

occurring in the market for the company's stock.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, on June 26, 2006 through 11:59 p.m. EDT, on July 10, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54033; File No. SR-Amex-2005-105]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of 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

June 22, 2006.

I. Introduction

On October 20, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal 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 futures contracts on the following four commodities: Copper, lead, nickel, and zinc (the "Metals-China Basket" or "Basket"). On March 23, 2006, Amex filed Amendment No. 1 to the proposed rule change. On April 12, 2006, Amex filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the *Federal Register* on May 3, 2006.³ The Commission received no comments regarding the proposal.

This order approves the proposed rule change, as amended.

II. Description of the Proposal

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.⁴ 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").⁵ 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").⁶ 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 107A⁷

⁴ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

⁵ 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.

⁶ The LME is the primary futures exchange for copper, lead, nickel, and zinc. 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 bulk of trading on the LME is transacted through inter-office dealing that allows the LME to operate as a 24-hour market. Liquidity for the four commodities primarily exists during the two daily trading sessions on the floor of the LME, from 11:40 a.m. to 1:15 p.m. and from 3:10 p.m. to 4:35 p.m., London time, and declines substantially outside of these trading sessions. See Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, Raymond Lombardo, Special Counsel, Division of Market Regulation ("Division"), Commission, and Jan Woo, Attorney, Division, Commission, on June 9, 2006. For a more detailed discussion of the LME, see Notice, note 3, *supra*.

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

and continued listing guidelines under Sections 1001-1003⁸ of the Company Guide. The Notes are senior non-convertible debt securities of Wachovia. The principal amount of each Note will be \$1,000.⁹ The Notes will have a term of at least one (1) but no more than ten (10) years.¹⁰ 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").¹¹ Accordingly, if the performance of the Metals-China Basket is negative or does not appreciate by greater than 7.2341% as of the fifth business day (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

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 See Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, Raymond Lombardo, Special Counsel, Division, Commission, and Jan Woo, Attorney, Division, Commission, on June 9, 2006.

¹⁰ *Id.*

¹¹ 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%.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 53723 (April 25, 2006), 71 FR 26146 ("Notice").

over the term of the Notes.¹² Performance of the Basket will be determined at the close of the market on 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

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

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

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.

Metals-China Basket

The Basket is an equally-weighted basket of the daily settlement value of the futures contracts on 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

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 event¹³ occurs on such date, the Valuation Date will be the next trading day on which no market disruption event occurs.

offering the Notes. The Metals-China Basket will not be managed and will remain static over the term of the Notes. The Exchange will calculate an indicative basket amount once each trading day, as opposed to at least every 15 seconds during the trading day. The indicative basket value is the Exchange's estimate of the value of the Notes, less fees. 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").¹⁴

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 stocks of the 25 largest and most heavily traded Chinese companies.¹⁵ The components of the

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

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.¹⁶ 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.

¹² See Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on April 24, 2006. Amex confirmed that the Metals-China Basket is not managed.

¹³ 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 on futures 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% 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 note 19, *infra*. In cases of a "market disruption event," other than of a temporary nature, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act. Unless approved for continued trading, the Exchange would commence delisting proceedings. See Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, Raymond Lombardo, Special Counsel, Division, Commission, and Jan Woo, Attorney, Division, Commission, on June 9, 2006.

¹⁴ See Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Raymond Lombardo, Special Counsel, Division, Commission, on April 13, 2006.

¹⁵ 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 invested 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.

¹⁶ 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>.

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.¹⁷ 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, 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 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. The Exchange states that the 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. 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 prevented by market conditions. 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 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.

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.

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 real-time 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.¹⁸

*Commodities: Copper, Lead, Nickel, and Zinc*¹⁹

The China Metals Basket is an equally-weighted basket of four commodities (copper, lead, nickel and zinc) and the FTSE/Xinhua China 25 Index. Each component of the Basket will initially represent 20% of the Basket. The initial Basket starting level is 1,000 so that each component of the Basket will represent 200 (20% of the

¹⁷ A rule-based methodology has specific standards and is applied without discretion. Additional information regarding the methodology for the China 25 Index is available at http://www.ftse.com/xinhua/english/Indices/International_Investors/Index_Rules.jsp. See Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, Raymond Lombardo, Special Counsel, Division, Commission, and Jan Woo, Attorney, Division, Commission, on June 9, 2006.

¹⁸ 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).

¹⁹ See Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Raymond Lombardo, Special Counsel, Division, Commission, on June 9, 2006. For a more detailed description of copper, lead, nickel, and zinc, see Notice, note 3, *supra*.

Basket). Because the China Metals Basket will not be managed over the term of the Notes, the component weights of the Basket will change due to market fluctuations.

The China-Metals Basket will be calculated and disseminated once each trading day. The Basket will be calculated by the Exchange at the close of the trading day on the basis of the reported closing price for the most active futures contract of the four commodities and the closing level of the FTSE/Xinhua China 25 Index. The value of the Basket will equal the sum of the products of (i) the component weight or multiplier of each Basket component and (ii) the closing level of the Index or the official closing settlement price of the component commodity.

The closing prices and daily settlement prices for the futures contracts are publicly available on the Web sites of the LME at <http://www.lme.com>. In addition, various data vendors and news publications publish futures prices and data. The Exchange has represented that futures quotes and last sale information for the futures contracts on the commodities underlying the Index are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters.

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.²⁰ 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.²¹ 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.²² Third, the Exchange will, prior to trading the

²⁰ 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, Commission, on April 24, 2006.

²¹ 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.

²² See Amex Rule 462 and Section 107B of the Company Guide.

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 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.²³ 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

²³ See Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on April 24, 2006.

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.

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁴ In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6(b)(5) of the Act,²⁵ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove

²⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

A. Surveillance

Information sharing agreements with primary markets are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. The Commission believes that the Exchange's comprehensive surveillance sharing agreements with the LME and the Hong Kong Stock Exchange for the purpose of providing information in connection with trading of the Index components and commodity futures contracts on which the Notes are based create the basis for Amex to monitor for fraudulent and manipulative practices in the trading of the Notes. The Exchange represents that all of the other trading venues on which current Index components are traded are members of the ISG and the Exchange has access to all relevant trading information with respect to those contracts without any further action.

Moreover, Amex Rule 1204A requires Exchange specialists to provide the Exchange with information relating to their trading in physical commodities and related futures contracts and options thereon or any other related commodities derivative. The Commission believes that these rules provide Amex with the tools necessary to adequately surveil trading in the Notes.

B. Dissemination of Information

The Commission believes that sufficient venues exist for obtaining reliable information so that investors in the Notes can monitor the underlying Index relative to the indicative value of their Notes. There is a considerable amount of information about the Index and its components available through public Web sites and professional subscription services, including Reuters and Bloomberg. The Index is calculated in real time by FXI and published every minute during the index period (09:15–16:00 Local Hong Kong Time) or (17:15–24:00 U.S. PDT) and is available, by subscription, directly from FTSE and from the following vendors: Reuters, Bloomberg, Telekurs, FTID, and LSE/Proquote.

The closing prices and daily settlement prices for the futures contracts on copper, lead, nickel and zinc are publicly available on the Web sites of the LME at <http://www.lme.com>. In addition, various data vendors and news publications publish futures

prices and data. The Exchange has represented that futures quotes and last sale information for the commodities underlying the Index are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters.

The Exchange will calculate and disseminate an indicative basket value once each trading day. The Commission 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 but at maturity is at least 100% of the principal investment amount, and there will be no creation or redemption of shares as there would be with an ETF. The end of day index value, based on last sale prices, is distributed at 16:15 (Local Hong Kong Time) and is available through the Financial Times Asia edition and other major newspapers and on the FTSE Index Services Web site: <http://www.ftse.com>. In addition, the daily closing index value, historical values, constituents' weighting, constituents' market capitalization and daily percentage changes, as well as, all corporate actions and rules relating to the management of the indices, are publicly available from <http://www.ftsexinhua.com>. The commodity prices are determined by the cash settlement price of each respective commodity futures contract traded on the LME. Wachovia will determine the value of the Notes at maturity, which will consist of at least 100% of the principal investment amount, plus the Basket Performance Amount.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Notes are consistent with the Act. The Notes will trade as debt securities subject to Amex rules including, among others, rules governing equity margins, specialist responsibilities, account opening and customer suitability requirements. The Commission believes that the listing and delisting criteria for the Notes should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Notes. Finally, the Commission notes that the circular that the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Notes, including their prospectus delivery obligations.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2005-105), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Nancy M. Morris,
Secretary.

[FR Doc. E6-10244 Filed 6-28-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54035; File No. SR-BSE-2006-20]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 3 Thereto To Create a New Electronic Trading Facility, the Boston Equities Exchange ("BeX"), To Be Operated by BSX Group, LLC

June 22, 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 May 5, 2006, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the BSE. BSE filed Amendment No. 1 to the proposed rule change on June 1, 2006.³ BSE filed Amendment No. 3 to the proposed rule change on June 15, 2006.⁴ 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 is proposing to create a new electronic trading facility, the Boston Equities Exchange ("BeX"), to be operated by BSX Group, LLC ("BSX"). This rule filing sets forth the proposed governance structure of BSX and

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 superseded and replaced the original filing in its entirety. Amendment No. 2 was withdrawn by BSE on June 9, 2006.

⁴ Amendment No. 3 supersedes and replaces the original filing and Amendment No. 1 in their entirety.