

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47139; File No. SR-Amex-2002-109]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to Dow Jones & Company Liability Disclaimer

January 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 18, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 Amex proposes to amend Rule 902 to include the Dow Jones & Company, Inc. in the disclaimer provisions of the Rule. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

#### 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 III 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

Dow Jones & Company, Inc. compiles, calculates and maintains stock indexes in which it owns "intellectual property" rights such as trademark, copyright, and

proprietary rights. As a condition of a license agreement between the Exchange and Dow Jones & Company, Inc. in connection with the trading of options on certain exchange traded funds, the Amex is required to adopt, and maintain as part of its rules, a disclaimer, limiting the liability of Dow Jones with respect to the dissemination and calculation of its indexes. During the last couple of years, Dow Jones has entered into license agreements with State Street Bank and Trust Company ("SSGA"), and Barclays Global Investors, NA ("BGI") to use its intellectual property rights in various indexes in connection with the issuance, marketing and promotion of certain exchange-traded open-end funds (the "SSGA ETFs" and the "BGI ETFs"). The Exchange is now entering into a license agreement with Dow Jones to use the same indexes to trade Options Clearing Corporation issued options on the SSGA ETFs and the BGI ETFs.

The proposed disclaimer is similar in content to disclaimers currently in place for Standard & Poors Corporation and Morgan Stanley & Co., Incorporated in connection with other ETFs and index options. The proposed disclaimer states that Dow Jones does not guarantee the accuracy or completeness of its indexes, makes no express or implied warranties with respect to the indexes and shall have no liability for damages, claims, losses or expenses caused by errors in calculating or disseminating the indexes.

###### 2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act<sup>3</sup> in general and furthers the objectives of section 6(b)(5)<sup>4</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2002-109 and should be submitted by February 5, 2003.

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

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<sup>5</sup> and, in particular, the requirements of section 6 of the Act.<sup>6</sup> The proposed liability disclaimer provision is similar to other liability disclaimers, including one related to portfolio depository receipts in Amex Rule 1004 and others related to index options in Amex Rule 902C.

The Amex has requested that the proposed rule change be given accelerated approval pursuant to the section 19(b)(2) of the Act.<sup>7</sup> Since the proposed liability disclaimer is substantially similar to other liability disclaimers, the proposed disclaimer

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78s.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>3</sup> 15 U.S.C. 78s(b).

<sup>4</sup> 15 U.S.C. 78s(b)(5).