

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>20</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 Treasury 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 the Exchange rules. Investors are guaranteed, subject to certain conditions, at least the principal amount that they paid for the Underlying Securities.<sup>21</sup> In addition, each of the Underlying Corporate Bonds will pay interest on a semi-annual basis and thus the ABS Securities themselves will also pay interest on a semi-annual basis. To alleviate cash flow timing issues, the Trust will deposit any interest payments it receives between distribution dates in a non-interest bearing account to be held until such funds are distributed on the subsequent semi-annual distribution date. The Treasury Securities will not make periodic payments of interest.<sup>22</sup> In addition, the ABS Securities will mature on the latest maturity date of the Underlying Securities.<sup>23</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 the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the ABS Securities. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the

potential problems that could arise from the hybrid nature of the ABS Securities. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the ABS Securities.

The Commission notes that the ABS Securities are dependent upon the individual credit of the issuers of the Underlying Securities. To some extent this credit risk is minimized by the Exchange's listing standards in section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the ABS Securities. In addition, the Exchange's "Other Securities" listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.<sup>24</sup> The Commission notes that the Exchange has represented that the ABS Securities will be listed in \$25 denominations with its existing debt floor trading rules applying to the trading. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.<sup>25</sup>

Due to the pass-through and passive nature of the ABS Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. Thus, the ABS Securities will conform to the initial listing guidelines under section 107A and continued listing guidelines under sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the ABS Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the ABS Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Securities meet the Exchange's section 107A listing requirements (in the case of

Treasury securities, the Exchange will rely on the fact that the issuer is the U.S. government rather than the asset and stockholder tests found in section 107A), the Underlying Securities will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of "B" or equivalent from an NRSRO. Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of \$100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market vendors such as Bloomberg, L.P., or through Web sites such as <http://www.investinginbonds.com> and <http://publicdebt.treas.gov> for Treasury Securities.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other asset-backed instruments currently listed and traded on the Amex.<sup>26</sup> The Commission believes that the ABS Securities will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the ABS Securities promptly. Additionally, the ABS Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act<sup>27</sup> to approve the proposal on an accelerated basis.

## V. Conclusion

Is it therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-Amex-2003-98) is hereby approved on an accelerated basis.

<sup>20</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>21</sup> See *supra* note 8.

<sup>22</sup> See *supra* note 7.

<sup>23</sup> See *supra* note 8.

<sup>24</sup> See Company Guide section 107A.

<sup>25</sup> The ABS Securities will be registered under section 12 of the Act.

<sup>26</sup> See *supra* note 9.

<sup>27</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>28</sup> 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).