

scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, November 5, 2003 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Opinions.

For further information, please contact the Office of the Secretary at (202) 942-7070.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: October 28, 2003.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48708; File No. SR-Amex-2003-91]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Notes Based on the Morgan Stanley Technology Index

October 28, 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 October 22, 2003, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which the Amex has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Amex proposes to list and trade, under Section 107A of the Amex Company Guide, senior non-convertible debt securities ("Notes") of Morgan Stanley, the return on which is based on the performance of the Morgan Stanley Technology Index.

#### 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 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 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, the Amex 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.<sup>3</sup> The Amex proposes to list for trading Notes based on the Morgan Stanley Technology Index.<sup>4</sup> The Technology Index will be determined, calculated and maintained solely by the Amex.<sup>5</sup> The Notes will conform to the

<sup>3</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

<sup>4</sup> The Morgan Stanley Technology Index is an equal-dollar weighted index consisting of thirty-five (35) securities designed to measure the performance of a cross-section of highly capitalized U.S. companies that are active in nine technology subsectors: (i) computer services; (ii) design software; (iii) server software; (iv) PC software and new media; (v) networking and telecommunications equipment; (vi) server hardware; (vii) server hardware; (viii) PC hardware and peripherals; and (ix) specialized systems and semi-conductors.

<sup>5</sup> As further described in the prospectus, the Amex is solely responsible for calculating and maintaining the Technology Index in consultation with Morgan Stanley & Co., Inc. These duties, among others, include changes to the Index due to annual reconstitutions and adjustments. The Amex has re-submitted a letter dated August 29, 1995 from Morgan Stanley to the Commission that describes the role of the Amex with respect to the calculation and maintenance of the Technology Index, and has further represented that the same methodology will apply with respect to the Notes that are the subject of this proposed rule change. See Memorandum from Jeffrey P. Burns, Associate

listing guidelines under Section 107A of the Amex Company Guide<sup>6</sup> and the continued listing guidelines under Sections 1001-1003 of the Amex Company Guide.<sup>7</sup>

The Notes are senior non-convertible debt securities of Morgan Stanley that will have a term of not less than one year nor more than ten years. The "Initial Index Value" is the value of the Technology Index on the date the Notes are priced for the initial sale to the public. At maturity the holder of Notes will be entitled to receive an amount based upon an "Average Index Value," which will be determined by calculating the arithmetic average of the "Closing Index Value" on each of three (3) trading days on which no market disruption event occurs, beginning on or after December 23, 2004. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. The Notes are not callable by the issuer.

The "Redemption Amount," which is the payment that a holder or investor will receive at maturity of the Note, will be based on whether the Average Index Value is greater or less than the Initial Index Value. If the Average Index Value is greater than the Initial Index Value, a holder of the Notes will receive a Redemption Amount in cash equal to \$10 plus the "Leveraged Upside Payment." The Leveraged Upside Payment is equal to \$10 multiplied by

General Counsel, Amex, to Patrick M. Joyce, Special Counsel, Commission, dated October 21, 2003.

<sup>6</sup> The initial listing standards for the Notes require: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least \$4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have 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 Amex Company Guide, the Amex 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.

<sup>7</sup> The Amex's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Amex Company Guide. Section 1002(b) of the Amex Company Guide states that the Amex will consider removing from listing any security where, in the opinion of the Amex, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Amex inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Amex will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Amex 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.

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

<sup>2</sup> 17 CFR 240. 19b-4.