



Claire P. McGrath  
Senior Vice President and  
General Counsel

American Stock Exchange  
86 Trinity Place  
New York, NY 10006-1872  
T 212 306 1885  
F 212 306 5402  
claire.mcgrath@amex.com

December 8, 2006

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-9303

Re: American Stock Exchange LLC Comments to NYSE File No. SR-NYSE-2006-69 (Proposal to list and trade Notes Linked to the Performance of the MSCI India Equities Index)

Dear Ms. Morris:

The American Stock Exchange LLC (the "Amex" or the "Exchange") appreciates this opportunity to comment on New York Stock Exchange ("NYSE") File No. SR-NYSE-2006-69 (the "Filing") relating to the listing and trading of iPath Exchange-Traded Notes (the "Notes") of Barclays Bank PLC (the "Issuer") linked to the performance of the MSCI India Equities Index (the "India Index" or "Index").<sup>1</sup>

The Amex applauds the efforts of the Securities and Exchange Commission (the "Commission" or "SEC") and the Division of Market Regulation (the "Division") by recognizing the need to re-evaluate certain regulatory requirements that may have reduced in significance given the changing nature of the global marketplace. In particular, we note that the Commission noticed for public comment in the *Federal Register*, the Filing even though (to the best of our knowledge) the NYSE has not entered into a comprehensive surveillance sharing agreement ("CSSA") with the applicable underlying Indian marketplaces.<sup>2</sup> This would be a significant departure from existing rules and precedence to permit "derivative products" to be listed and traded without a CSSA. For example, Section 107D(g)(viii) of the Amex *Company Guide*, relating to index-linked securities, requires that foreign country securities or American Depositary Receipts (ADRs) that are not subject to CSSAs do not in the aggregate represent more than 20% of the weight of the index. NYSEArca, Inc. ("NYSEArca") and the Nasdaq

<sup>1</sup> See Securities Exchange Act Release No. 54800 (November 21, 2006), 71 FR 68864 (November 28, 2006).

<sup>2</sup> These include the National Stock Exchange of India and the Bombay Stock Exchange.

Market, Inc. ("Nasdaq") have adopted the identical requirements for index-linked securities.<sup>3</sup> This standard was originally proposed and adopted in Amex File No. SR-Amex-2005-001.<sup>4</sup>

The Amex, as a pioneer in introducing new financial products, such as exchange-traded funds and a variety of equity and index-linked securities, seeks to provide investors with a diverse line-up of product listings. Accordingly, we believe a relaxation of the CSSA requirement will provide greater incentives for issuers to list products benefiting our capital markets.

The Amex notes, with few exceptions, that the Commission (through the staff of the Division) historically has required CSSA's between U.S. exchanges and the underlying foreign markets for index-linked securities similar to the Notes. In particular, the Division set forth its views in a 1994 letter to the Intermarket Surveillance Group ("ISG") stating that "[i]n order to approve a proposed rule, the Commission must find that, among other things, the rule is consistent with Section 6 of the Exchange Act, which requires an exchange to have the capacity to enforce compliance with its rules and the securities laws and to enact rules designed to prevent and manipulation."<sup>5</sup> The Commission further provided that in the context of approving new derivative products based on foreign securities or indexes, "one factor the Commission evaluates is whether the U.S. exchange sponsoring the product has entered into SSAs with relevant foreign markets. The Division then evaluates whether those SSAs can provide the U.S. exchange with appropriate foreign information when necessary to enforce its rules and U.S. laws and regulations, and to protect investors from the effects of intermarket manipulation, in accordance with Section 6."<sup>6</sup>

With limited exceptions, the Division since the early 1990's has required national securities exchanges to have in place a CSSA with its foreign counterparts when proposing to list and trade a "derivative" product based on, or linked to, such foreign marketplace.<sup>7</sup> Therefore, we believe that the instant Filing represents a significant

<sup>3</sup> See NYSE Arca Rule 5.2(j)(6)(g)(vii) and Nasdaq Rule 4420(m)(7)(ix).

<sup>4</sup> See Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005)(the "Generic Order").

<sup>5</sup> See letter from Brandon Becker, Director, Division, to Gerald D. O'Connell, Chairman, Intermarket Surveillance Group, dated June 3, 1994, page 1.

<sup>6</sup> *Id.* at page 1. SSAs are surveillance sharing agreements.

<sup>7</sup> See *e.g.* Securities Exchange Act Release Nos. 46021 (June 3, 2002), 67 FR 39753 (June 10, 2002)(approving the listing and trading of notes based on the Select European 50 Index); 49999 (July 9, 2004), 69 FR 43023 (July 19, 2004)(approving the listing and trading of notes linked to the Nikkei 225 Index); 50016 (July 14, 2004), 69 FR 43639 (July 21, 2004)(approving the listing and trading of notes linked to the Nikkei 225 Index); Amex File No. SR-2004-84 (proposing to list and trade notes linked to the Dow Jones STOXX 50 Index); and 54033 (June 22, 2006), 71 FR 37131 (June 29, 2004)(approving the listing and trading of the China Metals basket). See also Generic Order *supra* note 3 and Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005)(approving the listing and trading of shares of the iShares COMEX Gold Trust); 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006)(approving the listing and trading of shares of the DB Commodity Index Tracking Fund); 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006)(approving the listing and trading of shares of the United States Oil Fund, L.P.); 54790 (November 20, 2006), 71 FR 68645 (November 27, 2006)(approving the listing and trading of notes linked to

departure from existing precedent whereby approval of a foreign-based index-linked security was typically contingent on the existence of a CSSA with the underlying foreign marketplace. For the purpose of regulatory certainty, the Amex requests that the Division set forth its views regarding whether or not a CSSA is required for index-linked securities and other derivative products based on a foreign market or markets. In addition, if a CSSA continues to be required for foreign-based derivatives, the Commission should provide the criteria that is to be followed by a national securities exchange seeking to list and trade such product. The Amex believes that a known regulatory standard or pronouncement is necessary so that all market participants know, with legal certainty, the requirements to list and trade foreign-based derivative products.

The Exchange submits that the ability to list and trade "derivative" securities without a CSSA is not without precedent. For example, the Division recently approved an Amex proposal to adopt generic listing standards for series of exchange-traded funds ("ETFs") based on global or international indexes. These generic listing standards permit shares of ETFs based on global and/or international securities indexes that meet the specified criteria to be listed and traded without the Exchange having in place CSSA's with the underlying foreign markets. Prior to the adoption of these international generic ETF listing standards, the Division approved several international ETFs for listing and trading without CSSAs. We believe that the Division should extend its reasoning in the context of ETFs to other "derivative" securities such as index-linked notes and index options.

#### **Index Options and Options on ETFs**

In connection with index options, Commentaries .02 and .03 to Amex Rule 901C apply the listing standards for broad-based stocks index groups and stock index industry groups, respectively. In both cases, the Exchange requires that non-U.S. component stocks (stocks or ADRs) that are not subject to a CSSA be limited to no more than 20% of the weight of the particular index. The Exchange submits that the disparate regulatory treatment of identical indexes based on whether a "derivative" product is an ETF or index option is not warranted. For the purpose of regulatory consistency and clarity, we believe that the Division should work with the options exchanges to conform the rules relating to index options to the standards applicable to ETFs.

Given that ETF shares are also subject to options trading, the Amex asserts that the rules regarding ETF options are also in need of clarification. For example, current Commentary .06 to Amex Rule 915<sup>8</sup> requires that: (i) any non-U.S. component stocks in the index or portfolio on which an ETF share is based that are not subject to CSSAs do not represent more than 50% of the weight of the index; (ii) stocks for which the primary market is in any one country that is not subject to a CSSA do not represent 20% or more of the weight of the index; and (iii) stocks for which the primary market is in any two (2)

---

the DJ-AIG Ex-Energy Sub-Index) and Amex File No. SR-2006-90 (proposing to list and trade notes linked to the Hang Seng China Enterprises Index).

<sup>8</sup> The other options exchanges have identical rules. See e.g. Commentary .06 to CBOE Rule 5.3 and ISE Rule 502(h).

Nancy M. Morris  
December 8, 2006  
Page 4

countries that are not subject to CSSAs do not represent 33% or more of the weight of the index. Accordingly, as a result of a perceived anomaly between the generic international ETF listing standards and the ETF option listing standards, an international or foreign ETF share could be listed and traded at the Exchange while the options on such ETF would be prohibited. We believe that such a result is not in the best interests of investors and the marketplace. Accordingly, the Exchange requests that the Commission provide guidance to the securities and options markets on the proper regulatory standard.

We look forward to discussing the matters covered in this letter with the Commission and the Division. If you have any questions or comments regarding the substance of this letter, please contact the undersigned at 212-306-1885 or Jeffrey P. Burns at 212-306-1822.

Sincerely,

*Claire P. McHale*