

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55925; File No. SR-Amex-2007-44)

June 20, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, to Amend Section 107D of the Company Guide

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 May 1, 2007, the American Stock Exchange LLC (“Exchange” or “Amex”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On May 21, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On June 14, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. This order provides notice of the proposed rule change 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 amend Section 107D(g) of the Amex Company Guide to expand the eligibility of foreign securities and American Depository Receipts (“ADRs”) that may be components of an underlying index in connection with index-linked securities (“Index-Linked Securities”).<sup>3</sup> The text of the proposed rule change is available at Amex, the Commission’s Public Reference Room, and [www.amex.com](http://www.amex.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> See Section 107D of the Amex Company Guide (defining Index-Linked Securities as securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes (“Underlying Index”)).

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 Exchange 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to expand the number of permissible securities indexes comprised of foreign securities and/or ADRs that may qualify under Section 107D(g) of the Amex Company Guide. Pursuant to Section 107D, which sets forth generic listing standards to permit the listing and trading of Index-Linked Securities pursuant to Rule 19b-4(e) under the Act,<sup>4</sup> the Exchange may list Index-Linked Securities based on an Underlying Index that meet the criteria set forth in paragraph (g) of Section 107D of the Amex Company Guide. Specifically, an Underlying Index is required to either be (i) an index meeting the specific criteria set forth in Section 107D(g),

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<sup>4</sup> Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, 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 derivatives securities product, and the SRO has a surveillance program for the product class. See 17 CFR 240.19b-4(e)(1). See also Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR-Amex-2005-001) (approving the adoption of generic listing standards for Index-Linked Securities).

or (ii) an index previously approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act<sup>5</sup> and rules thereunder.

Section 107D(g) of the Amex Company Guide provides the following requirements for the Underlying Index:

(i) Each component security must have a minimum market value of at least \$75 million, except that for each of the lowest weighted component securities in the Underlying Index that in the aggregate account for no more than 10% of the weight of the Underlying Index, the market value can be at least \$50 million;

(ii) Each component security must have a trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted securities in the Underlying Index that in the aggregate account for no more than 10% of the weight of the Underlying Index, the trading volume must be at least 500,000 shares in each of the last six months;

(iii) In the case of a capitalization-weighted Underlying Index, the lesser of the five highest weighted component securities in the Underlying Index or the highest weighted component securities in the Underlying Index that in the aggregate represent at least 30% of the total number of component securities in the Underlying Index, each of such securities must have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

(iv) No component security may represent more than 25% of the weight of the Underlying Index, and the five highest weighted component

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<sup>5</sup> 15 U.S.C. 78s(b)(2).

securities in the Underlying Index must not in the aggregate account for more than 50% of the weight of the Underlying Index (60% for an Underlying Index consisting of fewer than 25 component securities);

(v) 90% of the Underlying Index's numerical index value and at least 80% of the total number of component securities must meet the then current criteria for standardized options trading set forth in Amex Rule 915;

(vi) Each component security must be an Act reporting company which is listed on a national securities exchange or is traded through the facilities of a national securities system and is subject to last sale reporting; and

(vii) Foreign country securities or ADRs that are not subject to comprehensive surveillance agreements must not in the aggregate represent more than 20% of the weight of the Underlying Index.

The Exchange's experience to date has revealed that it is difficult to list and trade Index-Linked Securities based on an Underlying Index comprised of foreign securities and/or ADRs with respect to which the primary market for such securities is outside of the United States. In particular, subparagraph (g)(vi) of Section 107D of the Company Guide prohibits the inclusion of component securities unless each component security is an Act reporting company listed on a national securities exchange or traded through the facilities of a national securities system and is subject to last sale reporting. The Exchange believes that this requirement essentially eliminates the usefulness of the generic listing standard for Index-Linked Securities because it prohibits the use of foreign indexes (not already approved by the Commission) in connection with Index-Linked Securities, unless the underlying components are listed and traded on a United States national securities exchange. Accordingly, the Exchange believes that the requirements set forth in subparagraph (vi) of Section

107D(g) of the Amex Company Guide are unduly restrictive to the detriment of the marketplace, as well as the application of the generic listing standard.

The proposal would revise subparagraph (vi) of Section 107D(g) and combine current subparagraphs (vi) and (vii) of this Section. The revision would permit the Exchange to list and trade Index-Linked Securities so long as all component securities are either (A) securities (other than foreign country securities and ADRs) that are (1) issued by a reporting company under the 1934 Act that is listed on a national securities exchange, and (2) “NMS stock,” as defined in Rule 600 of Regulation NMS,<sup>6</sup> or (B) foreign country securities or ADRs, provided that the foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group or are not parties to comprehensive surveillance sharing agreements with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the Underlying Index.

The Exchange submits that the expansion of the potential foreign country securities and ADRs that may be components of an eligible Underlying Index underlying Index-Linked Securities should benefit the marketplace and investors. The Exchange believes that the proposal will also enhance the market for potential foreign-based index products listed and traded on the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and

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<sup>6</sup> 17 CFR 242.600(b)(47).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 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

No written comments were solicited or received with respect to the proposed rule change.

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 (<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-2007-44 on the subject line.

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-2007-44. 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. 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-2007-44 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

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<sup>9</sup> 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).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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. The Commission believes that the proposal should expand the use of Underlying Indexes comprised of foreign securities and/or ADRs to the benefit of the marketplace and investors, so long as such component securities, having their respective primary foreign trading markets that are not members of ISG or parties to a comprehensive surveillance sharing agreement, do not represent in the aggregate more than 20% of the overall weight of the Underlying Index.

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, before the 30th day after the date of publication of notice of filing thereof in the Federal Register.<sup>11</sup> The Commission notes that it has previously approved substantially similar provisions with respect to the expanded eligibility of component securities included in indexes underlying index-linked securities<sup>12</sup> and presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of such securities on the Exchange. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>13</sup> to approve the proposed rule change on an accelerated basis.

#### V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the

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<sup>11</sup> In Amendment No. 2, the Exchange requested for accelerated approval of the proposal.

<sup>12</sup> See Securities Exchange Act Release No. 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR-NYSE-2007-27) (approving, among other things, the eligibility requirements of component securities underlying Equity Index-Linked Securities).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> Id.



proposed rule change (SR-Amex-2007-44), as modified by Amendment Nos. 1 and 2 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).