SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53723; File No. SR–Amex–2005–105]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to the Listing and Trading of Principal Protected Notes Linked to the Metals-China Basket

April 25, 2006.

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 October 20, 2005, the American Stock Exchange LLC (the ''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 Amex. On March 23, 2006, Amex filed Amendment No. 1 to the proposed rule change.[3] On April 12, 2006, Amex filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to list and trade principal protected notes, the performance of which is linked to a basket comprised of an equal weighting of the FTSE/Xinhua China 25 Index (the ''China 25 Index'' or ''Index'') and the following four commodities: copper, lead, nickel, and zinc (the ''Metals-China Basket'' or ''Basket'').

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com,* the Amex' Office of the Secretary, 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, as amended, 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 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 the 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.[5] The Amex proposes to list for trading under section 107A of the Company Guide principal protected notes linked to the performance of the Metals-China Basket (the ''Notes'').[6]

Wachovia will issue the Notes under the name ''Asset Return Obligation Securities.'' The China 25 Index is determined, calculated and maintained solely by FXI while the commodity prices are determined by the cash settlement price of each respective commodity futures contract traded on the London Metals Exchange (the ''LME''). The Notes will provide for participation in the positive performance of the Metals-China Basket during their term while reducing the risk exposure to investors through principal protection.

The Notes will conform to the initial listing guidelines under section 107A[7] and continued listing guidelines under sections 1001–1003[8] of the Company Guide. The Notes are senior non-convertible debt securities of Wachovia. The principal amount of each Note is expected to be $1,000. The Notes are expected to have a term of at least one (1) but no more than ten (10) years. At a minimum, the Notes will entitle the owner at maturity to receive at least 100% of the principal investment amount. At maturity, the holder would receive the full principal investment amount of each Note plus the Basket Performance Amount. The Basket Performance Amount is the greater of zero and the product of $1,000 and the performance of the Basket as adjusted by the adjustment factor (the ''Adjustment Factor'').[9] Accordingly, if the performance of the Metals-China Basket is negative or does not appreciate by greater than 7.2341% as of the Valuation Date, a holder will nevertheless receive the principal investment amount of the Note at maturity. The Notes are not callable by the Issuer.

The payment that a holder or investor of a Note will be entitled to receive (the ''Maturity Payment Amount'') will depend on the performance of the Metals-China Basket during the term of the Note. The Metals-China Basket will not be managed and will remain static over the term of the Notes.[10] Performance of the Basket will be determined at the close of the market on

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 to the proposed rule change: (1) Clarifies certain specialist restrictions regarding potential conflicts of interests in the underlying commodities; and (2) specifies that the listing and trading principle protected notes will occur on the debt trading floor and be subject to the Exchange's debt trading rules.

[4] Amendment No. 2 to the proposed rule change states that the applicable composite basket will be calculated and disseminated once each trading day.

[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).

[6] Wachovia Corporation (''Wachovia'') and FTSE/Xinhua Index Limited (''FXI''), a joint venture between FTSE International Limited and Xinhua Financial Network, have entered into a non-exclusive license agreement providing for the use of the Xinhua Index by Wachovia and certain affiliates and subsidiaries in connection with certain securities including these Notes. FTSE/Xinhua Index Limited is not responsible and will not participate in the issuance and creation of the Notes.

[7] 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.

[8] 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.

[9] The Adjustment Factor is initially set at 100% and will be reduced by a rate of 2% per annum compounded daily on an actual 365 day count. On any calendar day, the Adjustment Factor is equal to $(100\% - (2\%/365))^n$. ''*n*'' is the number of calendar days from but excluding July 21, 2005 to and including the calendar day. The Adjustment Factor as of the Valuation Date will be 93.2341%.

[10] *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on April 24, 2006. Amex confirmed that the Metals-China Basket is not managed.

the fifth business day (the ''Valuation Date'') prior to maturity of the Notes. The Basket Starting Level will be 1,000 and the Basket Ending Level will be the closing level of the underlying basket on the Valuation Date, equal to the sum of the products of (i) the component multiplier of each basket component and (ii) the closing price or level of the respective basket component on the Valuation Date. The Basket Ending Level is then adjusted by the Adjustment Factor as of the Valuation Date. In the event that the Valuation Date occurs on a non-trading day or if a market disruption event [11] occurs on such date, the Valuation Date will be the next trading day on which no market disruption event occurs.

At maturity, a holder will receive a maturity payment amount per Note equal to $1,000 + Basket Performance Amount. If the Adjusted Basket Ending Level is less than or equal to the Basket Starting Level, the Basket Performance Amount will be zero and the Maturity Payment Amount will be $1,000.

The Basket Performance Amount per Note is equal to the greater of: (i) Zero; and (ii)

$$\$1,000 \text{ x} \left(\frac{\text{Adjusted Basket Ending Level - Basket Starting Level}}{\text{Basket Starting Level}} \right)$$

The Maturity Payment Amount per Note will never be less than the principal investment amount of $1,000.

Metals-China Basket

The Basket is an equally-weighted basket of four commodities (copper, lead, nickel, and zinc) and the China 25 Index. Each component of the Basket will initially represent 20% of the Basket. The Basket is not a recognized market index and was created solely for purpose of offering the Notes. The Metals-China Basket will not be managed and will remain static over the term of the Notes. The basket value will be calculated and disseminated once each trading day. The Exchange believes that this daily dissemination of an indicative basket amount is appropriate because the Notes are a bond traded on Amex's debt floor, the value of which is linked to the basket, and there will be no creation or redemption of shares as there would be with an exchange-traded fund (''ETF'').[12]

China 25 Index

The China 25 Index is designed to represent the performance of the largest companies in the mainland China equity market that are available to international investors. The Index consists of the 25 largest and most heavily traded Chinese companies.[13] The components of the Index are weighted based on the free-float adjusted total market value of their shares, so that securities with higher total market values generally have a higher representation in the Index. Components are screened for liquidity and weightings are capped to avoid over-concentration in any one stock. The China 25 Index commenced publication in March 2001. As of September 30, 2005, the top three holdings were China Mobile, PetroChina and BOC Hong Kong, with the top three industries being telecommunications, oil and gas, and banks.

As of September 30, 2005, the China 25 Index's components had a total market capitalization of approximately $414 billion and a float-adjusted market capitalization of approximately $55 billion.[14] The average total market capitalization was approximately $16.5 billion and the average float-adjusted market capitalization was approximately $22 billion. The ten largest constituents represented approximately 62% of the index weight. The 5 highest weighted stocks, which represented 41.7% of the index weight, had an average daily trading volume in excess of $79 million globally during the past six (6) months.

Component Selection Criteria. The China 25 Index is rule-based and is monitored by a governing committee. The China 25 Index Committee (the ''Index Committee'') is responsible for conducting quarterly reviews of components and for making changes in accordance with applicable procedures. The Index Committee is currently composed of 19 members, four of whom are currently affiliated with non-U.S. broker-dealers. FTSE has represented that the FTSE, FXI, and the Index Committee have adopted policies that prohibit the dissemination and use of confidential and proprietary information about the Index and have instituted procedures designed to prevent the improper dissemination or the use of such information.

Float-Adjusted Market Capitalization. When calculating a component's index weight, shares held by governments, corporations, strategic partners, or other control groups are excluded from the company's shares outstanding. Shares owned by other companies are also excluded, regardless of whether such

[11] A ''market disruption event'' is defined as the failure of the primary market or related markets to open for trading during regular trading hours or the occurrence or existence of any of the following events: (i) A trading disruption, if material, at any time during the one hour period that ends at the close of trading for a relevant exchange or related exchange; (ii) an exchange disruption, if material, at any time during the one hour period that ends at the close of trading for a relevant exchange or related exchange; or (iii) an early closure. A ''trading disruption'' generally means any suspension of, or limitation, imposed on trading by the relevant exchange or related exchange or otherwise, whether by reason of movements in price exceeding limits permitted by the relevant exchange or related exchange or otherwise: (i) Relating to securities that comprise 20% or more of the level of the Index; or (ii) in options contracts or futures contracts relating to the Index on any relevant related exchange. An ''exchange disruption'' means any event (other than a scheduled early closure) that disrupts or impairs the ability of market participants in general to: (i) Effect transactions in, or obtain market values on, any relevant exchange or related exchange in securities that comprise 20 percent or more of the level of the Index or; (ii) effect transactions in options contracts or futures contracts relating to the Index on any relevant related exchange. A ''related exchange'' is an exchange or quotation system on which futures or options contracts relating to the Index are traded. *See* footnote 19, *infra.*

[12] *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Raymond Lombardo, Special Counsel, Division of Market Regulation, Commission, on April 13, 2006.

[13] All classes of equity securities in issue are eligible for inclusion in the Index, subject to conforming with free-float and liquidity restrictions. H shares and Red Chip shares are eligible for inclusion in the Index. H shares are incorporated in China and listed and traded on the Hong Kong Stock Exchange. They are quoted and traded in Hong Kong and U.S. dollars. Like other securities trading on the Hong Kong Stock Exchange, there are no restrictions on who can trade H shares. Red Chip shares are incorporated in Hong Kong and trade on the Hong Kong Stock Exchange. They are quoted in Hong Kong dollars. Red Chip companies may be substantially owned directly or indirectly by the Chinese Government and have the majority of their business interested in mainland China. H shares and Red Chip shares trade on the Hong Kong Stock Exchange, typically on a T+2 basis, through a central book-entry system that the Exchange states effectively guarantees settlement of exchange trades by broker-dealers.

[14] Float-adjusted market capitalization includes shares available in the market for public investment and reflects free float adjustments to the Index in accordance with FTSE's free float rules. Additional information regarding FTSE's free float adjustment methodology is available on *http://www.ftse.com.*

companies are index components. Where a foreign investment limit exists at the sector or company level, the component's weight will reflect either the foreign investment limit or the percentage float, whichever is more restrictive. Component stocks are screened to ensure there is sufficient liquidity to be traded. Factors in determining liquidity include the availability of current and reliable price information and the level of trading volume relative to shares outstanding. Value traded and float turnover are also analyzed on a monthly basis to ensure ample liquidity. Fundamental analysis is not part of the selection criteria for inclusion or exclusion of stocks from the Index. The financial and operating conditions of a company are not analyzed.

Index Maintenance. The Index Committee is responsible for undertaking the review of the China 25 Index and for approving changes of components in accordance with the index rules and procedures. The FTSE Global Classification Committee is responsible for the industry classification of constituents of the Index within the FTSE Global Classification System. The FTSE Global Classification Committee may approve changes to the FTSE Global Classification System and Management Rules. FXI appoints the Chairman and Deputy Chairman of the Index Committee. The Chairman chairs meetings of the Committee and represents the Committee in outside meetings. Adjustments to reflect a major change in the amount or structure of a constituent company's issued capital (before the quarterly review) will be made before the start of the index calculation on the day on which the change takes effect. Adjustments to reflect less significant changes (before the quarterly review) will be implemented before the start of the index calculation on the day following the announcement of the change. All adjustments are made before the start of the index calculations on the day concerned, unless market conditions prevent this. A company will be inserted into the Index at the quarterly periodic review if it rises to 15th position or above when the eligible companies are ranked by full market value before the application of any investibility weightings. A company in the Index will be deleted at the quarterly periodic review if it falls to 36th position or below when the eligible companies are ranked by full market value before the application of any investibility weightings. Any deletion to the Index will simultaneously entail an addition to the Index to maintain 25 index constituents at all times.

The China 25 Index is reviewed quarterly for changes in free float. These reviews will coincide with the quarterly reviews undertaken of the Index as a whole. Implementation of any changes will be after the close of the index calculation on the third Friday in January, April, July, and October.

The quarterly review of the Index constituents takes place in January, April, July, and October. Any changes will be implemented on the next trading day following the third Friday of the same month of the review meeting. Details of the outcome of the review and the dates on which any changes are to be implemented will be published as soon as possible after the Index Committee meeting has concluded its review.

Index Dissemination. The Index is calculated in real time and published every minute during the index period (09:15–16:00 Local Hong Kong Time) or (17:15–24:00 U.S. PDT). It is available, by subscription, published every minute, directly from FTSE and from the following vendors: Reuters, Bloomberg, Telekurs, FTID, and LSE/Proquote. The end of day index value, based on last sale prices, is distributed at 16:15 (Local Hong Kong Time). This end of day index value is also made available to the Financial Times Asia edition and other major newspapers and will be available at the FTSE Index Services Web site: *http://www.ftse.com.* The Index is calculated using Hong Kong Stock Exchange trade prices and Reuter's realtime spot currency rates, as described below. A total return index value that takes into account reinvested dividends is published daily at the end of day. The Index is not calculated on days that are holidays in Hong Kong. The daily closing index value, historical values, constituents' weighting, constituents' market capitalization and daily percentage changes are publicly available from *http://www.ftsexinhua.com.* All corporate actions and rules relating to the management of the indices are also available from the Web site.

Exchange Rates and Pricing. FXI calculates the value of the Index using Reuters real-time foreign exchange spot rates and local stock exchange real-time, last sale security prices. The underlying Index is calculated in Hong Kong Dollars, using Hong Kong Stock Exchange trade prices. Non-Hong Kong Dollar denominated constituent prices are converted to Hong Kong Dollars in order to calculate the value of the underlying Index. Thus, the Reuter's foreign exchange rates and Hong Kong Stock Exchange prices received at the closing time of the underlying Index will be used to calculate the final underlying Index value each day.

The Commission has previously approved the listing of securities linked to the performance of the China 25 Index.[15]

Commodities: Copper, Lead, Nickel, and Zinc

Commodity prices are volatile and, although ultimately determined by the interaction of supply and demand, are subject to many other influences, including the psychology of the marketplace and speculative assessments of future world and economic events. Political climate, interest rates, treaties, balance of payments, exchange controls and other governmental interventions, as well as numerous other variables affect the commodity markets, and even with complete information it is impossible for any trader to reliably predict commodity prices.

Copper. The Exchange states that copper was the first mineral that man extracted from the earth and along with tin gave rise to the Bronze Age. As the ages and technology progressed, the uses for copper increased. With the increased demand, exploration for the metal was extended throughout the world, laying down the foundations for the industry as we know it today. Copper is an excellent conductor of electricity, as such one of its main industrial usage is for the production of cable, wire and electrical products for both the electrical and building industries. The construction industry also accounts for copper's second largest usage in such areas as pipes for plumbing, heating, and ventilating as well as building wire and sheet metal facings.

The price of copper is volatile with fluctuations expected to affect the value of the Notes. The closing price of copper is determined by reference to the official U.S. dollar cash settlement price per ton of the copper futures contract traded on the LME. The price of copper is primarily affected by the global demand for and supply of copper.

Demand for copper is significantly influenced by the level of global industrial economic activity. Industrial sectors which are particularly important

[15] *See, e.g.*, Securities Exchange Act Release Nos. 50505 (October 8, 2004), 69 FR 61280 (October 15, 2004) (approving the listing and trading of the iShares FTSE/Xinhua China 25 Index Fund) and 50800 (December 6, 2004), 69 FR 72228 (December 13, 2004) (approving the trading of the iShares FTSE/Xinhua China 25 Index Fund).

include the electrical and construction sectors. In recent years demand has been supported by strong consumption from newly industrializing countries, which continue to be in a copper-intensive period of economic growth as they develop their infrastructure (such as China). An additional, but highly volatile, component of demand is adjustments to inventory in response to changes in economic activity and/or pricing levels. Apart from the United States, Canada, and Australia, the majority of copper concentrate supply (the raw material) comes from outside the Organization for Economic Cooperation and Development countries. Chile is the largest producer of copper concentrate. In previous years, copper supply has been affected by strikes, financial problems, and terrorist activity. Output has fallen particularly sharply in the ''African Copperbelt'' and in Bougainville, Papua New Guinea.

The price of copper during the period January 2001 through September 2005, ranged from a high of $3,978 per ton in September 2005 to a low of $1,319 per ton in November 2001. As of September 30, 2005, the spot price as provided by that day's spot copper futures contract was $3,949 per ton.

Lead. Being very soft and pliable and highly resistant to corrosion, lead was ideal for use in plumbing as well as for the manufacture of pewter. In the early 20th century, the Exchange states that the automotive industry took off and new areas of consumption—batteries and petrol—created an enormous market. Storage batteries remain the main outlet but lead-free fuels have caused a decline in usage. Ironically, environmental issues have brought about new uses for the metal, particularly in the housing of power generation units to protect against electrical charges or dangerous radiation.

Changes in the price of lead are expected to affect the value of the Notes. The closing price of lead is determined by reference to the official U.S. dollar cash settlement price per ton of the lead futures contract traded on the LME. The price of lead is primarily affected by the global demand for and supply of lead. Demand for lead is significantly influenced by the level of global industrial economic activity. The storage battery market is extremely important given that the use of lead in the manufacture of batteries accounts for approximately two-thirds of worldwide lead demand. Lead is also used to house power generation units as it protects against electrical charges and dangerous radiation. Additional applications of lead include petrol additives, pigments, chemicals and crystal glass. The supply of lead is widely spread around the world. It is affected by current and previous price levels, which influences important decisions regarding new mines and smelters. A critical factor influencing supply is the environmental regulatory regimes of the countries in which lead is mined and processed. It is not possible to predict the aggregate effect of all or any combination of these factors.

The price of lead during the period January 2001 through September 2005 ranged from a high of $1,056 per ton in December 2004 to a low of $425 per ton in October 2002. As of September 30, 2005, the spot price as provided by that day's spot lead futures contract was $975 per ton.[16]

Nickel. In the mid 18th century, the Exchange states that primary nickel was first isolated as a separate metal. Prior to this, it was found in copper mines and thought to be an unsmeltable copper ore. Primary nickel can resist corrosion and maintains its physical and mechanical properties even when placed under extreme temperatures. When these properties were recognized, the development of primary nickel began. It was found that by combining primary nickel with steel, even in small quantities, the durability and strength of the steel increased significantly, as did its resistance to corrosion. This partnership has remained and the production of stainless steel is now the single largest consumer of primary nickel today. This highly useful metal is also used in the production of many different metal alloys for specialized use.

Changes in the price of nickel are expected to affect the value of the Notes. The closing price of nickel is determined by reference to the official U.S. dollar cash settlement price per ton of the nickel futures contract traded on the LME. The price of nickel is primarily affected by the global demand for and supply of nickel. Demand for nickel is significantly influenced by the level of global industrial economic activity. The stainless steel industrial sector is particularly important given that the use of nickel in the manufacture of stainless steel accounts for approximately two-thirds of worldwide nickel demand. An additional, but highly volatile, component of demand is adjustments to inventory in response to changes in economic activity and/or pricing levels. Nickel supply is dominated by Russia, the world's largest producer by far. Australia and Canada are also large producers. The supply of nickel is also affected by current and previous price levels, which will influence investment decisions in new mines and smelters. It is not possible to predict the aggregate effect of all or any combination of these factors.

The price of nickel during the period January 2001 through September 2005 ranged from a high of $17,770 per ton in January 2004 to a low of $4,420 per ton in October 2001. As of September 30, 2005, the spot price per ton for nickel as provided by that day's spot nickel futures contract was $13,600 per ton.[17]

Zinc. Zinc is commonly mined as a co-product with standard lead, and both metals have growing core markets for their consumption. For zinc, the main market is galvanizing, which accounts for almost half its modern-day demand. Zinc's electropositive nature enables metals to be readily galvanized, which gives added protection against corrosion to building structures, vehicles, machinery, and household equipment.

Changes in the price of zinc are expected to affect the value of the Notes. The closing price of zinc is determined by reference to the official U.S. dollar cash settlement price per ton of the zinc futures contract traded on the LME. The price of zinc is primarily affected by the global demand for and supply of zinc. Demand for zinc is significantly influenced by the level of global industrial economic activity. The galvanized steel industrial sector is particularly important given that the use of zinc in the manufacture of galvanized steel accounts for approximately 50% of world-wide zinc demand. The galvanized steel sector is in turn heavily dependent on the automobile and construction sectors. A relatively widespread increase in the demand for zinc by the galvanized steel sector, particularly in China and the United States, has been the primary cause of the recent rise in zinc prices. An additional, but highly volatile, component of demand is adjustments to inventory in response to changes in economic activity and/or pricing levels. The supply of zinc concentrate (the raw material) is dominated by China, Australia, North America, and Latin America. The supply of zinc is also affected by current and previous price levels, which will influence investment

[16] *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on April 24, 2006.

[17] *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on April 24, 2006. Amex confirmed that the spot price for nickel was calculated per ton.

decisions in new mines and smelters. It is not possible to predict the aggregate effect of all or any combination of these factors.

The price of zinc during the period January 2001 through September 2005 ranged from a high of $1,439 per ton in September 2005 to a low of $725.5 per ton in August 2002. As of September 30, 2005, the spot price per ton for zinc as provided by that day's spot zinc futures contract was $1,411 per ton.[18]

The LME

The LME was established in 1877. The Exchange states that the LME is the principal metals exchange in the world on which contracts for the future delivery of copper, lead, zinc, and nickel are traded. In contrast to U.S. futures exchanges, the LME operates as a principals' market for the trading of forward contracts and is therefore more closely analogous to over-the-counter physical commodity markets than futures markets in the U.S. As a result, members of the LME trade with each other as principals and not as agents for customers, although such members may enter into offsetting ''back-to-back'' contracts with their customers. In addition, while futures exchanges permit trading to be conducted in contracts for monthly delivery in stated delivery months, historically, LME contracts were established for delivery on any day (referred to as a ''prompt date'') from one day to three months following the date of the contract (*i.e.*, the average amount of time it took a ship to sail from certain Commonwealth countries to London). Currently, LME contracts may be established for monthly delivery up to 63, 27, and 15 months forward (depending on the commodity). Further, because it is a principals' forward market, there are no price limits applicable to LME contracts, and therefore, prices may decline without limitation over a period of time. Trading is conducted on the basis of warrants that cover physical material held in listed warehouses.

The LME is not a cash cleared market. Both inter-office and floor trading are cleared and guaranteed by a system run by the London Clearing House, whose role is to act as a central counterparty to trades executed between clearing members. The LME is subject to regulation by the Securities and Investment Board (''SIB'') in the United Kingdom. The bulk of trading on the LME is transacted through inter-office dealing that allows the LME to operate as a 24-hour market. Trading on the floor takes place in two sessions daily, from 11:40 a.m. to 1:15 p.m. and from 3:10 p.m. to 4:35 p.m., London time. The two sessions are each broken down into two rings made up of five minutes' trading in each contract. After the second ring of the first session, the official prices for the day are announced. Contracts may be settled by offset or delivery and can be cleared in U.S. dollars, pounds sterling, Japanese yen, and euros. Copper has traded on the LME since its establishment. The copper contract was upgraded to high grade copper in November 1981 and again to today's Grade-A contract which began trading in June 1986. Nickel joined the exchange in April 1979. The LME share (by weight) of world terminal market trading is over 90% of all copper and virtually all lead, nickel, and zinc.

Commodity Market Regulation

The Exchange states that the LME provides the trading environment for the four commodities of copper, lead, nickel, and zinc (as well as several others) and is required to ensure that business in its market is conducted in an orderly manner for the protection of investors. The members of the LME are the institutions involved in trading with each other and with their customers. Regulation of the market is largely carried out by the LME subject to SIB oversight with the Financial Services Authority (the ''FSA'') responsible for regulating the financial soundness and conduct of LME members. Market participants are generally subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products.

Approved as a recognized investment exchange (''RIE'') and conforming with U.K. and other international regulatory requirements, the LME provides price and volume transparency and audit trails. The Exchange states that LME members operate in a strict regulatory environment policed by the FSA. To ensure compliance with its regulatory obligations, the LME has a compliance department under the supervision of its executive director of regulation and compliance. This department monitors the market and member positions in order to analyze developments and ensure that the LME is meeting its regulatory responsibilities.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the Metals-China Basket. The Notes are designed for investors who desire to participate or gain exposure to the Metals-China Basket, are willing to hold the investment to maturity, and who want to limit risk exposure by receiving principal protection of their investment amount.

Trading

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.[19] 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.[20] Second, even though the trading of the notes will occur on the debt trading floor subject to the debt trading rules of the Exchange, the Notes will be subject to the equity margin rules of the Exchange.[21] 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, 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, Wachovia will

[18] *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on April 24, 2006. Amex confirmed that the spot price for zinc was calculated per ton.

[19] Because the Notes are principal protected, the Exchange has not set out specific criteria for trading halts. However, if a ''market disruption event'' occurs that is of more than a temporary nature, the Exchange will cease trading the Notes. In the event a ''market disruption event'' occurs that is of more than a temporary nature, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances. *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on April 24, 2006.

[20] 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.

[21] *See* Amex Rule 462 and section 107B of the Company Guide.

deliver a prospectus in connection with the initial 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, 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.

Exchange surveillance procedures applicable to trading in the proposed Notes will be similar to those applicable to other index-linked notes listed and traded on the Exchange. The Exchange also has in place a comprehensive surveillance agreement with the Hong Kong Stock Exchange.[22] In addition, the Hong Kong Exchanges and Clearing Ltd. (''HKEx''), which is the clearing house for both the Hong Kong Stock Exchange and the Hong Kong Futures Exchange, is currently an affiliate member of the Intermarket Surveillance Group (''ISG''). In addition, the Exchange has negotiated an Information Sharing Agreement with the LME regarding the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of copper, lead, nickel, and zinc.

The listing and trading of the China-Metals Notes will be subject to Amex Rules 1203A and 1204A applicable to Commodity-Based Trust Shares. Amex Rule 1203A addresses potential conflicts of interest and provides that the prohibitions in the Amex Rule 175(c) apply to a specialist in the Notes so that the specialist or affiliated person may not act or function as a market maker in the underlying commodities, related futures contracts or option on commodity future, or any other related commodity derivative. An affiliated person of the specialist, consistent with the Amex Rule 193, may be afforded an exemption to act in a market making capacity, other than as a specialist in the Notes on another market center, in the underlying commodities, related futures or options or any other related commodity derivative. More specifically, Amex Rule 1203A provides that an approved person of the specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Notes, on another market center in the underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

Amex Rule 1204A requires that specialists provide the Exchange with all the necessary information relating to their trading in physical commodities and related futures contracts and options thereon or any other related commodities derivative. Amex Rule 1204A states that, in connection with trading the physical asset or commodities, futures or options on futures, or any other related derivatives, the use of material, non-public information received from any person associated with a member, member organization, or employee of such person regarding trading by such person or employee in the physical asset or commodities, futures or options on futures, or any other related derivatives is prohibited by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6 of the Act[23] in general, and furthers the objectives of section 6(b)(5)[24] 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, as amended, 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 90 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:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at *http://www.sec.gov/rules/sro.shtml* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2005–105 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Amex–2005–105. 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 at *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 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.

[22] *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on April 24, 2006.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78(f)(b)(5).

All submissions should refer to File No. SR–Amex–2005–105 and should be submitted on or before May 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Nancy M. Morris,

Secretary.

[FR Doc. E6–6642 Filed 5–2–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53727; File No. SR–CBOE–2006–37]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rule 8.4 Relating to Remote Market-Maker Appointments

April 26, 2006.

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 12, 2006, 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. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

CBOE proposes to amend CBOE Rule 8.4 relating to Remote Market-Maker appointments. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[25] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 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

The purpose of this rule change is to amend CBOE Rule 8.4 relating to Remote Market-Maker (''RMM'') appointments. CBOE Rule 8.4 provides that RMMs will have a Virtual Trading Crowd (''VTC'') Appointment, which confers the right to quote electronically in a certain number of products selected from various ''Tiers''. There are five Tiers (Tiers A, B, C, D, and E) that are structured according to trading volume statistics, and an ''A+'' Tier which consists of five option classes—options on Standard & Poor's Depositary Receipts, options on the Nasdaq-100 Index Tracking Stock, options on Diamonds, reduced value options on the Standard & Poor's 500 Stock Index, and options based on The Dow Jones Industrial Average. CBOE Rule 8.4(d) assigns ''appointment costs'' to Hybrid 2.0 Classes based on the Tier in which they are located, and an RMM may select for each Exchange membership it owns or leases any combination of products trading on the Hybrid 2.0 Platform whose aggregate ''appointment cost'' does not exceed 1.0.

CBOE proposes to make the following changes to the Tiers. CBOE proposes to remove from the A+ Tier reduced value options on the Standard & Poor's 500 Stock Index (XSP). Going forward, XSP options would fall within one of the remaining Tiers A through E depending on its trading volume. As a result of this change, the appointment cost for XSP options would be reduced from .25 to the appointment cost for whichever Tier (A through E) it is assigned.

CBOE also proposes to make two changes to the non-A+ Tiers. First, CBOE proposes to lower the appointment costs for Tiers B, C, D, and E as follows (the costs for Tiers A and A+ remain the same):

Tiers	Existing appointment cost	New appointment cost
B	.0667	.05
C	.05	.04
D	.04	.02
E	.033	.01

CBOE believes that the above new appointment costs for Tiers B, C, D, and E, are more appropriate for each of these four Tiers which would effectively lower an RMM's cost to access CBOE's marketplace and receive an appointment in multiple Hybrid 2.0 Classes. Moreover, these revised appointment costs are more competitive with the access costs at other options exchanges to hold an appointment as a market-maker in multiple option classes.

Second, CBOE proposes to amend the composition of the five non-A+ Tiers, in connection with CBOE's determination to increase the total number of option classes traded on the Hybrid 2.0 Platform from approximately 605 to 905. When CBOE launched its RMM program in March 2005, it initially designated as Hybrid 2.0 Classes the 602 most actively traded, multiply listed option classes. CBOE also advised its members that it may designate additional classes as Hybrid 2.0 Classes as conditions warrant. Increasing the total number of Hybrid 2.0 Classes to 905 would increase competition and liquidity in these option classes by allowing RMMs to have an appointment in them, and would provide RMMs with additional trading opportunities.

As noted above, Tiers A through E are structured according to trading volume statistics, with Tier A consisting of the 20% most actively-traded Hybrid 2.0 Classes over the preceding three calendar months, (excluding ''A+'' Tier products), Tier B consisting of the next 20% most actively-traded products, etc., through Tier E, which consists of the 20% least actively-traded Hybrid 2.0 Classes. Currently, there are approximately 605 option classes traded on the Hybrid 2.0 Platform. Tiers A through E thus each consist of approximately 120 Hybrid 2.0 Classes.

CBOE proposes to amend the composition of Tiers A through E as follows: