

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55687; File No. SR-NYSE-2007-27)

May 1, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 3 to Proposed Rule Change and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendments No. 1, 2, and 3 Thereto, to Adopt Generic Listing Standards for Index-Linked Securities

I. Introduction

On March 9, 2007, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt generic listing standards for equity index-linked securities (“Equity Index-Linked Securities”), commodity-linked securities (“Commodity-Linked Securities”), and currency-linked securities (“Currency-Linked Securities” and, together with Equity Index-Linked Securities and Commodity-Linked Securities, “Index-Linked Securities”). On April 4, 2007, Exchange filed Amendment No. 1 to the proposed rule change. On April 5, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on April 13, 2007 for a 15-day comment period.³ The Commission received no comments on the proposal. On April 26, 2007, the Exchange filed Amendment No. 3 to the proposed rule change.⁴ This order approves the proposed rule change, as modified by Amendments No. 1, 2, and 3, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55600 (April 9, 2007), 72 FR 18712 (“Notice”).

⁴ In Amendment No. 3 to the proposed rule change, the Exchange clarified the eligibility criteria for component securities comprising the Underlying Index (as defined herein) for

II. Description of the Proposal

As explained more fully in the Notice, the Exchange proposes to add new Section 703.22 to its Listed Company Manual (the “Manual”) to provide generic listing standards to permit the listing and trading of Index-Linked Securities pursuant to Rule 19b-4(e) under the Act.⁵ This proposal will enable the Exchange to list and trade Index-Linked Securities pursuant to Rule 19b-4(e) of the Act if each of the conditions set forth in proposed Section 703.22 of the Manual is satisfied. Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO’s trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.⁶

Index-Linked Securities

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments, or market indexes of the foregoing (the “Underlying Index” or “Underlying Indexes”). Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one year, but not greater than thirty years, and are

Equity Index-Linked Securities, broadened the requirement for surveillance procedures, including adequate comprehensive surveillance sharing agreements, for all Index-Linked Securities, and represented that Exchange trading rules governing the Index-Linked Securities would be identified and disclosed in the Information Memorandum.

⁵ See 17 CFR 240.19b-4(e)(1).

⁶ When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the SRO begins trading the new derivative securities

tied to the performance of the Underlying Index. Index-Linked Securities may or may not make interest payments based on dividends or other cash distributions paid on the securities comprising the Underlying Index or Indexes to the holder during their term. Despite the fact that Index-Linked Securities are linked to an Underlying Index, each will trade as a single, exchange-listed security.

The proposed generic listing standards will not be applicable to Index-Linked Securities with respect to which the payment at maturity is based on a multiple of the negative performance of an Underlying Index or Indexes. An Index-Linked Security may or may not provide “principal protection,” i.e., a minimum guaranteed amount to be repaid.⁷ In addition, Index-Linked Securities do not give the holder any right to receive a portfolio component, dividend payments, or any other ownership right or interest in the portfolio or underlying components comprising the Underlying Index. Pursuant to proposed Section 703.22 of the Manual, the current or composite value of the Underlying Index will be widely disseminated at least every 15 seconds during the trading day.

Proposed General Listing Criteria for Index-Linked Securities

The Exchange will apply the following requirements to all issuers of Index-Linked Securities:

- If the issuer is a NYSE-listed company, the entity must be a company in good standing (i.e., meets NYSE’s applicable continued listing criteria); if the issuer is an affiliate of a NYSE-listed company, the NYSE-listed company must be a company in

products. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

good standing; if not listed, the issuer must meet the size and earnings requirements of Sections 102.01 – 102.03 or Sections 103.01 – 103.05 of the Manual. Sovereign issuers will be evaluated on a case-by-case basis.

- The issuer will be expected to have a minimum tangible net worth⁸ of \$250,000,000. In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and (ii) not to issue Index-Linked Securities, the original issue price of which, combined with all the issuer’s other Index-Linked Securities listed on a national securities exchange, exceeds 25% of the issuer’s tangible net worth at the time of issuance.⁹

- The issuer must be in compliance with Rule 10A-3 under the Act.¹⁰

In addition, the Exchange will apply the following requirements to each issue of Index-Linked Securities:

- The issue must have a minimum public distribution of at least 1 million units and a minimum of 400 holders, except if traded on the NYSE Bonds system and the applicable NYSE Bonds listing and trading standards are satisfied;¹¹

⁷ Some Index-Linked Securities may provide for “contingent” protection of the principal amount, whereby the principal protection may disappear if the Underlying Index at any point in time during the life of such security reaches a certain predetermined level.

⁸ “Tangible net worth” is defined as total assets, less intangible assets and total liabilities. Intangibles include non-material benefits such as goodwill, patents, copyrights, and trademarks.

⁹ If the Index-Linked Securities are fully and unconditionally guaranteed by an affiliate of the issuer, the Exchange will rely on such affiliate’s tangible net worth for purposes of these requirements and will include in its calculation all Index-Linked Securities that are fully and unconditionally guaranteed by such affiliate.

¹⁰ See 17 CFR 240.10A-3 (setting forth the listing standards relating to audit committees).

- The issue must have a principal amount/aggregate market value of not less than \$4 million;
- The issue must have a term of at least one year, but not greater than thirty years;
- The issue must be the non-convertible debt of the issuer; and
- The issue must not base its payment at maturity on a multiple of the negative performance of an Underlying Index or Indexes, although the payment at maturity may or may not provide for a multiple of the positive performance of an Underlying Index or Indexes.

Listing Standards for Equity Index-Linked Securities

Equity Index-Linked Securities would be subject to the criteria in proposed Section 703.22(B)(I) of the Manual for initial and continued listing. For an Underlying Index to be appropriate for the initial listing of an Equity Index-Linked Security, such Underlying Index must comprise at least ten component securities of different issuers. The Underlying Index must also either: (i) be approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act¹² and rules thereunder, and the conditions set forth in the Commission’s approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (ii) satisfy certain eligibility

¹¹ See NYSE Rule 86 (establishing rules and standards with respect to the Exchange’s electronic system, known as “NYSE Bonds,” for receiving, processing, executing, and reporting bids, offers, and executions in bonds). In addition, this requirement will not be applicable if the issue provides for the redemption of Index-Linked Securities at the option of the holders on at least a weekly basis. See Notice, *supra* note 3, 72 FR at 18713 (describing the purpose of weekly redemption rights of Index-Linked Securities and the rationale behind this exception to the minimum holder requirement).

¹² 15 U.S.C. 78s(b)(2).

standards, rebalancing obligations, and empirical requirements based on market value, trading volume, and dollar weight percentages.¹³ In particular, all component securities comprising the Underlying Index for Equity Index-Linked Securities must either be: (A) securities (other than foreign country securities and American Depositary Receipts (“ADRs”), that are (1) issued by an Act reporting company which is listed on a national securities exchange and (2) NMS stocks, as defined in Rule 600 of Regulation NMS,¹⁴ or (B) foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group (“ISG”) or parties to comprehensive surveillance sharing agreements with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the Underlying Index.

In connection with an Equity Index-Linked Security, the Exchange would commence delisting or removal proceedings if any of the standards set forth in the initial eligibility criteria are not continuously maintained¹⁵ or an Underlying Index fails to satisfy the maintenance standards or conditions for such Underlying Index or Indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act¹⁶ approving the Underlying Index for the trading of options or other derivatives. The Exchange would also commence delisting or removal

¹³ See Notice, supra note 3, 72 FR at 18713-18714 (providing, among others, detailed eligibility requirements of the component securities comprising the Underlying Index based on minimum market value, trading volume, and certain dollar weight percentages).

¹⁴ See 17 CFR 242.600(b)(47).

¹⁵ Proposed Section 703.22 of the Manual provides for certain exceptions to the continued listing criteria of Equity Index-Linked Securities based on certain numerical requirements and percentages with respect to the component securities comprising the Underlying Index. See Notice, supra note 3, 72 FR at 18714.

¹⁶ 15 U.S.C. 78s(b)(2).

proceedings of an Equity Index-Linked Security if: (1) the aggregate market value or the principal amount of the Equity Index-Linked Securities publicly held is less than \$400,000; (2) the value of the Underlying Index or composite value of the Underlying Indexes is no longer calculated and widely disseminated on at least a 15-second basis during the time the Equity Index-Linked Securities trade on the Exchange; or (3) such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Listing Standards for Commodity-Linked and Currency-Linked Securities

Commodity-Linked and Currency-Linked Securities would be subject to the criteria in proposed Sections 703.22(B)(II) and 703.22(B)(III) of the Manual, respectively, for initial and continued listing. Each issue of Commodity-Linked or Currency-Linked Securities must meet either of the following initial listing standards:

- The Commodity Reference Asset¹⁷ or Currency Reference Asset,¹⁸ as the case may be, to which the corresponding security is linked shall have been reviewed and approved for the trading of Commodity Trust Shares (in the case of Commodity-Linked Securities) or Currency Trust Shares (in the case of Currency-Linked Securities), options, or other derivatives by the Commission under Section 19(b)(2) of the Act¹⁹ and rules thereunder, and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied;
- or

¹⁷ Commodity Reference Asset is defined as one or more physical commodities or commodity futures, options, or other commodity derivatives, Commodity Trust Shares (as defined in NYSE Rule 1300B), or a basket or index of any of the foregoing.

¹⁸ Currency Reference Asset is defined as one or more currencies, or options, currency futures, or other currency derivatives, Currency Trust Shares (as defined in NYSE Rule 1300A), or a basket or index of any of the foregoing.

- The pricing information for each component of a Commodity Reference Asset or Currency Reference Asset, as the case may be, must be derived from certain required sources.²⁰

With respect to each of the Commodity-Linked and Currency-Linked Securities, the value of the Commodity Reference Asset or Currency Reference Asset, as the case may be, must be calculated and widely disseminated on at least a 15-second basis during the time the corresponding Commodity-Linked or Currency-Linked Securities trade on the Exchange. In addition, if the Commodity-Linked or Currency-Linked Securities are periodically redeemable, the indicative value of the subject Commodity-Linked or Currency-Linked Securities, as the case may be, must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time such securities trade on the Exchange.

The Exchange would commence delisting or removal proceedings if any of the initial listing criteria described above for each of the Commodity-Linked or Currency-Linked Securities, as applicable, is not continuously maintained. Notwithstanding the foregoing, an issue of Commodity-Linked or Currency-Linked Securities would not be delisted for a failure to have in place comprehensive surveillance sharing agreements if the Commodity Reference Asset or Currency Reference Asset, as the case may be, has at least 10 components, and the Exchange

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ In the case of a Commodity Reference Asset, the pricing information for each component thereof must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement. In the case of a Currency Reference Asset, the pricing information for each component thereof must be either (1) the generally accepted spot price for the currency exchange rate in question or (2) derived from a market which (a) is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement and (b) is the pricing source for components of a Currency Reference Asset that has previously been approved by the Commission.

has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of such Commodity Reference Asset or Currency Reference Asset. The Exchange would also commence delisting or removal proceedings if: (1) the aggregate market value or the principal amount of the Commodity-Linked or Currency-Linked Securities publicly held is less than \$400,000; (2) the value of the Commodity Reference Asset or Currency Reference Asset, as the case may be, is no longer calculated or available and a new corresponding Commodity or Currency Reference Asset is substituted, unless the new corresponding Commodity or Currency Reference Asset meets the requirements of proposed Section 703.22; or (3) such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Exchange Rules Applicable to Index-Linked Securities

Index-Linked Securities traded on the Exchange's equity trading floor will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules and the Exchange's regular trading hours (9:30 a.m. to 4:00 p.m. Eastern Time) will apply to transactions in Index-Linked Securities. However, Index-Linked Securities traded on the NYSE Bonds system will be subject to the rules applicable to such securities traded on that system.

Information Memorandum

The Exchange represents that it will prepare and distribute, if appropriate, an Information Memorandum that describes the product to each member organization highlighting the particular structure and corresponding risks of an Index-Linked Security. In particular, the Memorandum will set forth the Exchange's suitability rule that sets forth certain requirements for member organizations recommending a transaction in Index-Linked Securities. In addition, the

Information Memorandum will note that all of the Exchange's equity trading rules will be applicable to trading in the Index-Linked Securities, except in the case of Index-Linked Securities traded on the NYSE Bonds system, in which case the Information Memorandum will note that the Index-Linked Securities will be subject to the trading rules applicable to securities trading on such system. The Memorandum will also reference the member requirements to deliver a prospectus to each investor purchasing newly issued Index-Linked Securities prior to or concurrently with the confirmation of a transaction.

Surveillance

The Exchange represents that it will closely monitor activity in Index-Linked Securities to identify and deter any potential improper trading activity in such securities. Additionally, the Exchange states that its surveillance procedures are adequate to properly monitor the trading of Index-Linked Securities. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, options, and exchange-traded funds. The Exchange represents that it has developed procedures to closely monitor activity in Index-Linked Securities and the Underlying Indexes and their components to identify and deter potential improper trading activity. To the extent applicable, the Exchange will be able to obtain trading and beneficial holder information from the primary trading markets for the components of the Underlying Indexes in relation to Index-Linked Securities, either pursuant to bilateral information sharing agreements with those markets or because those markets are full or affiliate members of ISG.

Firewall Procedures

For Index-Linked Securities where the Underlying Index is maintained by a broker-dealer, the broker-dealer will be required to erect a "firewall" around the personnel responsible for the maintenance of the Underlying Index or who have access to information concerning

changes and adjustments to the Underlying Index, and the Underlying Index will be calculated by a third party who is not a broker-dealer. Any advisory committee, supervisory board, or similar entity that advises an Index Licensor or Administrator (each as defined in NYSE Rule 1100, Supplementary Material .10) or that makes decisions regarding the Underlying Index or portfolio composition, methodology, and related matters would be required to implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable Underlying Index or portfolio.²¹

Trading Halts

In the case of Commodity-Linked or Currency-Linked Securities, if the indicative value or the Commodity Reference Asset value or Currency Reference Asset value, as the case may be, applicable to a corresponding series of such securities is not being disseminated as required, or, in the case of Equity Index-Linked Securities, if the value of the Underlying Index is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder

²¹ The Exchange states that NYSE Rules 1300B(b) and Rule 1301B provide for certain conflict-of-interest restrictions on specialist firms transacting in components of a Commodity Reference Asset, or any derivative instrument thereon, with respect to any issue of Commodity-Linked Securities. Similarly, a proposed rule change to NYSE Rules 1300A and 1301A seeks to impose similar restrictions on specialist firms for any issue of Currency-Linked Securities. See Securities Exchange Act Release No. 55222 (February 1, 2007), 72 FR 6021 (February 8, 2007) (SR-NYSE-2006-68).

applicable to a national securities exchange.²² In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,²³ which requires, among other things, that the Exchange's rules be 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.

A. Generic Listing Standards for Index-Linked Securities

To list and trade Index-Linked Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act²⁴ and Rule 19b-4 thereunder.²⁵ However, Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of Index-Linked Securities pursuant to Rule 19b-4(e) fulfill these requirements.

The Exchange's ability to rely on Rule 19b-4(e) to list and trade Index-Linked Securities that meet the requirements of proposed Section 703.22 of the Manual should reduce the time

²² In approving this proposed 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).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78s(b)(1).

²⁵ 17 CFR 240.19b-4.

frame for bringing these securities to the market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making Index-Linked Securities available to investors more quickly.

The Commission has previously approved generic listing standards pursuant to Rule 19b-4(e) for Index-Linked Securities based on indexes that consist of domestic, and to a certain extent, foreign, equity securities.²⁶ The Commission has also previously approved the listing and trading on the Exchange of debt securities linked to the performance of a variety of commodities and commodity indexes²⁷ and derivative products based on currencies.²⁸ In approving these

²⁶ See, e.g., Securities Exchange Act Release No. 54167 (July 18, 2006), 71 FR 42145 (July 25, 2006) (SR-NASDAQ-2006-002) (approving Rule 4420(m) of the NASDAQ Stock Market LLC); Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63) (approving generic listing standards for index-linked securities for the Pacific Exchange, Inc., n/k/a NYSE Arca, Inc.); and Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR-Amex-2005-001) (approving Section 107(D) of the American Stock Exchange LLC Company Guide).

²⁷ See, e.g., Securities Exchange Release No. 55548 (March 28, 2007), 72 FR 16392 (April 4, 2007) (SR-NYSE-2006-71) (approving a proposal to list and trade notes linked to the performance of sub-indices of the Dow Jones–AIG Commodity Index); Securities Exchange Release No. 54731 (November 9, 2006), 71 FR 66814 (November 16, 2006) (SR-NYSE-2006-54) (approving the listing and trading of two series of commodity-linked securities); Securities Exchange Release No. 54177 (July 19, 2006), 71 FR 42700 (July 27, 2006) (SR-NYSE-2006-19) (approving the listing and trading of index-linked notes linked to the performance of the Goldman Sachs Crude Oil Total Return Index); Securities Exchange Release No. 53849 (May 22, 2006), 71 FR 30706 (May 30, 2006) (SR-NYSE-2006-20) (approving the listing and trading of index-linked securities linked to the performance of the GSCI Total Return Index); and Securities Exchange Release No. 53876 (May 25, 2006), 71 FR 32158 (June 2, 2006) (SR-NYSE-2006-16) (approving the listing and trading of index-linked securities linked to the performance of the Dow Jones–AIG Commodity Index Total Return).

²⁸ See, e.g., Securities Exchange Act Release No. 55268 (February 9, 2007), 72 FR 7793 (February 20, 2007) (SR-NYSE-2007-03) (approving the listing and trading of Currency Trust Shares relating to the Japanese Yen); Securities Exchange Act Release No. 54020 (June 20, 2006), 71 FR 36579 (June 27, 2006) (SR-NYSE-2006-35) (approving the listing and trading of six Currency Trust Shares); and Securities Exchange Act Release

securities for Exchange trading, the Commission considered applicable Exchange rules that govern their trading. The Commission believes that generic listing standards for Index-Linked Securities should fulfill the intended objective of Rule 19b-4(e) and allow Index-Linked Securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.²⁹

B. Listing and Trading Index-Linked Securities

Taken together, the Commission finds that the NYSE proposal contains adequate rules and procedures to govern the listing and trading of Index-Linked Securities listed pursuant to Rule 19b-4(e) on the Exchange. All Index-Linked Security products listed under the proposed generic standards will be subject to the full panoply of NYSE rules and procedures that currently govern the trading of equity securities on the Exchange.

As set forth more fully above, NYSE has proposed size, earnings, and minimum tangible net worth requirements for each Index-Linked Security issuer, as well as minimum distribution and holder, principal amount/market value, and minimum term thresholds for each issuance of Index-Linked Securities. The Exchange's proposed listing criteria include minimum market capitalization, monthly trading volume, and relative weighting requirements for each Equity Index-Linked Security and the components underlying each such security. For Commodity-Linked and Currency-Linked Securities, the assets (or their derivatives) to which they are linked must either have been reviewed and approved for trading by the Commission or their pricing

No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR-NYSE-2005-65) (approving the listing and trading of Euro Shares).

²⁹ The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular index-linked product.

information must be derived from certain required sources.³⁰ These requirements are designed to ensure that the trading markets for the Underlying Index components are adequately capitalized and sufficiently liquid, and that, in the case of Equity Index-Linked Securities, no one component dominates the Underlying Index. The Commission believes that these requirements should minimize the potential for manipulation.

The Commission also finds that, in the case of Commodity-Linked and Currency-Linked Securities with at least 10 components, the requirement that at least 90% of the dollar weight of the corresponding Commodity Reference Asset or Currency Reference Asset, as the case may be, must have comprehensive surveillance sharing agreements with the Exchange should permit the Exchange to identify potential trading and other violations of its rules. In the case of Equity Index-Linked Securities, each component security (other than foreign country securities and ADRs) must be issued by a reporting company under the Act, listed on a national securities exchange, and be an “NMS stock,” as such term is defined in Rule 600 of Regulation NMS.³¹ The Commission believes that such a requirement will contribute to the transparency of the Underlying Index. Alternatively, such component securities may also be foreign country securities, including foreign country securities underlying ADRs, so long as the foreign country securities having their primary trading market on foreign markets that are not ISG members or parties to comprehensive surveillance agreements with the Exchange do not, in the aggregate, represent more than 20 percent of the dollar weight of the Underlying Index. The Commission also believes that, with respect to Equity Index-Linked Securities, the requirement that at least 90 percent of the component securities, by dollar weight, and 80 percent of the total number of

³⁰ See supra note 20 and accompanying text.

³¹ 17 CFR 240.600(b)(47).

component securities, be eligible individually for options trading should prevent an Index-Linked Security from being a vehicle for trading options on a security not otherwise options eligible. The Commission also notes that, by requiring pricing information for the relevant Underlying Index or Indexes to be readily available, the proposed listing standards of Section 703.22 of the Manual should help ensure a fair and orderly market for Index-Linked Securities listed and traded pursuant to Rule 19b-4(e).

The Exchange has also developed delisting criteria that will permit it to suspend trading of an Index-Linked Security in circumstances that make further dealings in the product inadvisable. The Commission believes that the delisting criteria should help ensure that a minimum level of liquidity exists for each Index-Linked Security to allow for the maintenance of fair and orderly markets. Also, in the event that the value of the Underlying Index or, in the case of Commodity-Linked and Currency-Linked Securities that are periodically redeemable, the indicative value, is no longer calculated and widely disseminated on at least a 15-second basis, the Exchange may halt trading during the day on which the interruption first occurs; however, if the interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption and will commence delisting proceedings.

C. Surveillance

The Commission notes that any Index-Linked Securities approved for listing and trading would be subject to the Exchange's existing surveillance procedures governing equities, options, and exchange-traded funds, as well as procedures the Exchange represents it has developed to closely monitor activity in Index-Linked Securities and the Underlying Indexes and their

components. The Exchange has represented that its surveillance procedures are adequate to properly monitor the trading of Index-Linked Securities listed pursuant to these proposed generic listing standards. In addition, the Commission notes that the Exchange has represented that it will be able to obtain trading and beneficial holder information from the primary trading markets for the components of the Underlying Indexes in relation to Index-Linked Securities, either pursuant to bilateral information sharing agreements with those markets or because those markets are full members or affiliate members of the ISG. In particular, the Exchange has represented that it will implement adequate comprehensive surveillance sharing agreements for non-U.S. components, as applicable.

D. Information Memorandum

The Exchange has represented that it will distribute, as appropriate, an Information Memorandum to members describing the product, the structure of the product, and the corresponding risks of the Index-Linked Security. In addition, the Information Memorandum will set forth the Exchange's suitability requirements with respect to recommendations in transactions in Index-Linked Securities to customers and the prospectus delivery requirements. The Memorandum will also identify and describe the Exchange's trading rules governing the Index-Linked Securities.

E. Firewall Procedures

The Exchange has further represented that, if the Underlying Index is maintained by a broker-dealer, such broker-dealer will establish a "firewall" around personnel responsible for the maintenance of the Underlying Index. As an added measure, a third-party who is not a broker-dealer will calculate the Underlying Index. In addition, the Exchange has stated that any person, committee, board, or similar entity that advises the Index Licensor or Administrator (each as

defined in NYSE Rule 1100, Supplementary Material .10) or that makes decisions regarding the composition and methodology of the Underlying Index, will be subject to policies and procedures designed to prevent the use and dissemination of material, non-public information. With respect to trading on NYSE, the Exchange has stated that, with respect to any issue of Index-Linked Securities, specialists will be restricted from making markets in and trading components of the Underlying Securities or any derivative instruments thereof.³²

E. Acceleration

The Commission finds good cause for approving the proposed rule change, as modified by Amendments No. 1, 2, and 3 thereto, before the 30th day after the date of publication of notice of filing thereof in the Federal Register. The Exchange requested accelerated approval of the proposal to facilitate the prompt listing and trading of Index-Linked Securities based on indexes or portfolios meeting the specified criteria of proposed Section 703.22 of the Manual. The Commission notes that the Exchange's proposed generic listing standards are based, in part, on previously approved listing standards for Index-Linked Securities based on an Underlying Index made up of equity securities.³³ The Commission also notes that it has previously approved the listing and trading of derivative products based on commodities and currencies.³⁴ The Commission believes that accelerated approval of the proposed rule change should expedite the listing and trading of additional Index-Linked Securities, subject to the standards discussed herein, to the benefit of the investing public. Therefore, the Commission finds good cause,

³² See supra note 21.

³³ See supra note 26.

³⁴ See supra notes 27-28.

consistent with Section 19(b)(2) of the Act,³⁵ to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2007-27 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2007-27. 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 (<http://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. Copies of the filing also will be available

³⁵ 15 U.S.C. 78s(b)(2).

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-2007-27 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁶ that the proposed rule change (SR-NYSE-2007-27), as modified by Amendments No. 1, 2, and 3, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁷

Florence E. Harmon
Deputy Secretary

³⁶ 15 U.S.C. 78s(b)(2).

³⁷ 17 CFR 200.30-3(a)(12).