

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54813; File No. SR-Amex-2006-19)

November 22, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to the Listing and Trading of Options on the Nuveen Municipal Fund Index

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 February 17, 2006, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On July 12, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On September 19, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On November 13, 2006, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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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> In Amendment No. 1, Amex clarified the Index symbol and the rationale for the product.

<sup>4</sup> In Amendment No. 2, Amex replaced the original rule filing in its entirety and incorporated the previously filed Amendment No. 1.

<sup>5</sup> In Amendment No. 3, Amex made modifications to the Purpose section to clarify the “Index Calculation and Maintenance” section and included representations made by Nuveen regarding the existence of firewalls to address insider trading concerns.

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

The Exchange proposes to list and trade options on the Price-Return Nuveen Municipal Closed-End Fund Index (“NMUNP”) (the “Nuveen Municipal Fund Index” or “Index”), an index based on the shares of exchange-listed closed-end management investment companies that are exempt from federal income tax by investing in portfolios of bonds issued by state and local governments and agencies (“Closed-End Funds” or “Funds”).

The text of the proposed rule change is available on the Amex’s Web site at <http://www.amex.com>, at the Amex Office of the Secretary, and at the Commission’s Public Reference Room.

**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 Amex 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 Amex 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 purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style index options on the Price-Return Nuveen Municipal Fund Index. The Exchange believes that options on the Index will be the first index options based on an index of closed-end funds. The proposed Index options are intended

for the use of investors desiring to achieve exposure to a broad section of the national tax-free municipal closed-end fund market, as well as a hedging vehicle for those investors holding such closed-end funds.

The Index is a capitalization-weighted index based entirely on the shares of Closed-End Funds listed on either the Amex, New York Stock Exchange, Inc. (the “NYSE”) or the Nasdaq Stock Market, Inc. (“Nasdaq”) that are exempt from federal income tax through investment in bonds issued by state and local governments and agencies. Each component is a NMS stock as defined in Rule 600 under the Securities Exchange Act of 1934 (the “1934 Act”). Currently, the Index is comprised of the shares of Closed-End Funds that are listed on the Amex or NYSE.

#### Index Design and Composition

The Nuveen Municipal Fund Index is designed to be a broad representation of the U.S. municipal fund market. This Index is capitalization-weighted and includes only those Closed-End Funds domiciled in the U.S. and its territories and that are traded on the Amex, NYSE, or Nasdaq. The component Closed-End Funds are weighted by their market capitalization, which is calculated by multiplying the primary market price by the outstanding shares.

Each of the component Closed-End Funds are required to have a minimum market capitalization of at least \$100 million and an average monthly trading volume over the prior six (6) months of at least 500,000 shares. In addition, for newly listed Closed-End Funds to be an index component, at least one (1) dividend payment with an ex-date prior to inclusion in the Index is required.

The Index is calculated based on a market capitalization weighting methodology. In a market capitalization index, components are weighted based on total market value of the outstanding shares, i.e., share price times the number of shares outstanding. The Exchange states that this type of index typically fluctuates in line with the price moves of the components. After the initial weighting of the Index, the weights are updated in conjunction with scheduled quarterly adjustments.

As of January 31, 2006, the Closed-End Funds comprising the Nuveen Municipal Fund Index had an average market capitalization of \$414 million, ranging from a high of \$1.9 billion (Nuveen Municipal Value Fund Inc. (NUV)) to a low of \$101 million (MBIA Capital/Claymore Managed Duration Investment Grade Municipal Fund (MZF)). The number of available shares outstanding ranged from a high of 194.9 million (NUV) to a low of 7.9 million (MZF), and averaged 31.9 million shares. The six-month average daily trading volume for Index components was 45,000 shares per day, ranging from a high of 159,100 shares per day (NUV) to a low of 13,100 shares per day (Morgan Stanley Quality Municipal Securities (IQM)).

#### Index Calculation and Maintenance

The value of the Index will be calculated by the Amex on behalf of Nuveen and will be disseminated at 15-second intervals during regular Amex trading hours to market information vendors via the Consolidated Tape Association (“CTA”) or by other major market data vendors (from another Amex market data feed).

The Exchange states that the methodology used to calculate the value of the Nuveen Municipal Fund Index is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes. The level of the Index

reflects the total market value of the component Closed-End Funds relative to a particular base period and is computed by dividing the total market value of the Closed-End Funds in the Index by the index divisor. The divisor is adjusted periodically to maintain consistent measurement of the Index. The Index commenced on December 31, 1994 with a base value of 1000.00. On December 30, 2005, the Index value was 1144.05.

Options on the Nuveen Municipal Fund Index will expire on the Saturday following the third Friday of the expiration month. Trading in options on the Index will normally cease at 4:15 p.m. Eastern time (“ET”) on the Thursday preceding an expiration Saturday. The exercise settlement value at expiration of each Nuveen Municipal Fund Index option will be calculated by the Amex on behalf of Nuveen, based on the opening prices of the Index’s component Closed-End Funds on the last business day prior to expiration (“Settlement Day”).<sup>6</sup> The Settlement Day is normally the Friday preceding “Expiration Saturday.” If a component Closed-End Fund in the Index does not trade on Settlement Day, the last reported sales price in the primary market from the previous trading day would be used to calculate the settlement value. Settlement values for the Index will be disseminated by the Amex over the CTA.

The Nuveen Municipal Fund Index is monitored and maintained by the Amex. The Amex is responsible for making all necessary adjustments to the Indexes to reflect component deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and

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<sup>6</sup> The aggregate exercise value of the option contract is calculated by multiplying the Index value by the Index multiplier, which is 100.

stock dividends, require simple changes to the available shares outstanding and the stock prices of the component securities. Other corporate actions, such as share issuances, change the market value of the Indexes and would require the use of an index divisor to effect adjustments.

The Index is reviewed each December, March, June, and September to ensure that at least 90% of the Index weight is accounted for by components that continue to represent the universe of Closed-End Funds that meet the Index methodology maintenance requirements. To remain in the Index, components must maintain a market capitalization of at least \$75 million and have a six (6) month average monthly trading volume over 250,000 shares. Changes to Index components and/or the component share weights typically take effect after the close of trading on the third Friday of each calendar quarter month in connection with quarterly rebalancing. The Amex and Nuveen,<sup>7</sup> by mutual agreement, may change the number of issues comprising the Index by adding or deleting one or more components contained in the Index with one or more substitute Closed-End Funds. If an Index component is added or deleted during a quarterly rebalance, the share weights used in the calculation of the Index will be updated based upon current shares outstanding. The Index components and their share weights are

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<sup>7</sup> The Commission notes that Nuveen, because it selects the components for the Index, has represented to Amex that it prohibits individuals at Nuveen who will be privy to information about future changes to the Nuveen Municipal Fund Index rules or constituent stocks from trading on that information, for their own benefit or for the benefit of Nuveen's clients. Additionally, Nuveen has represented that it has firewalls around the personnel who have access to information concerning changes and adjustments to the Index. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission on November 17, 2006.

determined and announced prior to taking effect. The share weight of each component in the Index portfolio remains fixed between quarterly reviews, except in the event of certain types of corporate actions such as splits, reverse splits, stock dividends, or similar events. The share weights used in the Index calculation are not typically adjusted for shares issued or repurchased between quarterly reviews.

In the event of a merger between two components, the share weight of the surviving entity may be adjusted to account for any shares issued in this acquisition. The Exchange may substitute components or change the number of issues included in the Index, based on changing conditions in the industry or in the event of certain types of corporate actions, such as mergers, acquisitions, spin-offs, and reorganizations. In the event of component or share weight changes to the Index portfolio, the payment of dividends other than ordinary cash dividends, spin-offs, rights offerings, re-capitalization, or other corporate actions affecting a component of the Index, the index divisor may be adjusted to ensure that such corporate actions do not affect the Index level.

The Exchange will apply the following maintenance standards for continued listing: (i) the number of securities in the Index may not drop by one-third or more from the number of components in the Index at the time of initial listing;<sup>8</sup> (ii) no more than 10% or more of the weight of the Index is represented by component securities having a market value of less than \$75 million; (iii) no more than 10% or more of the weight of the

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<sup>8</sup> The Exchange states that the Index currently has 86 components, and therefore, may not be comprised of less than 57 components. This representation replaces any prior representation to the effect that the Index could be comprised of no less than 10 components. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission on November 17, 2006.

Index is represented by component securities trading less than 15,000 shares per day; (iv) the largest component security in the Index accounts for no more than 15% of the weight of the Index, or the largest five components in the aggregate account for more than 50% of the weight of the Index on the first day of January and July each year;<sup>9</sup> or (v) the component securities will be listed and traded on the Amex, the NYSE, or NASDAQ.<sup>10</sup>

If the Index ceases to be maintained or calculated, or its values are not disseminated at least every 15 seconds by the Amex over the CTA (or another major market data vendor) or the above Index maintenance standards are not satisfied, the Exchange would not list any additional series for trading and would limit all transactions in options on the Index to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

#### Contract Specifications

The Nuveen Municipal Fund Index is a broad stock index group as defined in Amex Rule 900C(b)(1). Options on the Index would be European-style and a.m. cash-settled. The Exchange's standard trading hours for broad-based index options (9:30 a.m. to 4:15 p.m. ET), as set forth in Commentary .02 to Amex Rule 1, will apply to options on the Nuveen Municipal Fund Index. Exchange rules that apply to the trading of options

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<sup>9</sup> Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission on November 21, 2006 to remove this footnote.

<sup>10</sup> These maintenance standards are adapted from Commentary .03 of Amex Rule 901C to address the unique characteristics of the closed-end fund Index components, which may not always satisfy Commentary .03(4) of Amex Rule 901C. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission on November 23, 2006.

on broad-based indexes will also apply to options on the Index.<sup>11</sup> The trading of these options will also be subject to, among others, Exchange rules governing margin requirements and trading halt procedures for index options.

For options on the Nuveen Municipal Fund Index, the Exchange proposes to establish an aggregate position limit of 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in the nearest expiration month series.<sup>12</sup>

Commentary .01(c) to Rule 904C provides that position limits for hedged index options may not exceed twice the established position limits for broad stock index groups. The Exchange proposes that a hedge exemption of 37,500 be available for the Index.

Furthermore, proprietary accounts of member organizations could receive an exemption of up to three times the established position limit for the purpose of facilitating public customer orders, to the extent they comply with the procedures and criteria listed in Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE.

The Exchange proposes to apply broad-based index margin requirements for the purchase and sale of options on the Nuveen Municipal Fund Index. Accordingly, purchases of put or call options with nine months or less until expiration would have to be paid for in full. Writers of uncovered put or call options would have to deposit/maintain 100% of the option proceeds, plus 15% of the aggregate contract value (current index level x \$100), less any out-of-the-money amount, subject to a minimum of

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<sup>11</sup> See Amex Rules 900C through 980C.

<sup>12</sup> The same limits that apply to position limits would apply to exercise limits for these products.

the option proceeds plus 10% of the aggregate contract value for call options and a minimum of the option proceeds plus 10% of the aggregate exercise price amount for put options.

The Exchange proposes to set a strike price interval of at least 2½ points, at a minimum, for a near-the-money series in a near-term expiration month when the level of the Index is below 200, a 5-point strike price interval, at a minimum, for any options series with an expiration up to one year, and at least a 10-point strike price interval for any longer-term option. The minimum tick size for series trading below \$3 would be \$0.05, and for series trading at or above \$3 would be \$0.10.

The Exchange proposes to list options on the Index in the three consecutive near-term expiration months, plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.<sup>13</sup> In addition, long-term option series having up to 60 months to expiration will be traded.<sup>14</sup> The trading of long-term options on the Index will be subject to the same rules that govern all the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

#### Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options on the Nuveen Municipal Fund Index and intends to apply those same procedures that it applies to the Exchange's other index options. In addition, the Exchange is a member of the Intermarket Surveillance Group ("ISG"). The members of the ISG

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<sup>13</sup> See Amex Rule 903C(a).

<sup>14</sup> See Amex Rule 903C(a)(iii).

include all of the national securities exchanges, plus the NASD. The ISG members work together to coordinate surveillance and share information regarding the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange also represents that it has the necessary systems capacity to support the new options series that would result from the introduction of options on the Nuveen Municipal Fund Index, including long-term options.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>16</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 remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

The Exchange did not receive any written comments on the proposed rule change.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change, as amended, at the end of a 15-day comment period.<sup>17</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2006-19 on the subject line.

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<sup>17</sup> Amex has requested accelerated approval of this proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof, following the conclusion of a 15-day comment period. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission on November 21, 2006.

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-2006-19. 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 provision 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 the Amex. 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 submission should refer to File Number SR-Amex-2006-19 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

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

Nancy M. Morris  
Secretary

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