

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58467; File No. SR-NYSE-2008-77)

September 5, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Amend its Rule Governing Equity-Linked Debt Securities to Permit the Listing of Equity-Linked Debt Securities Linked to Baskets of up to Thirty Underlying Securities and to Provide for Greater Flexibility in Listing Criteria

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 26, 2008, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The Exchange proposes to amend Section 703.21 of the Exchange’s Listed Company Manual (the “Manual”) to permit the listing of Equity-Linked Debt Securities (“ELDS”) related to up to thirty (30) underlying stocks and to provide for greater flexibility in the listing criteria for ELDS. The text of the proposed rule change is available at NYSE, www.nyse.com, and the Commission’s Public Reference Room.

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 self-regulatory organization included statements

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 NYSE 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

The Exchange proposes to amend Section 703.21 of the Manual to permit the listing of ELDS related to up to thirty (30) underlying stocks and to provide for greater flexibility in the listing criteria for ELDS. The Exchange wishes to make this change in order to harmonize Section 703.21 with the comparable rules of the American Stock Exchange (the "Amex"),³ as well as the rules of NYSE Arca, Inc., which were recently conformed to the Amex rules.⁴

Number of Linked Securities

Currently, the Exchange defines ELDS as non-convertible debt of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock, non-convertible preferred stock, common units of a master limited partnership or any other common

³ Amex's initial listing standards for Equity-Linked Notes are set forth in Section 107A of the Amex Company Guide, which was approved by the Commission in March 1990, and Section 107B of the Amex Company Guide, which was approved by the Commission in May 1993. These sections have been amended several times. The filings that are relevant to the topics discussed in this filing follow. See Securities Exchange Act Release Nos. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR-Amex-89-29); 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (SR-Amex-92-42); 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (SR-Amex-93-46); 36990 (March 20, 1996), 61 FR 13545 (March 27, 1996) (SR-Amex-95-44); 37783 (October 4, 1996), 61 FR 53246 (October 10, 1996) (SR-Amex-96-31); 47055 (December 19, 2002), 67 FR 79669 (December 30, 2002) (SR-Amex-2002-110); 55733 (May 10, 2007), 72 FR 27602 (May 16, 2007) (SR-Amex-2007-34) (collectively, "Amex Releases").

⁴ See Securities Exchange Act Release No. 56924 (December 7, 2007), 72 FR 70918 (December 13, 2007) (SR-NYSEArca-2007-98) ("NYSE Arca Release").

equity security of a type classified for trading as stocks by the Exchange. The Exchange proposes to amend the definition to state that ELDS are defined as debt securities that are linked, in whole or in part, to the value of up to thirty (30) underlying stocks. This change conforms to NYSE Arca Equities Rule 5.1(b)(14), NYSE Arca Equities Rule 5.2(j)(2), and Section 107B of the Amex Company Guide.⁵ The Exchange proposes to expand the number of stocks that may be linked to ELDS in order to accommodate the varying types of ELDS products that are currently offered in the marketplace. The Exchange believes that expanding the number of stocks that may be linked to ELDS will also provide investors with enhanced investment flexibility. The Exchange also believes that there would be no investor protection concerns with expanding the number of stocks linked to ELDS because each linked stock is required to individually satisfy the applicable listing standards set forth in Section 703.21.

Equity-Linked Debt Security Listing Standards

Section 703.21(B) currently provides that an issue of ELDS must have a minimum public distribution of one million ELDS, a minimum of 400 holders, a minimum market value of \$4 million, and a minimum term of one year.

The Exchange proposes to add an exception to the minimum holders standard in Section 703.21(B) to provide that, if the ELDS is traded in \$1,000 denominations, there will be no minimum number of holders. The Exchanges also proposes to add an exception to the public distribution standard to provide that, if an issuance of ELDS is traded in \$1,000 denominations, there will be no minimum public distribution requirement. These changes correspond to NYSE Arca Equities Rule 5.2(j)(2)(B) and Section 107A(b) of the Amex Company Guide.⁶ The

⁵ See Amex Company Guide Section 107 and NYSE Arca Equities Rules 5.1(b)(14) and 5.2(j)(2).

⁶ See Amex Company Guide Section 107 and NYSE Arca Equities Rule 5.2(j)(2)(B).

Exchange notes that, without the exception to the one million ELDS minimum public distribution requirement, the Exchange would be unable to list ELDS in \$1,000 dollar denominations having a market value of less than \$1 billion. The Exchange believes that the proposed exception is a reasonable accommodation for those issuances in \$1,000 denominations.

In addition, the Exchange proposes to add an exception to the holders requirement in Section 703.21(B) to provide that, if the ELDS are redeemable at the option of the holders thereof on at least a weekly basis, there will be no minimum number of holders. This change also corresponds to NYSE Arca Equities Rule 5.2(j)(2)(B) and Section 107A(b) of the Amex Company Guide.⁷ The Exchange also proposes to clarify that the holders requirement applies to “public” holders only.

Linked Equity Listing Standards

Section 703.21(C) currently provides minimum standards applicable to the stocks underlying an ELDS and the issuers of such stocks. The rule currently provides that the ELDS must be issued by either: (a) a U.S. company, or (b) a non-U.S. company that meets certain additional standards. The Exchange proposes to amend the language in the rule to indicate that an issue of ELDS may be linked to more than one security and, therefore, more than one issuer of a security, in accordance with the amended definition of ELDS as set forth above. In addition, the Exchange proposes to amend the requirement that the issuer of any security underlying an ELDS must be a U.S. company (in order not to have to meet additional standards applicable to non-U.S. companies) to require that the issuer be a Securities Exchange Act of 1934 reporting company listed on a national securities exchange. This change corresponds to NYSE Arca

⁷ Id.

Equities Rule 5.2(j)(2)(C) and Section 107B(e) of the Amex Company Guide.⁸ The Exchange proposes this revision in order to encompass non-U.S. companies that have reporting requirements under the federal securities laws, which better addresses the Exchange’s concern regarding the public availability of financial information for the issuers of the underlying securities. The Exchange believes that such information serves to protect investors and the public interest.

In Sections 703.21(C) and (D), the Exchange also proposes certain minor changes in order to clarify certain language, including the language regarding common shares and American Depositary Shares (“ADSs”), generally conforming it to NYSE Arca Equities Rule 5.2(j)(2)(C) and (D) and Section 107B(e) of the Amex Company Guide.⁹ In Section 703.21(D), the Exchange also proposes to add the standard that, if any non-U.S. security and related securities have less than 20% of the worldwide trading volume occurring in the U.S. market during the six-month period preceding the date of listing, then the ELDS may not be linked to that non-U.S. security. This standard makes sense in the context of the current rule¹⁰ and corresponds to NYSE Arca Equities Rule 5.2(j)(2)(D) and Section 107B(f) of the Amex Company Guide.¹¹ The Exchange believes that this additional standard is appropriate in that it limits the listing of ELDS linked to non-U.S. securities to those that have a significant amount of U.S. market-trading

⁸ See Amex Company Guide Section 107(B)(e) and NYSE Arca Equities Rule 5.2(j)(2)(C) and (D).

⁹ Id.

¹⁰ The current rule provides that the issuance of ELDS relating to underlying non-U.S. securities cannot exceed certain percentage limits of the total outstanding shares of the underlying security. These percentage limits are tied to 20%, 50% and 70% of worldwide trading volume. Therefore, the rule as currently in effect, does not contemplate less than 20% worldwide trading volume.

¹¹ See Amex Company Guide Section 107(B)(f) and NYSE Arca Equities Rule 5.2(j)(2)(D).

volume, which provides reasonable assurance that the underlying non-U.S. securities are deliverable upon exercise of the ELDS.

The Exchange also proposes to amend the last paragraph of the rule to clarify that the Exchange, with the concurrence of the staff of the Division of Trading and Markets of the Securities and Exchange Commission, will evaluate the maximum percentage of ELDS that may be issued on a case-by-case basis when an issuer proposes to list (rather than “issue,” as the current rule states) ELDS that relate to more than the allowable percentages of the underlying securities specified in the rule. We also propose to delete a reference in the last paragraph of the rule that indicates that this decision would relate to the allowable percentage of “the underlying security,” as this reference is no longer appropriate if ELDS may be issued that relate to multiple underlying securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)¹² of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest in

¹² 15 U.S.C. 78(b).

¹³ 15 U.S.C. 78(b)(5).

that, while the proposed amendment adds additional flexibility to the rule, Section 703.21 as amended will continue to contain significant provisions for the protection of investors.

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 that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

Written comments were neither solicited nor received.

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 Exchange Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2008-77 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2008-77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (www.sec.gov/rules/sro.shtml). 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2008-77 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,¹⁵ which requires that the rules of an exchange be designed, among other things, 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 regulating, clearing, settling, processing

¹⁴ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the Federal Register. The proposal seeks to conform the Exchange's rules for ELDS to the rules of Amex and NYSE Arca that have previously been approved by the Commission.¹⁶ Therefore, the Commission does not believe that the Exchange's proposal raises any novel regulatory issues. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for ELDS.

¹⁶ See Amex Rule 107 and Amex Releases, note 3, supra. See also NYSE Arca Equities Rules 5.1(b)(14) and 5.2(j)(2) and NYSE Arca Release, note 4, supra.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,¹⁷ that the proposed rule change (SR-NYSE-2008-77) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon
Acting Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).