

thereof recommending a transaction in the ABS Securities: (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.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the ABS Securities. Specifically, the Amex will rely on its existing surveillance procedures governing debt, 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.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act<sup>19</sup> in general and furthers the objectives of Section 6(b)(5)<sup>20</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

### *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*

The Exchange did not receive any written comments on 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 the File No. SR-Amex-2003-25 and should be submitted by May 22, 2003.

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

After careful consideration, 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, with the requirements of Section 6(b)(5) of the Act.<sup>21</sup> The Commission finds that this proposal is similar to several approved equity-linked instruments currently listed and traded on the Amex,<sup>22</sup> as well as to asset-backed securities listed and traded on the NYSE.<sup>23</sup> Accordingly, the Commission finds that the listing and trading of the ABS Securities is

consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.<sup>24</sup>

As described more fully above, the ABS securities are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds together with the addition of either Treasury Securities or GSE Securities, subject to certain distribution of interest obligations of the Trust. The ABS Securities are not leveraged instruments. The ABS Securities are debt instruments whose price will still be derived and based upon the value of the Underlying Securities. The Exchange represents that the value of the Underlying Securities will be determined by one or more market makers, in accordance with Exchange rules and generally accepted principles of accounting regarding the valuation of securities. Investors are guaranteed at least the principal amount that they paid for the Underlying Securities. In addition, each of the Underlying Corporate Bonds will pay interest on a semi-annual basis while the ABS securities themselves will pay interest on a monthly or quarterly basis, pursuant to the Interest Distribution Agreement. Neither the Treasury Securities or GSE Securities will make periodic payments of interest.<sup>25</sup> In addition, the ABS securities will mature on the latest maturity date of the Underlying Securities.<sup>26</sup> However, due to the pass-through nature of the ABS Securities, the level of risk involved in the purchase or sale of the ABS Securities is similar to the risk involved in the purchase or sale of traditional common stock. The Commission notes that asset-backed securities that repackage a single underlying debt instrument are currently listed and

<sup>21</sup> *Id.*

<sup>22</sup> See Securities Exchange Act Release Nos. 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR-Amex-2001-91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index) (File No. SR-Amex-2001-40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index) (File No. SR-Amex-2001-39); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR-Amex-2001-28); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (accelerated approval order for the listing and trading of notes linked to a basket of no more than twenty equity securities) (File No. SR-Amex-99-42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow based index with a non-principal protected put option) (File No. SR-Amex-99-15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR-Amex-97-47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities ("MITTS")) (File No. SR-Amex-96-28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR-Amex-93-40); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR-Amex-92-42).

<sup>23</sup> See, e.g., *supra* note 13.

<sup>24</sup> 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>25</sup> See *supra* n. 10.

<sup>26</sup> The Commission notes, however, that the Exchange has represented that the Underlying Securities may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. See Prospectus for a schedule of the distribution of interest and of the principal upon maturity of each Underlying Security and for a description of payment default and acceleration of the maturity date. Telephone Conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Geoffrey Pemble, Special Counsel, Division, Commission, on April 23, 2003.

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).