

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55437; File No. SR-Amex-2006-118)

March 9, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Amendment Nos. 2 and 3 to Proposed Rule Change Relating to Generic Listing Standards for Series of Portfolio Depositary Receipts and Index Fund Shares Based on Fixed Income Indexes and Accelerated Approval of Proposed Rule Change as Amended

I. Introduction

On December 22, 2006, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to generic listing standards for series of portfolio depositary receipts (“PDRs”) and index fund shares (“IFSs”), together referred to as “exchange-traded funds” (“ETFs”), based on fixed income indexes. On January 26, 2007, the Exchange filed Amendment No. 1. The proposed rule change, as amended, was published for comment in the Federal Register on February 7, 2007 for a 15-day comment period.<sup>3</sup> The Commission received no comments on the proposal. On March 2, 2007, Amex filed Amendment No. 2 to the proposed rule change<sup>4</sup> and on March 7, 2007, Amex filed Amendment No. 3 to the proposed rule change.<sup>5</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> See Securities Exchange Act Release No. 55213 (January 31, 2007), 72 FR 5768 (“Notice”).

<sup>4</sup> In Amendment No. 2, the Exchange (1) updated its proposal to reflect the migration of ETF shares from Amex’s legacy platform to the AEMI platform and (2) represented that an ETF based on a fixed income index or combination index would be covered under the Exchange’s existing surveillance program for ETFs and that all products listed under the proposed generic listing standards would be subject to the full panoply of Amex rules and procedures that now govern the trading of ETFs on Amex.

<sup>5</sup> In Amendment No. 3, the Exchange revised proposed Commentary .06(g) to Rule 1000-AEMI and proposed Commentary .05(g) to Rule 1000A-AEMI to clarify that Rule 1000-

This order provides notice of the proposed rule change as modified by Amendments No. 1, 2, and 3 and approves the proposed rule change as amended on an accelerated basis.

## II. Description of the Proposal

The Exchange proposes to revise Amex Rules 1000-AEMI and 1000A-AEMI to include generic listing standards to permit the listing and trading of ETFs that are based on indexes or portfolios consisting of fixed income securities (“Fixed Income Indexes”) or both fixed income and equity securities (“Combination Indexes”) pursuant to Rule 19b-4(e) under the Act.<sup>6</sup> Specifically, the Exchange proposes to add Commentaries .04, .05, and .06 to Amex Rule 1000-AEMI and Commentaries .03, .04, and .05 to Amex Rule 1000A-AEMI and to revise the definitions of PDR and IFS, in Amex Rules 1000-AEMI(b)(1) and 1000A-AEMI(b)(1), respectively, to include ETFs based on Fixed Income Indexes and Combination Indexes.

The proposed rule change will enable the Exchange to list and trade an ETF pursuant to Rule 19b-4(e) under the Act without a rule filing if each of the conditions set forth in either Commentaries .04 and .05 to Rule 1000-AEMI or Commentaries .03 and .04 to Rule 1000A-AEMI, as applicable, is satisfied. The proposed listing standards will apply to certain Fixed Income Indexes and Combination Indexes that the Commission has yet to review, as well as those Fixed Income Indexes described in exchange rules that have previously been approved by

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AEMI and Rules 1001 through 1006 as well as Rule 1000A-AEMI and Rules 1001A through 1005A apply to the listing and trading of fixed income and combination index ETFs.

<sup>6</sup> 17 CFR 240.19b-4(e).

the Commission under Section 19(b)(2) of the Act<sup>7</sup> for the trading of ETFs, options, or other index-based securities.<sup>8</sup>

A. Generic Listing Standards

Rule 19b-4(e) under the Act 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>9</sup> if the Commission has approved, pursuant to Section 19(b) of the Act,<sup>10</sup> the self-regulatory organization's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the self-regulatory organization has a surveillance program for the product class.<sup>11</sup>

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> See proposed Commentary .04 to Amex Rule 1000-AEMI and Commentary .03 to Amex Rule 1000A-AEMI (permitting the Exchange to list and trade an ETF pursuant to Rule 19b-4(e) provided that the portfolio or index “has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission’s approval order, continue to be satisfied....”).

<sup>9</sup> 17 CFR 240.19b-4(c)(1).

<sup>10</sup> 15 U.S.C. 78s(b).

<sup>11</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (“New Products Release”).

The Exchange already has Commission-approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. and non-U.S. exchanges,<sup>12</sup> for trust certificates linked to certain Fixed Income Securities,<sup>13</sup> and for other index-based derivatives.<sup>14</sup> The Commission has also approved for listing and trading on the Exchange ETFs based on certain Fixed Income Indexes<sup>15</sup> and structured notes linked to a basket or index of Fixed Income Securities.<sup>16</sup> This proposal seeks to adopt listing standards, trading rules, and procedures, including surveillance, for ETFs based on Fixed Income and Combination Indexes that generally

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<sup>12</sup> See Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (for ETFs based on global and international indexes); and 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (for ETFs based on indexes comprised of U.S. stocks).

<sup>13</sup> See Securities Exchange Act Release No. 50355 (September 13, 2004), 69 FR 56252 (September 20, 2004) (approving generic listing standards for trust certificates linked to portfolios of investment-grade debt securities, securities of government-sponsored entities, and U.S. Treasury securities).

<sup>14</sup> See Amex Company Guide Section 107D (Index-Linked Securities); Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005). Such listing standards permit the listing – pursuant to Rule 19b-4(e) under the Act – 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>15</sup> See Securities Exchange Act Release Nos. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (approving the listing and trading of funds based on U.S. Treasury or corporate bond indexes); 46738 (October 29, 2002), 67 FR 67666 (November 6, 2002) (approving the listing and trading of FITRs); and 52870 (December 1, 2005), 70 FR 73039 (December 8, 2005) (approving the trading on a UTP basis of the iShares Lehman TIPS Bond Fund).

<sup>16</sup> See Securities Exchange Act Release Nos. 41334 (April 27, 1999), 64 FR 23883 (May 4, 1999) (approving the listing and trading of Bond Indexed Term Notes); 46923 (November 27, 2002), 67 FR 72247 (December 4, 2002) (approving the listing and trading of trust units linked to a basket of investment-grade fixed income securities); and 48484 (September 11, 2003), 68 FR 54508 (September 17, 2003) (approving the listing and trading of trust certificates linked to a basket of up to five investment-grade fixed income securities plus U.S. Treasury securities).

reflect existing generic listing standards for ETFs based on equities, but are tailored for the fixed income markets.<sup>17</sup>

#### B. Exchange-Traded Funds

Amex Rules 1000-AEMI and Rules 1001 et seq. allow for the listing and trading on the Exchange of PDRs. A PDR represents an interest in a unit investment trust registered under the Investment Company Act of 1940 (the “1940 Act”)<sup>18</sup> that operates on an open-end basis and holds the securities that comprise an index or portfolio. Amex Rules 1000A-AEMI and 1001A et seq. provide standards for listing IFSs, which are securities issued by an open-end management investment company (i.e., an open-end mutual fund) based on a portfolio of securities that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic stock index or fixed income index. Pursuant to these rules, ETF shares must be issued in a specified aggregate minimum 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, ETF shares must be redeemed by the issuer for the securities and/or cash, with a value equal to the next-determined NAV. Consistent with Amex Rules 1002 and 1002A, 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 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 invests in each component security of the underlying index in about the same proportion

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<sup>17</sup> The failure of a particular ETF to comply with the proposed generic listing standards would not preclude the Exchange from submitting a separate rule change pursuant to Section 19(b)(2) of the Act to list and trade the ETF.

<sup>18</sup> 15 U.S.C. 80a.

as that security is represented in the index itself. An ETF using a representative sampling strategy generally invests in a significant number, but perhaps not all, of the component securities of the underlying index, and holds securities that, in the aggregate, are 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”).

C. Listing and Trading of ETFs Based on Fixed Income Indexes or Fixed Income Securities

Proposed Commentary .04 to Amex Rule 1000-AEMI and Commentary .03 to Amex Rule 1000A-AEMI define 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. Treasury securities (“Treasury Securities”), securities of government-sponsored entities (“GSE Securities”), municipal securities, trust-preferred securities,<sup>19</sup> supranational debt,<sup>20</sup> and debt of a foreign country or subdivision thereof. For purposes of the proposed definition, a convertible bond is deemed to be a Fixed Income Security until it is converted into its underlying

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<sup>19</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>20</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.

common or preferred stock.<sup>21</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 have to be removed from such index for the ETF to remain listed pursuant to proposed Commentary .04 to Amex Rule 1000-AEMI or Commentary .03 to Amex Rule 1000A-AEMI.

#### Fixed Income Index Criteria

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 Commentary .04 to Amex Rule 1000-AEMI (for PDRs) or proposed Commentary .03 to Amex Rule 1000A-AEMI (for IFSs). As with existing generic listing standards for ETFs based on domestic and international or global indexes, these listing criteria are designed to ensure that securities with substantial market distribution and liquidity account for a substantial portion of the weight of a Fixed Income Index.<sup>22</sup>

To list an ETF based on a Fixed Income Index pursuant to the proposed generic listing standards, the index must meet the following criteria:

- The index or portfolio must consist of Fixed Income Securities;

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<sup>21</sup> Under the Section 3(a)(11) of the Act, 15 U.S.C. 78c(a)(11), a convertible security is an equity security. However, for the purposes of the proposed generic listing criteria, Amex 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.

<sup>22</sup> The Exchange noted in its proposal that the index criteria 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. See Securities Exchange Act Release No. 54106 (July 6, 2006), 71 FR 39534 (July 13, 2006) (File No. S7-07-06) (the “Joint Rules”).

- 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;<sup>23</sup>
- No component Fixed Income Security (excluding a Treasury 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;<sup>24</sup>
- An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers;<sup>25</sup> and
- Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either:<sup>26</sup>
  - From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act;<sup>27</sup>
  - From issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more;

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<sup>23</sup> This is virtually identical to the corresponding standard in Section 107E(a)(x) of the Amex Company Guide for trust certificates.

<sup>24</sup> This is consistent with the standard for U.S. equity ETFs set forth in Commentary .03(a)(A) to Amex Rule 1000-AEMI and Commentary .02(a)(A) to Amex Rule 1000A-AEMI and the standard set forth by the Commission and the CFTC in the Joint Rules. See note 22 supra.

<sup>25</sup> The required number of unaffiliated issuers parallels the diversification requirement applicable to U.S. equity ETFs as set forth in Commentary .03(a)(A) to Amex Rule 1000-AEMI and Commentary .02(a)(A) to Amex Rule 1000A-AEMI.

<sup>26</sup> The Exchange notes that 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.

<sup>27</sup> 15 U.S.C. 78m and 78o(d).

- 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>28</sup> or
- From issuers that are governments of foreign countries or political subdivisions of foreign countries.

The proposed generic listing requirements for ETFs based on Fixed Income Indexes would not require that component securities in an underlying index have an investment-grade rating.<sup>29</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.<sup>30</sup> Also, consistent with the existing Amex Rule 1000A-AEMI(b)(2)(iii), an IFS based on a Fixed Income Index or Combination Index that seeks to provide investment results that either exceed the performance of such underlying index or correspond to the inverse (opposite) of the performance of such index by a specified multiple may not be listed and traded pursuant to the proposed generic listing standards.

#### D. Listing and Trading of ETFs Based on Combination Indexes

To list an ETF pursuant to the proposed generic listing standards for Combination Indexes, an index underlying the ETF must satisfy all the conditions contained in proposed Commentary .05 to Amex Rule 1000-AEMI (for PDRs) or proposed Commentary .04 to Amex

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<sup>28</sup> 15 U.S.C. 78c(a)(12).

<sup>29</sup> See Joint Rules, supra note 22, 71 FR at 30537.

<sup>30</sup> In its proposal, the Exchange stated its view that the minimum principal amount outstanding requirement of \$100 million, coupled with the proposed concentration requirements, would reduce the likelihood that an ETF listed under the proposal would be readily susceptible to manipulation.

Rule 1000A-AEMI (for IFSs). As with ETFs based solely on Fixed Income Indexes, the 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 a Combination Index.

The proposed rules provide that the Exchange may list and trade ETFs 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, pursuant to Rule 19b-4(e) under the Act, provided that: (i) such portfolio or combination of indexes has been described in an exchange rule approved by the Commission for the trading of options, PDRs, IFSs, Index-Linked Exchangeable Notes, or Index-Linked Securities, and all of the standards set forth in the approval order are satisfied by the exchange employing generic listing standards; or (ii) the equity portion and fixed income portion of the component securities separately meet the criteria set forth in Commentary .03 (equities) and proposed Commentary .04 (fixed income) for PDRs and Commentary .02 (equities) and proposed Commentary .03 (fixed income) for IFSs.<sup>31</sup>

#### E. Index Maintenance and Information

The Exchange proposes to adopt Commentaries .04(b) and .05(a) to Amex Rule 1000-AEMI and Commentaries .03(b) and .04(a) to Amex Rule 1000A-AEMI to establish requirements regarding the maintenance and dissemination of index information in connection with ETFs based on Fixed Income Indexes and Combination Indexes.

Commentaries .04(b)(ii) and .05(a)(ii) to Amex Rule 1000-AEMI and Commentaries .03(b)(ii) and .04(a)(ii) to Amex Rule 1000A-AEMI would require that the underlying value of a Fixed Income Index be widely disseminated by one or more major market data vendors at least

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<sup>31</sup> See proposed Commentary .05 to Amex Rule 1000-AEMI and Commentary .04 to Amex Rule 1000A-AEMI.

once a day during the time when the corresponding ETF trades on the Exchange. The rules also require that the underlying value of a Combination Index be widely disseminated by one or more major market data vendors at least 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, their impact on the index is required to be updated only once each day. In its proposal, the Exchange stated that these provisions reflect the nature of the fixed income markets as well as the frequency of intra-day trading information with respect to Fixed Income Securities. 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.

Moreover, if a Fixed Income Index or Combination Index underlying an ETF is maintained by broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index. In addition, any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index composition, methodology, and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the index.

F. Application of General Rules

Proposed Commentary .06 to Amex Rule 1000-AEMI and Commentary .05 to Amex Rule 1000A-AEMI set forth requirements governing any ETF based on a Fixed Income Index or Combination Index. These include initial shares outstanding, minimum price variation, listing fees, surveillance procedures, the application of PDR or IFS rules (as applicable), and the

dissemination of the Intraday Indicative Value, which is an estimate of the value of a share of each ETF, updated at least every 15 seconds.

G. ETF Listing Criteria, Trading Rules, and Procedures

Under the Exchange's proposal, an ETF based on a Fixed Income Index or Combination Index would be subject to the listing criteria set out in Amex Rules 1002 and 1002A. Accordingly, an ETF's NAV must be calculated at least once each day and disseminated to all market participants at the same time.<sup>32</sup> Also, where the value of the underlying index or portfolio of securities on which the ETF is based is no longer calculated or available, or if the ETF chooses to substitute 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 Amex Rules 1000-AEMI and Rules 1001 et seq. or Amex Rules 1000A-AEMI and 1001A et seq., as applicable. If an ETF chose to substitute an index that did not meet any of Amex's generic listing standards, approval by the Commission of a separate filing pursuant to Section 19(b)(2) of the Act to list and trade that ETF would be required.

An ETF based on a Fixed Income Index or Combination Index would be traded, in all respects, under the Exchange's existing trading rules and procedures that apply to ETFs generally, including with respect to delisting and trading halts.<sup>33</sup> In particular, Amex Rules 1002(b)(ii) and 1002A(b)(ii) provide that, if the Intraday Indicative Value or the index value applicable to that series of ETFs is not being disseminated as required, the Exchange may halt

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<sup>32</sup> See Amex Rules 1002(a)(ii) and 1002A(a)(ii) (requiring that, before approving an ETF for listing, the Exchange will obtain a representation from the ETF issuer that the NAV per share will be calculated daily and made available to all market participants at the same time).

<sup>33</sup> See Amex Rules 1000-AEMI and 1001 through 1006 and Amex Rules 1000A-AEMI and 1001A through 1005A.

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 index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.<sup>34</sup>

As noted above, 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.

#### H. Surveillance

The Exchange represents that an ETF based on a Fixed Income Index or Combination Index would be covered under the Exchange’s surveillance program for ETFs.<sup>35</sup> The Exchange will implement written surveillance procedures for an ETF based on a Fixed Income Index or a Combination Index.<sup>36</sup> The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of ETFs listed pursuant to the proposed new listing standards. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

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<sup>34</sup> If an ETF is traded on the Exchange pursuant to unlisted trading privileges, the Exchange would halt trading if the primary listing market halts trading in such ETF because the Intraday Indicative Value and/or the index value is not being disseminated. See Amex Rules 1002(b)(ii) and 1002A(b)(ii).

<sup>35</sup> See Amendment No. 2.

<sup>36</sup> See proposed Commentary .06(f) to Amex Rule 1000-AEMI and Commentary .05(f) to Amex Rule 1000A-AEMI.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>37</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>38</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 must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act<sup>39</sup> and Rule 19b-4 thereunder<sup>40</sup> to list or trade any ETF based on Fixed Income Securities. The Exchange also must file a proposed rule change to list or trade an ETF based on a Fixed Income or Combination 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

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<sup>37</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>38</sup> 15 U.S.C. 78f(b)(5).

<sup>39</sup> 15 U.S.C. 78s(b)(1).

<sup>40</sup> 17 CFR 240.19b-4.

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 Amex 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>41</sup>

The Commission has previously approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. and non-U.S. exchanges, as well as for other index-based derivatives.<sup>42</sup> The Commission has also approved for listing and trading ETFs based on certain fixed income indexes and structured notes linked to a basket or index of Fixed Income Securities.<sup>43</sup> The Commission believes that adopting additional generic listing standards for ETFs based on Fixed Income and Combination Indexes should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading without a rule filing. Taken together, the Commission finds that the Amex proposal meets the requirements of Rule 19b-4(e). All products listed under the proposed generic listing standards will be subject to existing Amex rules that governing the trading of ETFs.

Proposed Commentary .04 to Amex Rule 1000-AEMI (for PDRs) and proposed Commentary .03 to Amex Rule 1000A-AEMI (for IFSs) establish the standards for the composition of a Fixed Income Index or Combination Index underlying an ETF. These

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<sup>41</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 to list and trade such ETF.

<sup>42</sup> See notes 12-14 *supra*. The Commission notes that such listing standards permit an exchange to list new derivative securities pursuant to Rule 19b-4(e) under the Act based on portfolios or indexes that underlie securities described in other previously approved rules, subject to the condition that all of the standards set forth in the approval order are satisfied by the exchange employing generic listing standards.

<sup>43</sup> See notes 15-16 *supra*.

requirements are designed, among other things, to require that components of an index or portfolio underlying the ETF are adequately capitalized and sufficiently liquid, and that no one security dominates the index. 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 Amex 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 Amex 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. Amex would be able to rely on that earlier approval order, provided that Amex complies with the commitments undertaken by the other SRO set forth in the prior order, including any surveillance-sharing arrangements.

The Commission believes that Amex's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>44</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. Under the Exchange's proposed listing standards, the underlying value of a Fixed Income Index is required to be widely disseminated by one or more major market data vendors at least once a day during the time when the corresponding ETF

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<sup>44</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

trades on the Exchange. Likewise, the underlying value of a Combination Index is required to be widely disseminated by one or more major market data vendors at least 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 Fixed Income Index or Combination Index underlying such an ETF is maintained by a broker-dealer or fund advisor, that entity must erect a firewall around the personnel who have access to information concerning changes and adjustments to the index. Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index composition, methodology, or related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the index. The Commission also notes that existing Amex Rules 1002(a)(ii) and 1002A(a)(ii), which would apply to an ETF listed and traded pursuant to this proposal, require that, before approving an ETF for listing, the Exchange will obtain a representation from the ETF issuer that the NAV per share will be calculated daily 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 cannot be assured. Amex Rules 1002(b)(ii) and 1002A(b)(ii) provide that, if the Intraday Indicative Value or the 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, the Exchange will halt trading

no later than the beginning of the next trading day.<sup>45</sup> Also, the Exchange will commence delisting proceedings in the event that the value of the underlying index is no longer calculated and widely disseminated on at least a 15-second basis (for Combination Indexes) or at least once a day (for Fixed Income Indexes).

The Exchange will implement written surveillance procedures for ETFs based on a Fixed Income Index or Combination Indexes.<sup>46</sup> In approving this proposal, the Commission has relied on the Exchange's representation that its surveillance procedures are adequate to properly monitor the trading of ETFs listed pursuant to this proposal. This approval order is conditioned on the continuing accuracy of that representation.

#### Acceleration

The Commission finds good cause to approve the proposal, as amended, prior to the thirtieth day after the amended proposal was published for comment in the Federal Register. The Commission believes that accelerating approval of the proposed rule change will expedite the listing and trading of additional ETFs based on Fixed Income and Combination Indexes by the Exchange, subject to consistent and reasonable standards. The Commission also notes that no comments were received during the abbreviated comment period, and that Amendments No. 2 and 3 do not make any substantial changes to the proposal. Thus, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>47</sup> to grant accelerated approval of the proposed rule change, as amended.

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<sup>45</sup> If an ETF is traded on the Exchange pursuant to unlisted trading privileges, the Exchange would halt trading if the primary listing market halts trading in such ETF because the Intraday Indicative Value and/or the index value is not being disseminated. See Amex Rules 1002(b)(ii) and 1002A(b)(ii).

<sup>46</sup> See proposed Commentary .06(f) to Amex Rule 1000-AEMI and Commentary .05(f) to Amex Rule 1000A-AEMI.

<sup>47</sup> 15 U.S.C. 78s(b)(2).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments regarding Amendments No. 2 and 3, including whether Amendments No. 2 and 3 are 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-Amex-2006-118 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-Amex-2006-118. 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 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 submissions should refer to File Number SR-Amex-2006-118 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>48</sup> that the proposed rule change (SR-Amex-2006-118), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>49</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>48</sup> 15 U.S.C. 78s(b)(2).

<sup>49</sup> 17 CFR 200.30-3(a)(12).