPMorgan.[35]

Finally, the Commission notes that the value of the Index will be calculated and disseminated by the CBOE once every trading day after the close of trading. However, the Commission notes that the value of the DJIA will be widely disseminated at least once every fifteen seconds throughout the trading day and that investors are able to obtain real-time call option pricing on the DJIA during the trading day. Further, the Indicative Value, which will be calculated by the Amex after the close of trading and after the CBOE calculates the BXD Index for use by investors the next trading day, is designed to provide investors with a daily reference value of the adjusted Index. The Commission notes that JPMorgan has agreed to arrange to have the BXD Index calculated and disseminated on a daily basis through a third party in the event that the CBOE discontinues calculating and disseminating the Index. In such event, the Exchange agrees to obtain Commission approval, pursuant to filing the appropriate Form 19b–4, prior to the substitution of the CBOE BXD Index. Further, the Commission notes that the Exchange has agreed to undertake to delist the Notes in the event that the CBOE ceases to calculate and disseminate the Index, and JPMorgan is unable to arrange to have the BXD Index calculated and widely disseminated through a third party.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[36] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as

[30] 30 15 U.S.C. 78f(b)(5).

[31] *See, e.g.*, Securities Exchange Act Release Nos. 51634 (Apr. 29, 2005), 70 FR 24138 (May 6, 2005) (approving the listing and trading of notes linked to the performance of the CBOE S&P 500 BuyWrite Index(sm)) (File No. SR–Amex–2005–036); 51426 (Mar. 23, 2005), 70 FR 16315 (Mar. 30, 2005) (approving the listing and trading of notes linked to the performance of the CBOE S&P 500 BuyWrite Index(sm)) (File No. SR–Amex–2005–022); 50719 (Nov. 22, 2004), 69 FR 69644 (Nov. 30, 2004) (approving the listing and trading of notes linked to the performance of the CBOE S&P 500 BuyWrite Index(sm)) (File No. SR–Amex–2004–55).

[32] 15 U.S.C. 78f(b)(5). In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[33] *See* Section 107A(c) of the Company Guide.

[34] The issuer, JPMorgan, disclosed in the prospectus and prospectus supplement that the hedging activities of it and its affiliates, including taking positions in the stocks underlying the Index and selling call options on the Index, which could adversely affect the market value of the Notes from time to time and the redemption amount holders of the Notes would receive on the Notes. Such hedging activity must, of course, be conducted in accordance with applicable regulatory requirements.

[35] *See* Securities Exchange Act Release Nos. 44913 (Oct. 9, 2001), 66 FR 52469 (Oct. 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR-NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (Sept. 27, 1996), 61 FR 52480 (Oct. 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[36] *See supra* notes 12 (citing previous approvals of securities with structures similar to that of the proposed Notes); and 14 (citing previous approvals of securities linked to the performance of the DJIA as well as options on the DJIA).

described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[37] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (File No. SR–Amex–2005–042) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3184 Filed 6–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51830; File No. SR–CBOE–2005–26]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Terms of Index Option Contracts Listed on the Exchange

June 13, 2005.

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 March 16, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 prepared by the Exchange. On June 9, 2005, CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change, as amended.

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

The Exchange proposes to amend its rules relating to the terms of index option contracts listed on the Exchange. The text of the proposed rule change is below. Proposed new language is in italics; deletions are in brackets.

* * * * *

CHAPTER XXIV

Index Options

Rule 24.1—Rule 24.8 No Change

* * * * *

Rule 24.9—Terms of Index Option Contracts

Rule 24.9. (a) General.

(1)–(3) No Change.

(4) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these rules and the rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from [first reported sale] *the opening* [(opening)] prices of the underlying securities on such day, *as determined by the market for such security selected by the Reporting Authority pursuant to Interpretation and Policy .12 to Rule 24.9*, except that in the event that the primary market for an underlying security does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on that day, or in the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 24.7(e).

The following A.M.-settled index options are approved for trading on the Exchange:

(i)–(lxxiv) No Change.

* * * * *

(5) Other Methods of Determining Exercise Settlement Value. Exercise settlement values for the following index options are determined as specified in this paragraph:

(i) No Change.

(ii) [Nasdaq 100 Stock Index. The current index value at expiration shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration. The current index value for such purposes shall be calculated by the Nasdaq Stock Market, Inc. (''Nasdaq'') and reported to the CBOE using the volume weighted prices (''VWPs'') of the securities underlying the Nasdaq-100 Index, which VWPs shall be calculated according to the then current volume-weighted averaging methodology developed by Nasdaq.

(iii)]CBOE Volatility Indexes and CBOE Increased-Value Volatility Indexes. The current index value at expiration shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration. The current index value for such purposes shall be calculated by the Chicago Board Options Exchange as a Special Opening Quotation (SOQ) of each respective Volatility or Increased-Value Volatility Index using the sequence of opening prices of the options that comprise each Index. The opening price for any series in which there is no trade shall be the average of that option's bid price and ask price as determined at the opening of trading.

(b)–(c) No Change.

* * * *Interpretations and Policies:*

.01–.12 No Change.

* * * * *

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

In its filing with the Commission, CBOE 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 CBOE 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 clarify CBOE rules relating to the determination of opening prices for securities that underlie certain A.M.-settled index options traded on the Exchange and to clarify CBOE rules relating to the determination of the exercise settlement value for certain

---

[37] 37 15 U.S.C. 78s(b)(2).

[38] 38 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4, dated June 9, 2005 (''Amendment No. 1). Amendment No. 1 replaced the original rule filing in its entirety. In Amendment No. 1, CBOE made certain clarifications to the proposed rule text by referencing Interpretation and Policy .12 to Rule 24.9 (determination of pricing sources used in the calculation of an index) and further clarified the rationale for pursuing this rule change.