

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55544; File No. SR-Amex-2007-07)

March 27, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change Revising Existing Rules for Portfolio Depository Receipts and Index Fund Shares

I. Introduction

On January 11, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposal to revise its existing rules for portfolio depository receipts (Amex Rule 1000-AEMI) and index fund shares (Amex Rule 1000A-AEMI) to eliminate the methodology standards for eligible indexes. On January 25, 2007, the Amex submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on February 12, 2007 for a 15-day comment period.<sup>3</sup> The Commission received no comments regarding the proposal. On March 14, 2007, Amex filed Amendment No. 2 to the proposed rule change.<sup>4</sup> This order approves the proposed rule change, as amended.

II. Description of the Proposal

The purpose of this proposed rule change is to amend Amex’s existing generic listing

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 55240 (February 5, 2007), 72 FR 6624.

<sup>4</sup> Amendment No. 2 is a technical amendment, which revises the proposal to reflect the implementation of Amex’s Auction and Electronic Market Integration (“AEMI”) platform and corresponding adoption of Rules 1000-AEMI and 1000A-AEMI, which replace former Amex rules 1000 and 1000A. As such, it is not subject to notice and comment.

standards pursuant to Rule 19b-4(e) under the Act<sup>5</sup> for portfolio depositary receipts (“PDRs”) and index fund shares<sup>6</sup> to eliminate the requirement that an eligible index be calculated and weighted following a specified methodology.

The Exchange currently has generic listing standards (within the meaning of Rule 19b-4(e) under the Act<sup>7</sup>), which permit the listing and trading of various qualifying ETFs subject to the procedures contained in Rule 19b-4(e). The existence of generic listing standards allows qualifying ETFs to list or trade without the need to file a rule change for each security. The generic listing standards for ETFs presently provide that eligible indexes be calculated based on the market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology.<sup>8</sup> The proposed rule change would eliminate this standard, and, as a result, the Exchange would no longer consider index methodology in its review of an ETF’s eligibility for listing and trading pursuant to Rule 19b-4(e) under the Act.<sup>9</sup>

### III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>10</sup> and, in particular, the requirements of Section 6 of the Act.<sup>11</sup>

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<sup>5</sup> 17 CFR 240.19b-4(e).

<sup>6</sup> PDRs and index fund shares are registered investment companies under the Investment Company Act of 1940 and are referred to in this filing as exchange traded funds (“ETFs”).

<sup>7</sup> 17 CFR 240.19b-4(e).

<sup>8</sup> See Commentary .03(b)(i) to Amex Rule 1000-AEMI and Commentary .02(b)(i) to Amex Rule 1000A-AEMI.

<sup>9</sup> 17 CFR 240.19b-4(e).

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f.

Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

As the market for ETFs has grown, the variety of weighting and calculation methodologies for underlying indexes has also expanded, limiting the applicability of Amex's current generic ETF listing standards. The Commission believes that the proposed elimination of index methodology from its generic listing standards for ETFs would potentially reduce the time frame for bringing ETFs based on indexes with nontraditional weighting techniques to the market, thereby reducing the burdens on issuers and other market participants and promoting competition, without compromising investor protection.

The Commission notes that the generic listing standards for domestic indexes will continue to require, without limitation, that the most heavily weighted component stock of an index not exceed 30% of the weight of the index, and the five most heavily weighted component stocks of an index not exceed 65% of the weight of the index,<sup>13</sup> and that an index include a minimum of 13 component stocks.<sup>14</sup> Similarly, the generic listing standards for international or global indexes require, without limitation, that the most heavily weighted component stock of an index not exceed 25% of the weight of the index, and the five most heavily weighted component

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<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See Commentary .03(a)(A)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(3) to Amex Rule 1000A-AEMI.

<sup>14</sup> See Commentary .03(a)(A)(4) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(4) to Amex Rule 1000A-AEMI.

stocks of an index not exceed 60% of the weight of the index,<sup>15</sup> and that an index include a minimum of 20 component stocks.<sup>16</sup> Therefore, the Commission believes that indexes underlying ETFs will continue to be sufficiently broad-based in scope to minimize potential manipulation.

The Commission believes that the proposed rule change will enable the Exchange and issuers to benefit from the expected efficiencies resultant from this proposed rule change while at the same time still ensuring adequate protection for investors and the public in general.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-Amex-2007-07), as amended, be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> See Commentary .03(a)(B)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(3) to Amex Rule 1000A-AEMI.

<sup>16</sup> See Commentary .03(a)(B)(4) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(4) to Amex Rule 1000A-AEMI.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).