

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57187; File No. SR-Amex-2007-109)

January 23, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to the Trading of Exchange Traded Notes (ETNs)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 9, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On January 11, 2008, the Amex submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Section 107 of the Amex Company Guide (“Company Guide”) to permit certain index-linked securities, commodity-linked securities, and currency-linked securities to trade under the rules applicable to exchange-traded funds (“ETFs”). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.amex.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 IV 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 Exchange proposes to amend Sections 107D, 107E and 107F of the Company Guide to permit certain index-linked securities (“Index-Linked Securities”), commodity-linked securities (“Commodity-Linked Securities”), and currency-linked securities (“Currency-Linked Securities”) (collectively, “Exchange-Traded Notes or ETNs”) that offer a weekly redemption feature to be traded subject to the AEMI trading rules specific to ETFs.³

The Exchange believes that the existence of a weekly redemption feature, at the option of the holder, ensures a strong correlation between the market price of the ETN and the performance of the underlying asset. This feature is similar to the daily redemption feature available in ETFs. In addition, the Exchange notes that these Exchange Traded Notes are typically continuously offered, on a daily basis, so that the issuer would have the ability to issue new securities from time to time at market prices. This process is similar to the manner in which

³ The Exchange states that with the introduction of iPath Exchange-Traded Notes Issued by Barclays Bank PLC linked to the performance of the CBOE S&P 500 BuyWrite Index (symbol: BWV) on May 23, 2007, the Exchange listed its first ETN that is structurally similar to an ETF.

ETFs are continuously offered via the creation/redemption process in Creation Unit aggregations (i.e., 50,000 shares).

Background

The Exchange states that Securities listed pursuant to Section 107 of the Company Guide (“Section 107 Securities”) are debt securities of an issuer that typically provide for a cash payment at maturity, or if available, upon earlier redemption (such as a weekly redemption feature) at the holder’s option, based on the performance of an underlying index or asset. Permitted underlying assets for Index-Linked Securities include domestic and international equity indexes. Commodity-Linked Securities may be based on a commodity index, basket of commodities, or single commodity while Currency-Linked Securities may similarly be linked to a currency index, basket of currencies, or single currency.

Section 107 Securities typically have a term of at least one (1) year but not greater than 30 years. The issuer may or may not provide for periodic interest payments to holders. The holder of a Section 107 Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying asset.

A number of Section 107 Securities based on securities indexes that are listed and traded on the Exchange provide for a payment amount in a multiple of the positive index return or performance, subject to a maximum gain or cap. The Exchange’s generic listing standards in connection with Section 107 Securities allow for the multiple performance on the upside but prohibit payment at maturity based on a multiple of the negative performance of an underlying asset. Section 107 Securities may or may not provide for a minimum guaranteed amount to be repaid, i.e., “principal protection.” The Exchange believes that the flexibility to list a variety of

Section 107 Securities offers investors the opportunity to more precisely focus their specific investment strategies.

Section 107 Securities do not give the holder a right to receive the underlying asset or any other ownership right or interest in the underlying portfolio. The current value of the underlying asset is required to be widely disseminated at least every 15 seconds during the trading day.

The Exchange submits that Section 107 Securities are “hybrid” securities whose rates of return are largely the result of the performance of an underlying asset. Prior to the listing and trading of Section 107 Securities, the Exchange states that it typically highlights and discloses the special risks and characteristics of such security in an Information Circular.

Current Rules

Sections 107D,⁴ 107E,⁵ and 107F⁶ of the Company Guide treat Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities as equity instruments subject to the Exchange’s AEMI trading rules for equities. The only exception to this requirement is when a Section 107 Security is listed as a bond or debt (i.e., in \$1,000 denominations). In such a case, the Section 107 Security will be subject to Exchange rules applicable to bond or debt securities.⁷

Because the current Rules deem ETNs and other Section 107 Securities as “equity instruments,” the full range of AEMI trading rules specific to equities apply to all Section 107

⁴ See Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR-Amex-2005-001).

⁵ See Securities Exchange Act Release No. 55794 (May 22, 2007), 72 FR 29558 (May 29, 2007) (SR-Amex-2007-45).

⁶ Id.

⁷ Id.

Securities regardless of the particular structure of the Section 107 Security. In connection with an ETN that is continuously-offered with a weekly redemption option (such as BWV), the Exchange believes that the AEMI trading rules applicable to ETFs (rather than equities) should equally apply to such ETN.

Proposal

In order to qualify, the ETN would be required to offer a weekly redemption option to holders (“Eligible ETNs”).⁸ The Exchange believes that the redemption feature coupled with the effective continuous offering ensures a strong correlation between the price of the underlying asset and the performance of the Eligible ETN. This is similar to how ETFs have historically been structured. Accordingly, the Exchange submits that the specific AEMI trading rules developed for ETFs should also apply to Eligible ETNs.

The following rules specifically applicable to ETF trading would apply to the trading of Eligible ETNs:

- Rule 108—AEMI(c). The execution of Eligible ETN orders at the opening would be effected in the same manner as ETFs so that orders in Eligible ETNs would be executed before any broker-dealer bids or offers.
- Rule 110—AEMI(p). A Registered Trader in ETFs (including Eligible ETNs) would only actively quote ETFs traded on the same or contiguous panels for a maximum of three contiguous panels. A Registered Trader would also not actively quote more than a maximum of 15 ETFs (including Eligible ETNs). A Senior Floor Official of

⁸ See e-mail from Jeffrey P. Burns, Vice President & Associate General Counsel, Exchange, to Geoffrey Pemble and Michou Nguyen, Special Counsels, Division of Trading and Markets, Commission, on January 17, 2008.

- the Exchange may modify this restriction if a Registered Trader is able to appropriately fulfill his obligations to the market due to the level of activity in the ETFs and their proximity.
- Rule 128A—AEMI(d)(iv). Any quotation in an ETF entered into the AEMI platform by the specialist or Registered Trader while Auto-Ex is enabled that would cause the Amex Published Quote (APQ) to be locked or crossed would be automatically executed. In the case of a non-ETF Amex-listed security or a non-Nasdaq UTP equity security, quotations that are entered into the AEMI platform by the specialist while Auto-Ex is enabled that would cause the APQ to cross would be rejected. Therefore, Eligible ETNs would be automatically executed, rather than rejected, when a specialist or Registered Trader quotation causes the APQ to be locked/crossed when Auto-Ex is enabled.
 - Rule 128A—AEMI(f)(iv). AEMI does not automatically execute non-ETF orders when the automatic execution of an order exceeds the price change parameters of the “1%, 2, 1, ½ point” rule. This rule does not apply to ETFs and would accordingly not apply to the trading of Eligible ETNs.
 - Rule 131—AEMI(o). AEMI rejects “too marketable” non-ETF stop and stop limit orders. “Too marketable” is defined as a buy stop order received during the regular trading session with a stop price equal to the bid or lower, or a sell stop order received during the regular trading session with a stop price equal to the offer or higher. ETF stop orders that are “too marketable” are executed by AEMI under this Rule, and accordingly, Eligible ETN stop orders would similarly be executed.

- Rule 131—AEMI(r). AEMI does not accept electronic cross orders for non-ETFs and non-Nasdaq UTP securities. As a result, electronic cross orders are acceptable only for ETFs. As proposed, electronic cross orders for Eligible ETNs would be acceptable in AEMI.
- Rule 154—AEMI(c)(i). The Stop Order Rule requires floor official approval prior to the specialist electing a stop order by selling to the bid/buying on the offer. Prior floor official approval is not required for ETFs and would similarly not apply to Eligible ETNs.
- Rule 154—AEMI(c)(ii). Stop and stop limit orders in ETFs are elected by a quotation, although such orders in non-ETFs are not. Accordingly, stop and stop limit orders in Eligible ETNs would similarly be elected by quotation, pursuant to this rule.
- Rule 154—AEMI(e). Maximum price variation requirements are set forth in Rule 154—AEMI(e) (also known as the “1%-2, 1, .5 Point Rule”). This Rule specifically provides that it does not apply to the trading of ETFs. Accordingly, Rule 154—AEMI(e) would similarly not apply to Eligible ETNs.
- Commentary .03 to Rule 170-AEMI. A specialist quotation, made for his own account, should be such that a transaction effected at his quoted price or within the quoted spread, whether having the effect of reducing or increasing the specialist’s position, would bear a proper relation, in the case of ETFs or other derivatively-based securities, to the value of underlying or related securities. Eligible ETNs would similarly be subject to this requirement.

- Commentary .11 to Rule 170—AEMI. Commentary .11 to Rule 170—AEMI specifically exempts ETFs from the stabilization requirements. Accordingly, Eligible ETNs would similarly be exempt.
- Rule 206—AEMI. This Rule prohibits a specialist from crossing the market for the purpose of electing odd-lots and requires floor official approval in various circumstances for non-ETFs. The exemption for ETFs would similarly apply to Eligible ETNs.

Eligible ETNs would be subject to the same parity allocation as currently exists for ETFs and other equity-traded products that are not listed stocks, UTP stocks, or closed-end funds. In addition, Rule 110—AEMI (o), among other things, permits market makers (i.e., “Registered Traders”) to participate in transactions in Section 107 Securities, including Eligible ETNs. However, due to the manner in which Eligible ETNs are designated in the AEMI platform as “equities” consistent with Sections 107D, 107E and 107F, AEMI effectively prevents Registered Traders from receiving a parity allocation consistent with Rule 126—AEMI(c). In addition, the proposal would also provide Registered Traders with a greater ability to trade Eligible ETNs through the parity allocation process and the designation of such Eligible ETNs as “ETFs.” Accordingly, the Exchange believes that the proposal would better coordinate the requirements in AEMI by permitting the designation of Eligible ETNs as ETFs subject to the AEMI trading rules applicable to ETFs.⁹

⁹ Id.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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.

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

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

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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

the Exchange consents, the Commission will:

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

IV. 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. Please include File Number SR-Amex-2007-109 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-2007-109. 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 office 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-2007-109 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).