

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57150; File No. SR-Amex-2007-130)

January 15, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Certain Modifications to the Initial Listing Standards for Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities

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> notice is hereby given that on November 30, 2007, the American Stock Exchange LLC (“Amex” 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 substantially prepared by the Exchange. On December 5, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On December 21, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. This order provides notice of the proposed rule change, as amended, and approves the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, 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 Sections 107D, 107E, and 107F of the Amex Company Guide to revise the initial listing standards applicable to Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities (collectively, the “Section 107 Securities”),<sup>3</sup>

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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> Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (“Underlying Index”). See Section 107D of the Amex Company Guide. Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures,

respectively. In addition, the Exchange proposes a conforming revision to Commentary .05 to Amex Rule 411 to apply the suitability standard to all derivative securities that seek investment results based on a multiple of the direct or inverse performance of an underlying asset. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.amex.com](http://www.amex.com).

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 Exchange included statements 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 IV below. The Exchange 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 purpose of the proposed rule change is to amend the generic listing standards of Sections 107D, 107E, and 107F of the Amex Company Guide so that Section 107 Securities may be listed where the positive and/or negative payment at maturity may be accelerated by a multiple of the performance of the underlying Reference Asset. The Exchange believes that liberalizing the existing

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options or other commodity derivatives or Commodity-Based Trust Shares (as defined in Amex Rule 1200A), or a basket or index of any of the foregoing ("Commodity Reference Asset"). See Section 107E of the Amex Company Guide. Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in Amex Rule 1200B), or a basket or index of any of the foregoing ("Currency Reference Asset," and, together with the Underlying Index and Commodity Reference Asset, collectively, the "Reference Asset"). See Section 107F of the Amex Company Guide.

listing criteria for Section 107 Securities will benefit the marketplace and investors by providing additional risk/return alternative structures.

Sections 107D, 107E, and 107F of the Amex Company Guide set forth the generic listing standards that permit the Exchange to list and trade Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities, respectively, pursuant to Rule 19b-4(e) under the Act.<sup>4</sup> Currently, the respective generic listing standards for such securities state, among other requirements, that the payment at maturity may or may not provide for a multiple of the positive performance of the applicable underlying Reference Asset, and in no event may payment at maturity be based on a multiple of the negative performance of the applicable underlying Reference Asset.

Amex seeks to clarify and amend the generic listing standards for each of the Section 107 Securities such that, with respect to the listing and trading of an issue of such securities pursuant to Rule 19b-4(e): (1) the payment at maturity may or may not provide for a multiple of the direct or inverse performance of the applicable Reference Asset; and (2) in no event may a loss or negative payment at maturity be accelerated by a multiple that exceeds twice the performance of the applicable Reference Asset. The Exchange believes that the current restriction in the generic listing standards for each of the Section 107 Securities is unnecessarily limiting, given the changes in the market for these securities and the demand for differing structures. In addition, the Exchange notes that certain exchange-traded funds (“ETFs”) seeking to provide (a) investment results that correspond to or exceed twice (200%) the direct performance of a specified stock index, or (b)

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

investment results that correspond to twice (-200%) the inverse or opposite of the index's performance, are currently listed and traded on the Exchange.<sup>5</sup>

The Exchange also seeks to amend Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Section 107 Securities are subject to the general eligibility or suitability requirements existing for all products listed and traded on Amex, as set forth in Amex Rule 411. The Exchange specifically seeks to apply Commentary .05 to Amex Rule 411 to all Section 107 Securities that seek investment results based on a multiple of the direct or inverse performance of an underlying Reference Asset.

Currently, Commentary .05 to Amex Rule 411 is limited to Index Fund Shares, listed pursuant to Amex Rule 1000A(b)(2), that seek to provide investment results that either exceed the performance of a specified foreign or domestic stock index by a specified multiple or that correspond to the inverse (opposite) of the performance of such index by a specified multiple. The proposed revision would apply Commentary .05 to Amex Rule 411 to all derivative securities, including Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities, that seek to provide investment results that either exceed the performance of an underlying reference asset by a specified multiple or that correspond to the inverse (opposite) of the performance of an underlying reference asset by a specified multiple.

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<sup>5</sup> See, e.g., Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR-Amex-2004-62) (approving the listing and trading of shares of the xtraShares Trust); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR-Amex-2006-41) (approving the listing and trading of shares of the ProShares Trust); 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR-Amex-2006-101) (approving the listing and trading of shares of the ProShares Trust based on various sector indexes); 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR-Amex-2007-60) (approving the listing and trading of shares of the ProShares Trust based on various international equity indexes); and 56713 (October 29, 2007), 72 FR 61915 (November 1, 2007) (SR-Amex-2007-74) (approving the listing and trading of shares of funds of the Rydex ETF Trust).

Prior to commencement of trading, the Exchange will issue an Information Circular to its members and member organizations providing guidance with regard to member firm compliance responsibilities (including suitability obligations) when effecting transactions in Section 107 Securities that seek investment results based on a multiple of the direct or inverse performance of an underlying Reference Asset and highlighting the special risks and characteristics of the securities and applicable Exchange rules. This Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411. Specifically, the Information Circular will remind members of their obligations in recommending transactions in the securities so that members have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange states that no written comments were solicited or received with respect to the proposed rule change.

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2007-130 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Amex-2007-130. 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, 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 such 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-Amex-2007-130 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 Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule

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<sup>8</sup> 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).

change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires that the rules of a national securities exchange be designed, among other things, 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.

The Commission believes that the Exchange's proposal is consistent with the Act, and, in particular, reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in Section 6(b)(5) of the Act. The Commission notes that a variety of exchange-traded funds seeking to provide (a) investment results that correspond to or exceed twice (200%) the direct performance of a specified stock index, or (b) investment results that correspond to twice (-200%) the inverse or opposite of the index's performance, are currently listed and traded on the Exchange.<sup>10</sup> In addition, the Commission further believes that heightened suitability standards are appropriate for derivative securities products, including Section 107 Securities, that seek to provide investment results that correspond to the direct or inverse performance of an underlying reference asset by a specified multiple and allow for a loss or negative payment at maturity to be accelerated by a specified multiple. Before recommending transactions in these types of leveraged products, Exchange members must have a reasonable basis to believe that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. The Commission expects the Exchange to continue to monitor the application of its suitability requirements, including those under Commentary .05 to Amex Rule 411, as proposed.

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See supra note 5 and accompanying text.



The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission notes that it has approved identical revisions to the initial listing standards for the same type of derivative securities products, as proposed by another national securities exchange.<sup>11</sup> With respect to the revisions to Commentary .05 to Amex Rule 411, the Commission believes that the proposal strengthens the suitability standards and raises no new regulatory issues. Accordingly, the Commission finds good cause for approving the proposal on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the

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<sup>11</sup> See Securities Exchange Act Release No. 57149 (January 15, 2008) (SR-NYSEArca-2007-122) (approving the proposal to make substantively identical revisions to the initial listing standards for Index-Linked Securities listed and/or traded on NYSE Arca, Inc. (“NYSE Arca”). See also Securities Exchange Act Release No. 56907 (December 5, 2007), 72 FR 70640 (December 12, 2007) (SR-NYSEArca-2007-122) (providing notice of the proposal to make substantively identical revisions to the initial listing standards for Index-Linked Securities listed and/or traded on NYSE Arca).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-Amex-2007-130), as modified by Amendment Nos. 1 and 2 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).