

Dated: September 24, 1996.

June Gibbs Brown,

Inspector General, Department of Health and Human Services; and Vice Chair, PCIE.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-37783; File Nos. SR-Amex-96-31]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc., Relating to Listing Criteria for Equity Linked Notes

October 4, 1996.

I. Introduction

On August 14, 1996, the American Stock Exchange, Inc. ("Amex"), filed proposed rule changes with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to amend their respective issuer listing standards for Equity Linked Notes ("ELNs")³

Notice of the proposal was published for comment and appeared in the Federal Register on August 27, 1996.⁴ No comment letters were received on the proposed rule change. This order approves the Exchange proposal.

II. Description of the Proposal

ELNs are non-convertible debt securities of an issuer which are linked, in whole or in part, to the market performance of a common stock or a non-convertible preferred stock (the "underlying security"). The Exchange's listing standards currently permit the listing of ELNs if, among other things, (i) the issuer has minimum tangible net worth of \$150 million and (ii) the original issue price of the ELNs, combined with all the issuer's other publicly-traded ELNs, does not exceed 25 percent of the issuer's net worth (the "net worth standard").⁵

The Exchange proposes to add an alternative net worth standard to its ELNs issuer listing standards. Under the new test, an issuer with tangible net

worth of at least \$250 million would be able to issue ELNs without being subject to the limit that the ELNs be no more than 25 percent of the issuer's net worth. Issuers with tangible net worth of at least \$150 million, but less than \$250 million, will still be subject to the 25 percent limit.⁶ This will provide the largest issuers with increased flexibility in their financing and capitalization planning.

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.⁷ Specifically, the Commission finds that the Exchange's proposal strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In particular, the Commission believes that the trading of ELNs permits investors to more closely approximate their desired investment objectives through, for example, shifting some of the opportunity for upside gain in return for additional income.

ELNs, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that a holder of an ELN may not be able to receive full cash settlement at maturity. The Commission believes that the Exchange's proposed alternate ELNs issuer listing standard requiring issuers to have at least \$250 million tangible net worth (without the issuance being limited to 25% of the issuer's net worth), in addition to the existing size and earnings requirements,⁸ reasonably addresses this additional credit risk, and to some extent minimize this risk. The Commission also notes that the revised standard is identical to that approved for other issuer-based products, including index, currency, and currency index warrants.⁹

*It is therefore ordered, pursuant to Section 19(b)(2) of the Act*¹⁰ that the proposed rule change (File No. SR-Amex-96-31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.
 See Amex Company Guide Section 101(A) and the Securities Exchange Act Release No. 36168 (August 29, 1995), 61 FR 46637 (September 7, 1996) (SR-Amex-94-38).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-37784; File Nos. SR-NYSE-96-25]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the New York Stock Exchange, Inc., Relating to Listing Criteria for Equity Linked Debt Securities

October 4, 1996.

I. Introduction

On August 16, 1996, the New York Stock Exchange, Inc. ("NYSE"), filed proposed rule changes with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to amend their respective issuer listing standards for Equity Linked Debt Securities ("ELDS").³

Notice of the proposal was published for comment and appeared in the Federal Register on August 27, 1996.⁴ No comment letters were received on the proposed rule change. This order approves the Exchange proposal.

II. Description of the Proposal

ELDS are non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock (the "underlying security"). The Exchange's listing standards currently permit the listing of ELDS if, among other things, (i) the issuer has minimum tangible net worth of \$150 million and (ii) the original issue price of the ELDS, combined with all the issuer's other publicly-traded ELDS, does not exceed 25 percent of the issuer's net worth (the "net worth standard").⁵

The Exchange proposes to add an alternative net worth standard to its ELDS issuer listing standards. Under the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ ELDS are non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.

⁴ See Securities Exchange Act Release No. 37585 (August 20, 1996), 61 FR 44116.

⁵ See NYSE Listed Company Manual Para. 703.21.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ ELNs are non-convertible debt securities of an issuer which are linked, in whole or in part, to the market performance of a common stock or a non-convertible preferred stock.

⁴ See Securities Exchange Act Release No. 37587 (August 20, 1996), 61 FR 44097.

⁵ See Amex Company Guide Section 107B.