

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55776; File No. SR-Amex-2007-29)

May 17, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Notes Linked to the Performance of the Dow Jones-AIG Commodity Index Total Return

I. Introduction

On March 2, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² On April 5, 2007, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on May 1, 2007 for a 15-day comment period.³ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

Under Section 107A of the Amex Company Guide (“Company Guide”), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants, including index and currency warrants. Amex proposes to list for trading under Section 107A of the Company

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55661 (April 24, 2007), 72 FR 23862 (“Notice”).

Guide floating rate notes (the “Notes”) linked to the performance of the Dow Jones-AIG Commodity Index Total Return (the “Index”).⁴

The Exchange states that the Notes will conform to the initial listing guidelines under Section 107A of the Company Guide and the continued listing guidelines under Sections 1001-1003 of the Company Guide. The Notes are senior, non-convertible debt securities of Lehman, have a term of thirteen months, and will provide for participation in the positive performance of the Index during their term. The Notes are cash-settled in United States (“U.S.”) dollars and do not give the holder any right or other ownership interest in the Index or commodities comprising the Index. The Notes are designed for investors who desire to participate in, or gain exposure to, an index composed of a basket of actively-traded commodities, receive monthly coupon interest payments, and are willing to forego principal protection on the Notes during their term. Lehman will issue the Notes in denominations of whole units, with each unit representing a single Note. The original public offering price will be \$1,000 per Note.

Unless the Notes have been redeemed earlier, at maturity, a holder would receive per each \$1,000 Note, a cash amount equal to the Daily Value per \$1,000 Note as of the Valuation Date,⁵ plus accrued and unpaid coupon payments, to, but excluding, the stated maturity date. Lehman may redeem the Notes early if, on any Index Business Day prior to the Valuation Date, the Daily Value per \$1,000 Note falls below a certain pre-determined amount. This day is known as the “Early Redemption Determination Date.” This pre-determined amount will be

⁴ Lehman Brothers Holdings Inc. (“Lehman”), Dow Jones & Company, Inc. (“Dow Jones”) and AIG International, Inc. (“AIG”) have entered into a non-exclusive license agreement providing for the use of the Index by Lehman and certain affiliates and subsidiaries thereof in connection with certain securities including the Notes.

⁵ See Notice at 23862 (providing a detailed discussion of the calculation methodology of the “Daily Value” per \$1000 Note as of the Valuation Date). Terms not otherwise defined herein shall have the same meaning as the meaning given in the Notice, supra note 3.

determined at the time of issuance of the Notes. In the event of redemption, Lehman will pay an amount per \$1,000 Note equal to the Daily Value per \$1,000 Note calculated as of the first Index Business Day following the Early Redemption Determination Date, plus accrued and unpaid coupon payments to, but excluding, the Early Redemption Determination Date.

If an event of default occurs and the maturity of the Notes are accelerated, Lehman will pay holders an amount equal to the amount that would have been payable at maturity, calculated as though the date of acceleration was the stated maturity date, and the date three Index Business Days before the date of acceleration was the Valuation Date. If a bankruptcy proceeding is commenced, the claims of a holder of a Note may be limited.

Index Description

The Index, developed by AIGI, is a proprietary index that is calculated by Dow Jones, AIGI, and AIG Financial Products Corp. (“AIG-FP” and, together with AIGI and Dow Jones, the “Sponsors”) and published by Dow Jones.⁶ The methodology for determining the composition and weighting of the Index and for calculating its level is subject to modification by the Sponsors at any time.⁷ Dow Jones disseminates the Index level at least every 15 seconds from 8:00 a.m. to

⁶ AIG-FP is not a broker-dealer or futures commission merchant; however, AIG-FP may have such affiliates. Therefore, AIG-FP (1) maintains and agrees to continue to maintain procedures reasonably designed to prevent the use and dissemination by relevant employees of AIG-FP, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Index or the Dow Jones-AIG Commodity Index and (2) agrees to periodically check the application of such procedures as they relate to personnel of AIG-FP responsible for such changes. Dow Jones has informed the Exchange that it does not have any affiliates engaged in the securities or commodities trading businesses and, as such, does not believe that such firewall procedures are necessary in its case. In addition, the Supervisory and Advisory Committees (as defined herein) are subject to written policies that acknowledge their obligations with respect to material non-public information.

⁷ Lehman has informed the Exchange that Lehman is not affiliated with any of the Sponsors. E-mail from Jeffrey P. Burns, Associate General Counsel, Amex, to Edward

3:00 p.m. Eastern Time (“ET”),⁸ and publishes a daily Index level at approximately 4:00 p.m. ET on each DJ-AIG Business Day on its Web site at www.djindexes.com and on Bloomberg’s Web site.

The Index is re-weighted and re-balanced each year in January on a price-percentage basis. The annual weightings for the Index are determined each year in June or July by AIG-FP under the supervision of the Index Supervisory Committee,⁹ announced after approval by such Committee and implemented the following January.

The Index is designed to track rolling futures positions in a diversified basket of 19 exchange-traded futures contracts on physical commodities. The 19 physical commodities selected for 2007 are aluminum, coffee, copper, corn, cotton, crude oil, gold, heating oil, lean hogs, live cattle, natural gas, nickel, silver, soybeans, soybean oil, sugar, unleaded gasoline, wheat, and zinc. Unlike equities, which typically entitle the holder to a continuing stake in a corporation, commodity futures contracts normally specify a certain date for the delivery of the underlying physical commodity. The Index tracks what is known as a rolling futures position, which is a position where, on a periodic basis, futures contracts on physical commodities specifying delivery on a nearby date must be sold and futures contracts on physical commodities that have not yet reached the delivery period must be purchased. An investor with a rolling futures position is able to avoid delivering underlying physical commodities while maintaining

Y. Cho, Special Counsel, Division of Market Regulation, Commission, dated May 14, 2007.

⁸ Any disseminated Index value after 3:00 p.m. ET is static due to the close of auction trading of various commodities futures contracts.

⁹ On February 21, 2007, Dow Jones announced a change to the Dow Jones-AIG Commodity Index Oversight Committee structure providing for a two-tier committee structure consisting of a “Supervisory Committee” and an “Advisory Committee.” The Supervisory Committee makes all final decisions relating to the Index with the advice and recommendation from the Advisory Committee.

exposure to those commodities. The rollover for each Index component occurs over a period of five DJ-AIG Business Days each month according to a pre-determined schedule.

The 19 physical commodities selected for inclusion in the Index for 2007, and their respective weightings, are as follows:

<u>Commodity</u>	<u>Weighting</u>
crude oil	12.723561%
natural gas	12.546191%
soybeans	7.747790%
gold	6.825901%
aluminum	6.803820%
copper	6.187758%
live cattle	6.141286%
corn	5.627129%
wheat	4.715495%
unleaded gasoline	3.940958%
heating oil	3.789289%
cotton	3.146094%
sugar	3.122271%
coffee	3.021718%
lean hogs	3.013524%
soybean oil	2.845646%
zinc	2.798069%
nickel	2.715318%

silver	2.288179%
Total (rounded)	100.000000%

Futures contracts on the Index are currently listed for trading on the Chicago Board of Trade (“CBOT”). The Index commodities currently trade on U.S. exchanges, with the exception of aluminum, nickel and zinc, which trade on the London Metal Exchange (“LME”).

Designated Contracts for each Index Commodity

A futures contract, known as a “Designated Contract,” is selected by the Supervisory Committee for each Index commodity.¹⁰ With the exception of several LME contracts, the Supervisory Committee selects the futures contract that is traded in the U.S. and denominated in U.S. dollars. If more than one of those contracts exists, the Supervisory Committee will select the most actively traded contract. Data concerning this Designated Contract will be used to calculate the Index value. If a Designated Contract is terminated or replaced, a comparable futures contract would be selected, if available, to replace that Designated Contract.

The Designated Contracts for the Index commodities included in the Index for 2007 are traded on LME, CBOT, the New York Board of Trade (“NYBOT”),¹¹ the Chicago Mercantile Exchange, Inc. (“CME”), and the New York Mercantile Exchange (“NYMEX”). The particular commodities futures exchanges for each commodity futures contract are as follows: (1)

Aluminum, nickel, and zinc – LME at www.lme.com; (2) corn, soybeans, soybean oil, and wheat

¹⁰ The Supervisory Committee may exclude any otherwise eligible contract from the Index if it determines that it has inadequate liquidity. The Index currently includes contracts traded on LME, which is located in London. During the hours when the LME is closed, Dow Jones uses the last price and the settlement price once they are available in order to publish the Index value through the end of the trading day. The Index value does not reflect any after-hours or overnight trading in contracts traded on LME.

¹¹ NYBOT recently was purchased by the Intercontinental Exchange (“ICE”) and is now a regulated subsidiary of ICE.

– CBOT at www.cbot.com; (3) live cattle and lean hogs – CME at www.cme.com; (4) coffee, cotton, and sugar – NYBOT at www.nybot.com; and (5) copper, crude oil, gold, heating oil, natural gas, silver, and unleaded gasoline – NYMEX at www.nymex.com. In addition, various market data vendors and financial news publications publish futures prices and data. The Exchange represents that futures quotes and last sale information for the commodities underlying the Index are widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters.

Determination of Relative Weightings

The relative weightings of the component commodities included in the Index are determined annually according to both liquidity and dollar-adjusted production data in 2/3 and 1/3 shares, respectively. Each June, for each commodity designated for potential inclusion in the Index, liquidity is measured by the commodity liquidity percentage and production by the commodity production percentage.¹²

The Index is designed to provide diversified exposure to commodities as an asset class. To ensure that no single commodity or commodity sector dominates the Index, the following diversification rules are applied to the annual re-weighting and re-balancing of the Index as of January of the applicable year:

- No related group of commodities designated as a commodity group (e.g., energy, precious metals, livestock, or grains) may constitute more than 33% of the Index.
- No single commodity may constitute more than 15% of the Index.
- No single commodity, together with its derivatives (e.g., crude oil, together with heating oil and unleaded gasoline), may constitute more than 25% of the Index.

¹² See Notice at 23864 (providing a detailed discussion of how the commodity liquidity percentage and the commodity production percentage are determined and adjusted).

Following the annual re-weighting and re-balancing of the Index in January, the percentage of any single commodity or group of commodities at any time prior to the next re-weighting or re-balancing will fluctuate and may exceed or be less than the percentages set forth above. The Index is then calculated by the Sponsors by applying the impact of the changes to the futures prices of commodities included in the Index (based on their relative weightings).¹³

Index Calculation Disruption Events

From time to time, disruptions can occur in trading futures contracts on various commodity exchanges. The daily calculation of the Index may be adjusted in the event that the Sponsors determine that any of the following Index calculation disruption events exists:

- The termination or suspension of, or material limitation or disruption in, the trading of any futures contract used in the calculation of the Index on that day;
- The settlement price of any futures contract used in the calculation of the Index reflects the maximum permitted price change from the previous day's settlement price;
- The failure of an exchange to publish settlement prices for any futures contract used in the calculation of the Index; or
- With respect to any futures contract used in the calculation of the Index that trades on LME, a business day on which LME is not open for trading.

The Exchange submits that for a temporary disruption in the trading of a futures contract, AIGI will typically use the prior day's price for an Index commodity or commodities. In exceptional cases, AIGI may employ a "fair value" price. However, the Exchange represents that if the use of a prior day's price or "fair value" pricing for an Index commodity or commodities continues for more than one day, the Exchange will commence delisting the Notes.

¹³ See id. (describing the mathematical process for the calculation of the Index value).

Exchange Rules Applicable to the Notes

Amex represents that the Notes will trade on the Exchange subject to existing Amex trading rules applicable to the Notes including, among others, rules governing priority, parity, and precedence of orders, specialist responsibilities, account opening, and customer suitability requirements. In addition, the Notes will be subject to the equity margin rules of the Exchange.¹⁴

Criteria for Initial and Continued Listing

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Act.¹⁵ The Exchange further represents that the Notes will meet the listing requirements set forth in Section 107A of the Company Guide as well as the continued listing requirements set forth in Sections 1001 through 1003 of the Company Guide. The Exchange also has a general policy that prohibits the distribution of material, non-public information by its employees.

Trading Halts

The Exchange states that it will halt trading in the Notes if the circuit breaker parameters of Amex Rule 117 have been reached. In exercising its discretion to halt or suspend trading in the Notes, the Exchange may consider factors such as those set forth in Amex Rule 918C(b), in addition to other factors that may be relevant. In particular, if the Index value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Index value occurs. If the interruption to the dissemination of the Index value persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Surveillance

¹⁴ See Amex Rule 462.

¹⁵ See 17 CFR 240.10A-3(c)(1).

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, Amex will rely on its existing surveillance procedures governing index-linked securities which are similar to its surveillance procedures governing exchange-traded funds and trust-issued receipts. With regard to the Index components, the Exchange currently has in place a comprehensive surveillance sharing arrangement with ICE, LME, and NYMEX, for the purpose of providing information in connection with trading in or related to futures contracts comprising the Index and traded on their respective exchanges. The Exchange also notes that CBOT, CME, and NYBOT are members of the Intermarket Surveillance Group (“ISG”). As a result, the Exchange asserts that it can obtain all necessary market surveillance information, including customer identity information, from CBOT, CME, ICE, LME, NYBOT, and NYMEX, if necessary, due to regulatory concerns that may arise in connection with the commodity futures contracts underlying the Index.

Information Circular

The Exchange will, prior to trading the Notes, distribute an Information Circular to its membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations)¹⁶ when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. In addition, the Circular will identify and disclose the applicable trading rules governing the trading of the Notes on the Exchange and that Lehman will deliver a prospectus in connection with the initial sales of the

¹⁶ With respect to suitability recommendations and risks, the Exchange will require members, member organizations, and employees thereof recommending a transaction in the Notes: (1) to determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

Notes and will reference that the Commission has no jurisdiction over the trading of the physical commodities or the futures contracts or on the commodities upon which the value of the Notes is based. The Exchange submits that it recently received approval to list and trade notes linked to the performance of the Dow Jones-AIG ExEnergy Sub-Index, which is a subset of the Index.¹⁷

III. Discussion and Commission's Findings

After careful consideration, 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.¹⁸ In particular, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,¹⁹ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Notes are substantially similar to other notes, the listing and trading of which have previously been approved by the Commission.²⁰ The Commission also notes that it has approved indexes comprised of similar commodity pools underlying other

¹⁷ See Securities Exchange Act Release No. 54790 (November 20, 2006), 71 FR 68645 (November 27, 2006) (SR-Amex-2006-01).

¹⁸ In approving this proposed 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).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ See, e.g., 71 FR 68645, supra note 17 (approving the listing and trading of principal protected notes linked to the Dow Jones-AIG ExEnergy Sub-Index, which is comprised of components that make up a subset of the Index); Securities Exchange Act Release No. 53876 (May 25, 2006), 71 FR 32158 (June 2, 2006) (SR-NYSE-2006-16) (approving the listing and trading of index-linked securities of Barclays Bank PLC linked to the performance of the Index).

derivative products that are currently listed and traded on the Exchange.²¹

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,²² 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. Dow Jones will disseminate the Index value at least every 15 seconds from 8:00 a.m. to 3:00 p.m. ET and publish a daily Index level at approximately 4:00 p.m. ET on each DJ-AIG Business Day on its Internet Web site and on Bloomberg's Web site. In addition, daily settlement prices, futures quotes, and last-sale information for the designated contracts on the commodities underlying the Index are available through a variety of major market data vendors and financial news publications, including Bloomberg and Reuters.

In support of this proposal, the Exchange has made the following representations:

- (1) Amex would rely on its existing surveillance procedures, which are adequate to properly monitor the trading of the Notes. Specifically, the Exchange will rely on its surveillance procedures applicable to index-linked securities, which are similar to the surveillance procedures governing exchange-traded funds and trust-issued receipts. With regard to the Index components, Amex has in place a comprehensive surveillance sharing agreement with ICE, LME, and NYMEX, for the purpose of providing and obtaining information due to regulatory concerns

²¹ See e.g., Securities Exchange Act Release No. 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR-Amex-2006-76) (DB Multi-Sector Commodity Trust); Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR-Amex-2005-059) (DB Commodity Index Tracking Fund).

²² 15 U.S.C. 78k-1(a)(1)(C)(iii).

that may arise in connection with the trading of the futures contracts underlying the Index. In addition, Amex states that is able to obtain all such necessary market surveillance information from CBOT, CME, and NYBOT, which are members of ISG. As a result, the Exchange can obtain all necessary market surveillance information due to regulatory concerns that may arise in connection with the commodity futures contracts underlying the Index.

- (2) AIG-FP has in place procedures reasonably designed to prevent the improper sharing, use, and dissemination by relevant employees of AIG-FP of material non-public information relating to changes in the composition or method of computation or calculation of the Index and agrees to periodically check the application of such procedures as they relate to personnel of AIG-FP responsible for such changes. In addition, the Supervisory and Advisory Committees are subject to written policies that acknowledge their obligations with respect to such material non-public information.
- (3) The Exchange will halt trading in the Notes if the circuit breaker parameters of Amex Rule 117 have been reached and, in exercising its discretion to halt or suspend trading in the Notes, the Exchange may consider factors such as those set forth in Amex Rule 918C(b), in addition to other factors that may be relevant. In particular, if the Index value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Index value occurs. If the interruption to the dissemination of the Index value persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

- (4) Amex will distribute an Information Circular to its members providing guidance with regard to the special characteristics and risks of trading this type of security, member firm compliance responsibilities, including suitability recommendations, the specific Amex trading rules governing transactions in the Notes, and the prospectus delivery requirements applicable to the Notes.

This Order is conditioned on Amex's adherence to the foregoing representations.

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1 thereto, prior to the thirtieth day after publication for comment in the Federal Register pursuant to Section 19(b)(2) of the Act.²³ As noted earlier, the Notes are substantially similar to other notes, the listing and trading of which have previously been approved by the Commission, and do not appear to present any new regulatory concerns.²⁴ In addition, the Commission notes that the same Index currently underlies other products previously approved for listing and trading.²⁵ Accelerating approval of this proposed rule change would allow the Notes to trade on Amex without undue delay and should generate additional competition in the market for such products.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the

²³ 15 U.S.C. 78s(b)(2).

²⁴ See supra note 20.

²⁵ See id.

²⁶ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-Amex-2007-29), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Florence E. Harmon
Deputy Secretary

²⁷ 17 CFR 200.30-3(a)(12).