

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52130]

### Self-Regulatory Organizations; Declaration of Effectiveness of American Stock Exchange LLC Plan for the Implementation of Parts II and IIA of Form X-17A-5 Financial and Operational Combined Uniform Single Report ("FOCUS Report") and Schedule I Thereunder as Amended

July 27, 2005.

On September 17, 2004,<sup>1</sup> the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") an amended FOCUS Filing Plan ("Amended Plan") pursuant to Rule 17a-5(a)(4)<sup>2</sup> under the Securities Exchange Act of 1934 ("Act").<sup>3</sup> The Amended Plan<sup>4</sup> supersedes and replaces the Exchange's current FOCUS Filing Plan improving the efficiency of filing the FOCUS reports and the delivery to the Commission.<sup>5</sup>

The Amended Plan supersedes all such plans previously submitted by the Exchange, and sets forth (i) the FOCUS Report filing requirements applicable to Exchange sole members and member organizations and to Exchange members and member organizations designated to the Exchange pursuant to Rule 17d-1 under the Act for examination for compliance with applicable financial responsibility rules; (ii) the provisions and procedures relating to the maintenance of records containing the information required to be filed with the Exchange; and (iii) the provisions and procedures relating to transmitting this information to the Commission.

The Exchange believes that the Amended Plan complies with the requirements of Rule 17a-5(a)(4). Among its other features, the Amended

Plan eliminates the FOCUS Part I filing requirement. This standardizes the Exchange's requirements with those of other self-regulatory organizations while also reducing the filing burden on Amex members. In addition, the Amended Plan covers electronic filing of FOCUS Reports.<sup>6</sup>

The Commission has reviewed the Amended Plan and, having due regard for the fulfillment of the Commission's duties and responsibilities under the provisions of the Act, declares the Amended Plan to be effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jill M. Peterson,**  
Assistant Secretary.

### Exhibit A<sup>8</sup>—American Stock Exchange LLC Plan for the Implementation of Parts II and IIA of Form X-17A-5 Financial and Operational Combined Uniform Single Report ("FOCUS Report") and Schedule I Thereunder as Amended

1. The American Stock Exchange LLC (the "Exchange") hereby files pursuant to Rule 17a-5(a)(4) under the Securities Exchange Act of 1934 (the "Act") a plan ("Plan") implementing Parts II and IIA of Securities and Exchange Commission ("Commission") Form X-17A-5. This Plan, which supersedes all such plans previously submitted by the Exchange, sets forth (i) the FOCUS Report (Form X-17A-5) filing requirements (the "Requirements") applicable to Exchange sole members and member organizations and to Exchange members and member organizations designated to the Exchange pursuant to Rule 17d-1 under the Act for examination for compliance with applicable financial responsibility rules; (ii) the provisions and procedures relating to the maintenance of records containing the information (the "Information") required to be filed with the Exchange in accordance with the Requirements; and (iii) the provisions and procedures relating to the transmittal of the Information by the Exchange to the Commission.

<sup>6</sup> The Amex intends to continue the process that is currently in place, whereby the NASD generates and submits the FOCUS information data electronically to the Commission on behalf of the Amex.

<sup>7</sup> 17 CFR 200.30-3(a)(30).

<sup>8</sup> The Commission requested that the Exchange make a technical change to the Amended Plan language concerning the specific paragraph numbers referenced in paragraph 11. E-mail correspondence between William Curran, Regulatory Counsel, Exchange, and Sheila D. Swartz, Special Counsel, Division of Market Regulation, Commission (December 7, 2004).

2. Every member or member organization that clears transactions or carries customer accounts shall file with the Exchange a FOCUS Part II Report each month, on or before the 17th business day of the next month.

3. Every member or member organization that does not clear transactions nor carry customer accounts, except for such members or member organizations that are covered by paragraphs (b)(1) or (b)(2) of Rule 15c3-1 under the Act, shall file with the Exchange a FOCUS Part IIA Report each calendar quarter, on or before the 17th business day of the next month following the end of the calendar quarter.

4. Every member or member organization that does not file with the Exchange pursuant to paragraphs 2 or 3 of this Plan shall file FOCUS Part IIA (Short Form) each calendar quarter on or before the 17th business day of the next month following the end of the calendar quarter.

5. Whenever the Commission or the Exchange shall require, every member or member organization subject to the above reporting requirements shall file Part II or Part IIA of Form X-17A-5 and such other financial or operational information as the Commission or the Exchange shall specify in writing. Such filing shall be made on or before the 17th business day of each month or as otherwise specified by the Commission or the Exchange in writing.

6. Every member or member organization that is subject to the provisions of paragraph (d) of Rule 17a-5 providing for the annual filing of audited financial statements shall file an additional FOCUS Part II or Part IIA Report, as applicable, with the Exchange within seventeen (17) business days after the date selected for the annual audit whenever such date is other than a calendar quarter.

7. Upon written application by a member or member organization to the Exchange, the Exchange may extend the time for filing the information required by the above paragraphs. The Exchange will maintain a record of each request granted, in accordance with Rule 17a-1 under the Act.

8. For the quarter ending December 31st of each year, every member or member organization shall file with the Exchange Schedule I of Form X-17A-5 with the Exchange within 17 business days following the end of the calendar quarter. Such schedules shall be filed jointly with the member or member organization's normal quarterly filing of Part II, Part IIA or Part IIA (Short Form) of Form X-17A-5 for the same period ending date.

<sup>1</sup> See letter from Glen P. Barrentine, Senior Vice President and Chief Regulatory Officer, Amex, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation ("Division"), Commission, dated September 16, 2004. This filing superseded the original filing to amend the FOCUS plan filed by Amex on March 26, 2004, which was filed in response to comments from Commission staff. See letter from Glen P. Barrentine, Senior Vice President and Chief Regulatory Officer, Amex, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation ("Division"), Commission, dated March 25, 2004.

<sup>2</sup> 17 CFR 240.17a-5(a)(4).

<sup>3</sup> 15 U.S.C. 78a *et. seq.*

<sup>4</sup> Attached hereto as Exhibit A.

<sup>5</sup> Amex agreed to minor revisions by Commission Staff made to the first paragraph. E-mail correspondence between William Curran, Regulatory Counsel, Exchange, and E. David Hwa, Special Counsel, Division of Market Regulation, Commission (July 26, 2005).

9. Members and member organizations shall file Part II, Part IIA, or Part IIA (Short Form) electronically, in accordance with such instructions as the Exchange shall provide from time-to-time.

10. The information supplied the Exchange on Part II, Part IIA or Part IIA (Short Form) of Form X-17A-5 by members and member organizations participating in this Plan which are also members of one or more national securities exchanges or registered national securities association shall be furnished by the Exchange to such other exchange, exchanges or registered national securities association in a format and on a schedule which shall be mutually agreed upon.

11. The Information supplied the Exchange on reports filed on a quarterly basis by members or member organizations pursuant to paragraphs 2, 3, and 4 shall be furnished to the Commission on a quarterly basis on a date not later than 60 calendar days following the quarter-ending reporting date; and the Information supplied the Exchange on reports filed by members or member organizations pursuant to paragraph 8 of the Plan shall be furnished to the Commission on a quarterly basis on a date not later than 100 calendar days following the quarter-ending reporting date. The Exchange will deem confidential all Information supplied to the Exchange. Such Information shall be supplied to the Commission in such format as requested by the Commission from time-to-time.

12. From time-to-time, the Exchange may enter into agreements with another national securities exchange or registered national securities association for the purpose of providing or receiving data processing services related hereto. Without limitation, such services may include providing a means to file required reports, the maintenance of the information provided thereby, and the provision of such information to the Commission.

[FR Doc. E5-4273 Filed 8-8-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52197; File No. SR-Amex-2004-62]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto Relating To Listing and Trading of Shares of the xtraShares Trust

August 2, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 2, 2004, 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, II, and III below, which items have been prepared by the Exchange. On March 4, 2005, the Exchange amended its proposal.<sup>3</sup> On May 9, 2005, the Exchange filed an additional amendment.<sup>4</sup> The Exchange filed a third amendment on August 1, 2005.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Amex Rule 411 ("Duty to Know and Approve Customers") and Rule 1000A ("Index Fund Shares") and related Commentary .02 to accommodate the listing of Index Fund Shares that seek to provide investment results that exceed the performance of a securities index by a specified percentage or that seek to provide investment results that correspond to the inverse or opposite of the index's performance. The proposed rule change will accommodate listing on the Exchange of the following eight (8) funds of the xtraShares Trust (the

"Trust"): Ultra500 Fund; Ultra100 Fund; Ultra30 Fund; UltraMid-Cap 400 Fund; Short500 Fund; Short100 Fund; Short30 Fund; and ShortMid-Cap 400 Fund (the "Funds").

The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### Rule 411.

##### Duty To Know and Approve Customers

Rule 411. Every member or member organization shall use due diligence to learn the essential facts relative to every customer and to every order or account accepted. No member or member organization shall make any transaction for the account of or with a customer unless, prior to or promptly after the completion thereof, the member, a general partner, an officer or a trustee of the member organization shall specifically approve the opening of such account, provided, however, that in the case of a branch office the opening of an account for a customer may be approved by the manager of such branch office but the action of such branch office manager shall within a reasonable time be approved by a general partner or an officer of the member organization. The member, general partner, officer or trustee approving the opening of an account shall, prior to giving his approval, be personally informed as to the essential facts relative to the customer and to the nature of the proposed account and shall indicate his approval in writing on a document which will become part of the permanent records of his office organization.

#### Supervision of Accounts

Every member is required either personally or through a general partner, an officer or trustee of his organization to supervise diligently all accounts handled by an employee.

#### Commentary

.01-.04 No Change  
 .05 *Members, member organizations or registered employees thereof shall in recommending to any customer any transaction for the purchase, sale or exchange of an Index Fund Share listed pursuant to Rule 1000A(b)(2) that seeks to provide investment results that either exceed the performance of a specified foreign or domestic stock index by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified foreign or domestic index by a specified multiple, have reasonable grounds for believing*

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

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

<sup>3</sup> See Amendment No. 1, dated March 4, 2005 ("Amendment No. 1"). In Amendment No. 1, the Exchange modified the proposed rule text and accompanying description. Amendment No. 1 replaced Amex's original submission in its entirety.

<sup>4</sup> See Amendment No. 2, dated May 6, 2005 ("Amendment No. 2"). In Amendment No. 2, the Exchange clarified the portfolio investment methodology and made certain other clarifications to the description of the proposal.

<sup>5</sup> See Amendment No. 3, dated August 1, 2005 ("Amendment No. 3"). In Amendment No. 3, the Exchange provided additional details regarding the disclosure of the portfolio holdings of the Fund Shares and made certain other minor corrections to the rule text and proposal. Amendment No. 3 replaced Amex's earlier the submissions in their entirety.