

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55780; File No. SR-NYSE-2007-37)

May 17, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Generic Listing Standards for Series of Investment Company Units based on Fixed Income Indexes and Order Granting Accelerated Approval of Proposed Rule Change as Amended

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 March 29, 2007, the New York Stock Exchange LLC (“NYSE” 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 prepared substantially by the Exchange. On May 9, 2007, the Exchange filed Amendment No. 1.<sup>3</sup> This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change as amended on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise Section 703.16 of the NYSE Listed Company Manual to include generic listing standards for series of Investment Company Units (“ICUs”) that are based on indexes or portfolios consisting of fixed income securities (“Fixed Income Indexes”) or on composite indexes consisting of equity and fixed income indexes or indexes or portfolios consisting of both equity and fixed income securities (collectively, “Combination Indexes”).

The text of the proposed rule change is available at the NYSE, at the Commission’s Public Reference Room, and on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com).

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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> Amendment No. 1 replaced and superseded the original filing in its entirety.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE 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 III 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise Section 703.16 of the NYSE Listed Company Manual ("Manual") to include generic listing standards for series of ICUs (also referred to herein as 'exchange-traded funds' or 'ETFs') that are based on Fixed Income Indexes or on Combination Indexes. This proposal will enable the Exchange to list and trade ETFs pursuant to Rule 19b-4(e) under the Act<sup>4</sup> if each of the conditions set forth in Section 703.16 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 shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,<sup>5</sup> if the Commission has approved, pursuant to Section 19(b) of the Act,<sup>6</sup> the self-regulatory organization's trading rules, procedures, and listing standards for the

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

<sup>5</sup> 17 CFR 240.19b-4(c)(1).

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

product class that would include the new derivatives securities product, and the self-regulatory organization has a surveillance program for the product class.<sup>7</sup>

#### Exchange-Traded Funds

NYSE Rule 1100 and Section 703.16 of the Manual provide standards for listing ICUs, which are securities issued by a unit investment trust, an open-end management investment company (open-end mutual fund), or similar entity based on a portfolio of stocks or fixed income securities that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities index. Pursuant to Section 703.16 of the Manual, ICUs must be issued in a specified aggregate number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value ("NAV"). When aggregated in the same specified minimum number, ICUs must be redeemable by the issuer for the securities and/or cash, with a value equal to the next determined NAV. The NAV is calculated once a day after the close of the regular trading day.

To meet the investment objective of providing investment returns that correspond to the price, dividend, and yield performance of the underlying index, an ETF may use a "replication" strategy or a "representative sampling" strategy with respect to the ETF portfolio. An ETF using a replication strategy will invest in each security found in the underlying index in about the same proportion as that security is represented in the index itself. An ETF using a representative sampling strategy will generally invest in a significant number, but perhaps not all, of the component securities of the underlying index, and will hold securities that, in the aggregate, are

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<sup>7</sup> When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the exchange begins trading the new derivative securities product. See 17 CFR 240.19b-4(e)(2)(ii).

intended to approximate the full index in terms of certain key characteristics. In the context of a Fixed Income Index, such characteristics may include liquidity, duration, maturity, and yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code (“IRC”).<sup>8</sup>

#### Generic Listing Standards for Exchange-Traded Funds

The Exchange notes that the Commission has previously approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. exchanges as well as on indexes consisting of foreign stocks or both U.S. and foreign stocks.<sup>9</sup> In addition, the Commission has previously approved the listing and trading of ETFs based on fixed income

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<sup>8</sup> For an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC. Among these is the requirement that, at the close of each quarter of the ETFs taxable year, (i) at least 50% of the market value of the ETFs total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies, and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value if the ETFs assets and not greater than 10% of the outstanding voting securities of such issuer; and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the ETF (within the meaning of Section 851(b)(4)(B) of the IRC) and that are engaged in the same or similar trades or businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies).

<sup>9</sup> In 1996, the Commission approved Section 703.16 of the Listed Company Manual, which sets forth the rules related to the listing of ICUs. See Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR-NYSE-95-23). In 2000, the Commission approved the Exchange’s generic listing standards for the listing and trading, or the trading pursuant to unlisted trading privileges (“UTP”), of ICUs based on U.S. stock indexes under Section 703.16 of the Manual and Exchange Rule 1100. See Securities Exchange Act Release No. 43679 (December 5, 2000); 65 FR 77949 (December 13, 2000) (SR-NYSE-00-46). In 2007, the Commission also approved the Exchange’s generic listing standards for the listing and trading, or the trading pursuant to UTP, of ICUs based on foreign or global stock indexes. See Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101).

securities indexes.<sup>10</sup>

The Exchange notes that the Commission has also approved listing standards for other index-based derivatives that permit the listing—pursuant to Rule 19b-4(e)—of such securities where the Commission had previously approved the trading of specified index-based derivatives on the same index, on the condition that all of the standards set forth in the original order are satisfied by the exchange employing generic listing standards.<sup>11</sup>

The Exchange believes that adopting additional generic listing standards for ETFs based on Fixed Income Indexes and Combination Indexes and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for individualized Commission approval. The proposed rules have the potential to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the proposed generic listing standards would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular ETF.

#### Fixed Income and Combination Index ETFs

##### Requirements for Listing and Trading ETFs Based on Fixed Income Indexes.

Exchange-traded funds listed pursuant to these generic standards would be traded in all other respects under the Exchange's existing trading rules and procedures that apply to all

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<sup>10</sup> See Securities Exchange Act Release No. 46299 (August 1, 2002), 67 FR 51907 (August 9, 2002) (SR-NYSE-2002-26).

<sup>11</sup> See, e.g., Section 703.22 of the Manual and Securities Exchange Act Release No. 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR-NYSE-2007-27); NYSE Arca Equities Rule 5.2(j)(6) and 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).

Exchange-listed securities, including ETFs, and would be covered under the Exchange's surveillance programs for equities.<sup>12</sup>

In order to list an ETF pursuant to the proposed generic listing standards for Fixed Income Indexes, the index underlying the ETF must satisfy all the conditions contained in proposed Section 703.16(D) of the Manual. As with existing generic listing standards for ETFs based on domestic and international or global indexes, the proposed generic listing standards are intended to ensure that fixed income securities with substantial market distribution and liquidity account for a substantial portion of the weight of an index or portfolio. While the standards in this proposal are loosely based on the standards contained in Commission and Commodity Futures Trading Commission ("CFTC") rules regarding the application of the definition of narrow-based security index to debt security indexes<sup>13</sup> as well as existing fixed income ETFs, they have been adapted as appropriate to apply generally to Fixed Income Indexes for ETFs.

#### Fixed Income Securities

As proposed, Section 703.16(B)(3) defines the term "Fixed Income Securities" to include notes, bonds (including convertible bonds), debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust-preferred

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<sup>12</sup> See, e.g., NYSE Rule 1100.

<sup>13</sup> See Securities Exchange Act Release No. 54106 (July 6, 2006), 71 FR 39534 (July 13, 2006) (File No. S7-07-06) (the "Joint Rules").

securities,<sup>14</sup> supranational debt,<sup>15</sup> and debt of a foreign country or subdivision thereof. This new definition is designed to create a category of ETFs based on Fixed Income Indexes that may be listed and traded pursuant to Rule 19b-4(e) under the Act.

For purposes of the proposed definition, a convertible bond is deemed to be a Fixed Income Security up until the time that it is converted into its underlying common or preferred stock.<sup>16</sup> Once converted, the equity security may no longer continue as a component of a Fixed Income Index under the proposed rules, and accordingly, would be removed from such index.

The Exchange proposes that, to list a series of ICUs based on a Fixed Income Index pursuant to the generic standards, the index must meet the following criteria:

- The index or portfolio must consist of Fixed Income Securities;
- Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of \$100 million or more;

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<sup>14</sup> Trust-preferred securities are undated cumulative securities issued from a special purpose trust in which a bank or bank holding company owns all of the common securities. The trust's sole asset is a subordinated note issued by the bank or bank holding company. Trust-preferred securities are treated as debt for tax purposes so that the distributions or dividends paid are a tax-deductible interest expense.

<sup>15</sup> Supranational debt represents the debt of international organizations such as the World Bank, the International Monetary Fund, regional multilateral development banks, and multilateral financial institutions. Examples of regional multilateral development banks include the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, and the Inter-American Development Bank. In addition, examples of multilateral financial institutions include the European Investment Bank and the International Fund for Agricultural Development.

<sup>16</sup> The Exchange notes that, under the Section 3(a)(11) of the Act, 15 U.S.C. 78c(a)(11), a convertible security is defined as an equity security. However, for the purpose of the proposed generic listing criteria, NYSE believes that defining a convertible security (prior to its conversion) as a Fixed Income Security is consistent with the objectives and intention of the generic listing standards for fixed-income-based ETFs as well as the Act.

- No component Fixed Income Security (excluding a Treasury Security or GSE Security) represents more than 30% of the weight of the index, and the five highest weighted component fixed income securities in the index do not in the aggregate account for more than 65% of the weight of the index;
- An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and
- Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either:
  - From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act;<sup>17</sup>
  - From issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more;
  - From issuers that have outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least \$1 billion;
  - Exempted securities, as defined in Section 3(a)(12) of the Act;<sup>18</sup> or
  - From issuers that are governments of foreign countries or political subdivisions of foreign countries.

The Exchange believes that these proposed component criteria standards are reasonable for Fixed Income Indexes, and, when applied in conjunction with the other listing requirements, would result in ETFs that are sufficiently broad-based in scope.

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<sup>17</sup> 15 U.S.C. 78m and 78o(d).

<sup>18</sup> 15 U.S.C. 78c(a)(12).



The Exchange notes that the proposed standards are similar to the standards set forth by the Commission and the CFTC in the Joint Rules as well as existing fixed-income-based ETFs. First, in the proposed standards, component Fixed Income Securities that in the aggregate account for at least 75% of the weight of the index or portfolio would have to have a minimum original principal amount outstanding of at least \$100 million. Second, the proposed standards provide that the most heavily weighted component security cannot exceed 30% of the weight of the index or portfolio, consistent with the standard for U.S. equity ETFs set forth in Section 703.16(C)(2)(a)(iii). In addition, this standard is identical to the standard set forth by the Commission and the CFTC in the Joint Rules.<sup>19</sup> Third, in the proposed standards, the five most heavily weighted component securities could not exceed 65% of the weight of the index or portfolio, consistent with the standard for U.S. equity ETFs set forth in Section 703.16(C)(2)(a)(iii) of the Manual as well as the Joint Rules. Fourth, the minimum number of fixed income securities (except for portfolios consisting entirely of exempted securities, such as Treasury Securities or GSE Securities) from unaffiliated<sup>20</sup> issuers in the proposed standards is 13, consistent with the standard for U.S. equity ETFs set forth in Section 703.16(C)(2)(a)(iv) of the Manual and the Joint Rules. This requirement together with the diversification standards set forth above would provide assurance that the fixed income securities comprising an index would not be overly dependent on the price behavior of a single component or small group of components.

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<sup>19</sup> See note 13 *supra*.

<sup>20</sup> Rule 405 under the Securities Act of 1933, 17 CFR 230.405, defines an affiliate as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person. Control, for this purpose, is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Finally, the proposed standards would require that at least 90% of the weight of the index or portfolio must be either (i) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act;<sup>21</sup> (ii) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (iii) from issuers that have outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least \$1 billion; (iv) exempted securities, as defined in Section 3(a)(12) of the Act;<sup>22</sup> or (v) from issuers that are governments of foreign countries or political subdivisions of foreign countries. This proposed standard is consistent with a similar standard in the Joint Rules and is designed to ensure that the component fixed income securities have sufficient publicly available information.

The proposed generic listing requirements for fixed income ETFs would not require that component securities in an underlying index have an investment-grade rating.<sup>23</sup> In addition, the proposed requirements would not require a minimum trading volume, due to the lower trading volume that generally occurs in the fixed income markets as compared to the equity markets.

The proposed standards would also provide that the Exchange could not approve a series of fixed income ETFs under the proposed generic listing requirements if such series seeks to provide investment results that either exceed the performance of a specified index by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified index by a specified multiple.

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<sup>21</sup> 15 U.S.C. 78m and 78o(d).

<sup>22</sup> 15 U.S.C. 78c(a)(12).

<sup>23</sup> Cf. Joint Rules, 71 FR at 30538.

### Requirements for Listing and Trading ETFs Based on Combination Indexes.

The Exchange also seeks to list and trade ETFs based on Combination Indexes. An ETF listed pursuant to the generic standards for Combination Indexes would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to all Exchange-listed securities, including ETFs, and would be covered under the Exchange's surveillance program for equities.

To list an ETF pursuant to the proposed generic listing standards for Combination Indexes, an index underlying an ICU must satisfy all the conditions contained in proposed Section 703.16(E). These generic listing standards are intended to ensure that securities with substantial market distribution and liquidity account for a substantial portion of the weight of both the equity and fixed income portions of an index or portfolio.

Proposed Section 703.16(E) would provide that the Exchange may approve series of ICUs—based on a combination of indexes or a series of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market—for listing and trading pursuant to Rule 19b-4(e) under the Act. The standards that an ETF would have to comply with are as follows: (i) such portfolio or combination of indexes has been described in an exchange rule for the trading of options, ICUs, Index-Linked Exchangeable Notes, or Index-Linked Securities that has been approved by the Commission under Section 19(b)(2) of the Act, and all of the standards set forth in the original order are satisfied; or (ii) the equity portion and fixed income portion of the component securities separately meet the criteria set forth in Section 703.16(C) (equities) and proposed Section 703.16(D) (fixed income).

The proposed standards would also provide that the Exchange could not approve a series of ETFs based on a Combination Index under the proposed generic listing requirements if such

series seeks to provide investment results that either exceed the performance of a specified index by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified index by a specified multiple.

Index Methodology and Dissemination. The Exchange proposes to adopt Sections 703.16(D)(2) and (E)(1) to establish requirements for index methodology and dissemination in connection with Fixed Income and Combination Indexes.

If a broker-dealer is responsible for maintaining (or has a role in maintaining) the underlying index, such broker-dealer would be required to erect and maintain a “firewall,” in a form satisfactory to the Exchange, to prevent the flow of non-public information regarding the underlying index from the personnel involved in the development and maintenance of such index to others such as sales and trading personnel.

With respect to index dissemination, the Exchange proposes to adopt Sections 703.16(D)(2)(b) and (E)(1)(b) of the Manual. Section 703.16(D)(2)(b) would require that the index value for an ETF listed pursuant to the proposed standards for fixed income ETFs be widely disseminated by one or more major market data vendors at least once a day. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. This reflects the nature of the fixed income markets as well as the frequency of intra-day trading information with respect to Fixed Income Indexes. If an ETF is based on a Combination Index, pursuant to proposed Section 703.16(E)(1)(b), the index would have to be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the ETF shares trade on the Exchange to reflect updates for the prices of the

equity securities included in the Combination Index. The fixed income portion of the Combination Index would have to be updated at least daily.

Application of General Rules. Section 703(16)(F) would be added to identify those requirements for ETFs that would apply to all such series of ICUs based on Fixed Income or Combination Indexes. This would include the dissemination of the Intraday Indicative Value, an estimate of the value of a share of each ETF, updated at least every 15 seconds. In addition, Section 703.16(F)(2) would provide that paragraph (C)(5) of Section 703.16, which requires the Exchange to implement written surveillance procedures applicable to a series of ICUs, would apply to series of ICUs based on Fixed Income or Combination Indexes.

The Exchange states that the Commission has approved generic standards providing for the listing pursuant to Rule 19b-4(e) of other derivative products based on indexes described in rule changes previously approved by the Commission under Section 19(b)(2) of the Act. The Exchange proposes to include in the generic standards for the listing of ICUs based on Fixed Income and Combination Indexes, in Section 703.16(E), indexes described in exchange rules approved by the Commission in connection with the listing of options, Investment Company Units, Index-Linked Exchangeable Notes, or Index-Linked Securities. The Exchange believes that the application of that standard to ETFs is appropriate because the underlying index would have been subject to Commission review in the context of the approval of listing of other derivatives.<sup>24</sup>

The Exchange notes that current Section 703.16(E), which includes continued listing criteria applicable to ICUs, would be re-designated as Section 703.16(H), and this provision would apply to a series of ICUs based on Fixed Income or Combination Indexes.

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<sup>24</sup> See supra notes 10 and 11.

The Exchange further notes that current Section 703.16(A)(6) of the Manual provides that, in connection with approving an ETF issuer for listing on the Exchange, the Exchange will obtain a representation from the ETF issuer that the NAV per share will be calculated each business day and made available to all market participants at the same time.

The trading halt or suspension requirements for existing ETFs contained in current Rule 1100(f) will similarly apply to fixed income and combination index ETFs.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of ICUs listed pursuant to the proposed new listing standards or traded pursuant to unlisted trading privileges. In addition, the Exchange has a general policy prohibiting the dissemination of material, non-public information by its employees.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>25</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>26</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

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<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange believes that the proposed rule change would 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 has neither solicited nor received comments on this proposal.

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 ([www.sec.gov/rules/sro.shtml](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-NYSE-2007-37 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-2007-37. 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 ([www.sec.gov/rules/sro.shtml](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 such filing also will be available for inspection and copying at the principal office of NYSE. 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-2007-37 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

#### IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>27</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act<sup>28</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

Currently, the Exchange would have to file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act<sup>29</sup> and Rule 19b-4 thereunder<sup>30</sup> to list or trade any ETF based on a Fixed Income Index or on a Combination Index. The Exchange also would have to file a proposed rule change to list or trade an ETF based on a Fixed Income or Combination

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<sup>27</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).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> 15 U.S.C. 78s(b)(1).

<sup>30</sup> 17 CFR 240.19b-4.



Index described in an exchange rule previously approved by the Commission as an underlying benchmark for a derivative security. Rule 19b-4(e), however, provides that the listing and trading of a new derivative securities product by an 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 ETFs pursuant to Rule 19b-4(e) based on (1) certain indexes with components that include Fixed Income Securities or (2) indexes or portfolios described in exchange rules previously approved by the Commission as underlying benchmarks for derivative securities fulfill these requirements. Use of Rule 19b-4(e) by NYSE to list and trade such ETFs should promote competition, reduce burdens on issuers and other market participants, and make such ETFs available to investors more quickly.<sup>31</sup>

The Commission previously has approved generic listing standards for another exchange, Amex, that are substantially similar to those proposed here by NYSE.<sup>32</sup> This proposal does not appear to raise any novel regulatory issues. Therefore, the Commission finds that NYSE's proposal is consistent with the Act on the same basis that it approved Amex's generic listing standards for ETFs based on Fixed Income or Combination Indexes or on indexes or portfolios described in exchange rules that have previously been approved by the Commission and underlie derivative securities.

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<sup>31</sup> The Commission notes that failure of a particular ETF to satisfy the Exchange's generic listing standards does not preclude the Exchange from submitting a separate proposal under Rule 19b-4 to list and trade such ETF.

<sup>32</sup> See Securities Exchange Act Release No. 55434 (March 9, 2007), 72 FR 12233 (March 15, 2006) (SR-Amex-2006-118) (approving generic listing standards for series of ETFs based on Fixed Income and Combination Indexes).

Proposed Sections 703.16(D) and 703.16(E) of the Manual establish the standards for the composition of a Fixed Income Index or Combination Index underlying an ETF. The Commission believes that these standards are reasonably designed to ensure that a substantial portion of any underlying index or portfolio consists of securities about which information is publicly available, and that when applied in conjunction with the other applicable listing requirements, will permit the listing and trading only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation. The Commission further believes that the proposed listing standards are reasonably designed to preclude NYSE from listing and trading ETFs that might be used as a surrogate for trading in unregistered securities.

The proposed generic listing standards also will permit NYSE to list and trade an ETF if the Commission previously has approved an exchange rule that contemplates listing and trading a derivative security based on the same underlying index. NYSE would be able to rely on that earlier approval order, provided that NYSE complies with the commitments undertaken by the other SRO set forth in the prior order, including any surveillance-sharing arrangements.

The Commission believes that NYSE's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>33</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The value of a Fixed Income Index underlying underlying an ETF listed pursuant to this proposal is required to be widely disseminated by one or more major market data vendors at least once a day. Likewise, the value of an underlying Combination Index is required to be widely disseminated by one or more major market data vendors at least

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<sup>33</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

once every 15 seconds during the time when the corresponding ETF trades on the Exchange, provided that, with respect to the fixed income components of the Combination Index, the impact on the index is required to be updated only once each day.

Furthermore, the Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF appropriately. If a broker-dealer is responsible for maintaining (or has a role in maintaining) the underlying index, such broker-dealer would be required to erect and maintain a “firewall,” in a form satisfactory to the Exchange, to prevent the flow of non-public information regarding the underlying index from the personnel involved in the development and maintenance of such index to others such as sales and trading personnel. The Commission also notes that current Section 703.16(A)(6) of the Manual provides that, in connection with approving an ETF issuer for listing on the Exchange, the Exchange will obtain a representation from the ETF issuer that the NAV per share will be calculated each business day and made available to all market participants at the same time.

The Commission also believes that the Exchange’s trading halt rules are reasonably designed to prevent trading in an ETF when transparency is impaired. NYSE Rule 1100(f)(1) provides that, when the Exchange is the listing market, if the IIV or index value applicable to an ETF is not disseminated as required, the Exchange may halt trading during the day in which the interruption occurs. If the interruption continues, then the Exchange will halt trading no later than the beginning of the next trading day. Also, the Exchange may commence delisting proceedings in the event that the value of the underlying index is no longer calculated or available.

The Exchange will implement written surveillance procedures for ETFs based on Fixed Income Indexes or Combination Indexes.<sup>34</sup> In approving this proposal, the Commission relied on NYSE's representation that its surveillance procedures are adequate to properly monitor the trading of ICUs listed pursuant to this proposal. This approval is conditioned on the continuing accuracy of that representation.

#### Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30<sup>th</sup> day after the date of publication of the notice of filing thereof in the Federal Register. The Commission notes that NYSE's proposal is substantially similar to an Amex proposal that has been approved by the Commission.<sup>35</sup> The Commission does not believe that NYSE's proposal raises any novel regulatory issues and, therefore, believes that good cause exists for approving the filing before the conclusion of a notice-and-comment period. Accelerated approval of the proposal will expedite the listing and trading of additional ETFs by the Exchange, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Exchange Act,<sup>36</sup> to approve the proposed rule change, as amended, on an accelerated basis.

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<sup>34</sup> See proposed Section 703.16(F)(2).

<sup>35</sup> See supra note 32.

<sup>36</sup> 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>37</sup> that the proposed rule change (SR-NYSE-2007-37), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>38</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>37</sup> Id.

<sup>38</sup> 17 CFR 200.30-3(a)(12).