

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57660; File No. SR-Amex-2007-131)

April 14, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Generic Listing Standards For Index Multiple Fund Shares and Index Inverse Fund Shares

I. Introduction

On December 20, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to revise Amex rules to include generic listing standards for series of Index Multiple Exchange Traded Fund Shares (“Multiple Fund Shares”) and Index Inverse Exchange Traded Fund Shares (“Inverse Fund Shares”) (collectively, the “Fund Shares”). On February 29, 2008, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on March 13, 2008.³ The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description

Amex Rules 1000A-AEMI and Rules 1001A through 1005A provide standards for listing Index Fund Shares (“IFSS”) on the Exchange. The Exchange proposes to amend the definition of “Index Fund Share” set forth in Amex Rule 1000A-AEMI(b)(2)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57451 (March 7, 2008), 73 FR 13591.

to reflect that domestic equity, international or global equity, or fixed income securities indexes, or a combination thereof, may be used as the underlying performance benchmark for Fund Shares.⁴

The Exchange also proposes to revise Commentaries .02, .03 and .04 to Amex Rule 1000A-AEMI and add new Commentary .01 to Amex Rule 1002A to permit the listing and trading of Multiple Fund Shares and certain Inverse Fund Shares pursuant to the Exchange's generic listing standards for IFSs. Specifically, the investment objective associated with the Fund Shares must be expected to achieve investment results, before fees and expenses, by a specified multiple (Multiple Fund Shares) or inversely up to -200% (Inverse Fund Shares) of the underlying performance benchmark domestic equity, international or global equity and/or fixed income indexes, as applicable.

Accordingly, this proposal would enable the Exchange to list and trade Multiple Fund Shares and certain Inverse Fund Shares pursuant to Rule 19b-4(e) of the Act⁵ if each of the conditions set forth in Commentaries .02, .03, .04 and .05 to Amex Rule 1000A-AEMI, as applicable, are satisfied.⁶

⁴ Multiple Fund Shares seek to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign, domestic or fixed income securities index. Inverse Fund Shares seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign, domestic or fixed income securities index by a specified multiple. Fund Shares differ from traditional exchange-traded fund ("ETF") shares in that they do not merely correspond to the performance of a given securities index, but rather attempt to match a multiple or inverse of such underlying index performance.

⁵ 17 CFR 240.19b-4(e).

⁶ See Commentaries .02(a)(A) to Amex Rule 1000A-AEMI (Domestic Equity); .02(a)(B) to Amex Rule 1000A-AEMI (International Equity); .02(a)(C) to Amex Rule 1000A-AEMI (Prior Approved Indexes); .03 to Amex Rule 1000A-AEMI

Limitation on Leverage

In connection with Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds -200% of the underlying benchmark index, the Exchange's proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.⁷ In particular, Amex Rule 1000A-AEMI(b)(2)(iii) would expressly prohibit Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds -200% of the underlying benchmark index, from being approved by the Exchange for listing and trading pursuant to Rule 19b-4(e) under the Act.⁸

In connection with Multiple Fund Shares, proposed Amex Rule 1000A-AEMI(b)(2) does not provide a similar limitation on leverage. Instead, the proposal would permit the underlying registered management investment company or fund to seek to provide investment results, before fees and expenses, that correspond to any multiple, without limitation, of the percentage performance on given day of a particular domestic equity, international or global equity, or fixed income securities indexes or a combination thereof.

Availability of Information about Fund Shares and Underlying Indexes

Proposed new Commentary .01 to Amex Rule 1002A provides that the portfolio composition of a Fund will be disclosed on a public Web site. Web site disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the

(Fixed Income); and .04 to Amex Rule 1000A-AEMI (Combination Indexes of Domestic Equity, International Equity and/or Fixed Income).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 240.19b-4(e).

issuer of a series of Multiple Fund Shares or Inverse Fund Shares will be made daily and will include, as applicable, the identity and number of shares held of each specific equity security, the identity and amount held of each fixed income security, the specific types of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of a Fund. This public Web site disclosure of the portfolio composition of a Fund, that will form the basis for the calculation of the net asset value, will coincide with the disclosure of the same information to “Authorized Participants.”⁹ Investors will have access to the current portfolio composition of a Fund through the Fund’s Web site and/or at the Exchange’s Web site at www.amex.com.

Trading Halts

Existing trading halt requirements for IFSs will apply to Multiple Fund Shares and Inverse Fund Shares. In particular, Amex Rule 1002A(b)(ii) provides if the Intraday Indicative Value or the index value applicable to that series of IFSs is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the

⁹ Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be registered broker-dealers or other securities market participants, such as banks and other financial institutions that are exempt from registration as broker-dealers to engage in securities transactions, who are participants in DTC. The Commission notes that, although substantively identical, the format of the disclosure of portfolio holdings to Authorized Participants may differ from the format of the public Web site disclosure.

index value 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.¹⁰

In addition, proposed new Commentary .01 to Amex Rule 1002A will require Amex to halt trading of subject Fund Shares if the Exchange becomes aware that the open-end investment company fails to properly disseminate the appropriate net asset value (“NAV”) to market participants at the same time and/or fails to provide daily public Web site disclosure of its portfolio holdings. Commentary .01 to Amex Rule 1002A further provides that the Exchange may resume trading in such Fund Shares only when the NAV is disseminated to all market participants at the same time or the daily public Web site disclosure of portfolio holdings occurs, as appropriate.

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Multiple and/or Inverse Fund Shares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Multiple or Inverse Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In the case of the Financial Instruments held by a Multiple or Inverse Fund, the Exchange represented that a notification procedure will be implemented so that timely notice from the investment adviser of such Multiple or Inverse Fund is received by the Exchange when a particular

¹⁰ If an IFS is traded on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading if the primary listing market halts trading in such IFS because the Intraday Indicative Value and/or the index value is not being disseminated. See Securities Exchange Act Release No. 55018 (December 28, 2006), 72 FR 1040 (January 9, 2007) (SR-Amex-2006-109).

Financial Instrument is in default or shortly to be in default. Notification from the investment adviser will be made by phone, facsimile or e-mail. The Exchange will then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Multiple and/or Inverse Fund Shares. Trading in Multiple and/or Inverse Fund Shares will also be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Suitability

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 the Fund Shares and highlighting the special risks and characteristics of Multiple and Inverse Funds Shares as well as applicable Exchange rules.

This Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the Information Circular will remind members of their obligations in recommending transactions in the Shares 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, 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.

III. Discussion

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act¹¹ and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹³ which requires, among other things, that the Exchange's rules be designed 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.

Generic Listing Standards

Pursuant to Section 19(b) of the Act¹⁴ and Rule 19b-4 thereunder,¹⁵ the listing and trading of a new derivative securities product is a proposed rule change that must be filed with and approved by the Commission. Rule 19b-4(e) under the Act,¹⁶ however, provides that the listing and trading of a new derivative securities product by an exchange

¹¹ 15 U.S.C. 78f.

¹² 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).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(1).

¹⁵ 17 CFR 240.19b-4.

¹⁶ 17 CFR 240.19b-4(e).

will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) under the Act¹⁷ if the Commission has approved, pursuant to Section 19(b) of the Act, the self regulatory organization's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the exchange has a surveillance program for the product class. Thus, at present, Amex must submit for Commission approval a proposal for each new series of Fund Shares that it seeks to list and trade.

The Commission believes that the Exchange's adoption of listing and trading standards for Fund Shares that meet the requirements of Commentaries .02, .03 and .04 to Amex Rule 1000A-AEMI should fulfill the intended objective of Rule 19b-4(e) by allowing such Fund Shares to commence trading, without the need for individualized Commission approval. The Commission notes that it has previously approved the listing and trading of various Multiple Fund Shares and Inverse Fund Shares.¹⁸ The proposed rules should reduce the time frame for bringing these securities to market, thereby reducing the burdens on issuers and other market participants and promoting competition.

¹⁷ 17 CFR 240.19b-4(c)(1).

¹⁸ See Securities Exchange Act Release Nos. 56713 (October 29, 2007), 72 FR 61915 (November 1, 2007) (SR-Amex-2007-74) (approving the listing and trading of Rydex Leveraged Funds, Inverse Funds and Leveraged Inverse Funds); 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR-Amex-2004-62) (approving the listing and trading of the ProShares Ultra Funds and Short Funds); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR-Amex-2006-41) (approving the listing and trading of the ProShares UltraShort Funds); 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR-Amex-2006-101) (approving the listing and trading of Ultra, Short and UltraShort Funds based on various indexes); 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR-Amex-2007-60) (approving the listing and trading of ProShares Ultra, Short and UltraShort Funds based on various international indexes); and 56998 (December 19, 2007), 72 FR 73404 (December 27, 2007) (SR-Amex-2007-104) (approving the listing and trading of ProShares Ultra, Short and UltraShort Funds based on several fixed income indexes, among others).

Listing and Trading Rules

Taken together, the Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Inverse Fund Shares and Multiple Fund Shares listed pursuant to Rule 19b-4(e) on the Exchange. All Fund Shares listed under the proposed generic standards will be subject to the full panoply of Amex rules and procedures that currently govern the trading of IFSs on the Exchange. For example, where the value of the underlying index or portfolio of securities on which the series of Fund Shares is based is no longer calculated or available, the Exchange would commence delisting proceedings. Likewise, in the event that the issuer of a series of Fund Shares substitutes a new index or portfolio for the existing index or portfolio, the Exchange would commence delisting proceedings if the new index or portfolio does not meet the requirements of and listing standards set forth in Rule 1000A-AEMI.

Fund Shares listed and/or traded under the proposed "generic" standards would be subject to existing Amex rules that govern the continued listing and trading of IFSs. In addition, the Commission notes that proposed new Commentary .01 to Amex Rule 1002A will require that the portfolio composition of a Fund be disclosed on a public Web site.

Information Circular

The Exchange has represented that it will distribute, as appropriate, an Information Circular to its members and member organizations describing, among other things, their compliance responsibilities and highlighting the special risks and characteristics of Multiple Fund Shares and Inverse Fund Shares, as well as applicable Exchange rules.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.¹⁹

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-Amex-2007-131), as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

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Deputy Secretary

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).