

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56117; File No. SR-ISE-2007-47)

July 23, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Adopt Generic Listing Standards for Index-Linked Securities

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 June 26, 2007, the International Securities Exchange, LLC (“ISE” or “Exchange”) 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 July 17, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as amended, and approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

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

The Exchange proposes to (1) adopt generic listing standards for equity index-linked securities (“Equity Index-Linked Securities”), commodity-linked securities (“Commodity-Linked Securities”), and currency-linked securities (“Currency-Linked Securities,” and together with Equity Index-Linked Securities and Commodity-Linked Securities, collectively, “Index-Linked Securities”) under new ISE Rule 2130, and (2) make conforming changes to ISE Rules 2100 and 2101 in regard to the adoption of the generic listing standards for Index-Linked Securities. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.ise.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 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 Exchange proposes to adopt new ISE Rule 2130 (Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities), which would provide generic listing standards to permit the trading of Index-Linked Securities on the Exchange pursuant to Rule 19b-4(e) under the Act.³ The Exchange seeks to be able to list and/or trade Index-Linked Securities without individual Commission approval of each such product pursuant to Section 19(b)(2) of the Act.⁴ In addition, the Exchange proposes to amend ISE Rule 2101(a) to add Index-Linked Securities to the list of securities that will only trade on the Exchange pursuant to unlisted trading privileges (“UTP”). Thus, while the proposal would allow the Exchange to trade Index-Linked Securities by either listing or trading pursuant to UTP, the Exchange would only trade Index-Linked Securities pursuant to UTP. In order to trade by listing such Index-Linked Securities on the Exchange, the Exchange would first need to seek Commission approval and

³ 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 if the Commission has approved 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).

⁴ 15 U.S.C. 78s(b)(2).

amend its rules. Finally, the Exchange proposes to amend ISE Rule 2100(c)(7) to add Index-Linked Securities to the definition of Equity Securities.

The Exchange represents that any securities it lists and/or trades pursuant to proposed ISE Rule 2130 will satisfy the standards set forth therein. The Exchange states that within five business days after commencement of trading of an Index-Linked Security in reliance on proposed ISE Rule 2130, the Exchange will file a Form 19b-4(e) with the Commission.⁵

Index-Linked Securities

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments, or market indexes of the foregoing (the “Underlying Index” or “Underlying Indexes”).⁶ Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one year, but not greater than thirty years, and are tied to the performance of the Underlying Index.⁷ Index-Linked Securities may or may not make interest payments based on dividends or other cash distributions paid on the components comprising the Underlying Index or Indexes to the holder during their term. Despite the fact that Index-Linked Securities are linked to an Underlying Index, each will trade as a single, exchange-listed security.

⁵ See 17 CFR 240.19b-4(e)(2)(ii) and 17 CFR 249.820.

⁶ The Exchange states that the holder of an Index-Linked Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying component assets. For example, an Index-Linked Security may be subject to a “cap” on the maximum principal amount to be repaid to holders or a “floor” on the minimum principal amount to be repaid to holders at maturity.

⁷ E-mail from Laura Clare, Assistant General Counsel, ISE, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated July 18, 2007 (confirming the description of Index-Linked Securities).

The Exchange represents that the proposed generic listing standards will not be applicable to Index-Linked Securities with respect to which the payment at maturity is based on a multiple of negative performance of an Underlying Index or Indexes. An Index-Linked Security may or may not provide “principal protection,” i.e., a minimum guaranteed amount to be repaid.⁸ The Exchange believes that the flexibility to list a variety of Index-Linked Securities will offer investors the opportunity to more precisely focus their specific investment strategies.

Index-Linked Securities do not give the holder any right to receive a portfolio component, dividend payments, or any other ownership right or interest in the portfolio or underlying components comprising the Underlying Index. Pursuant to proposed ISE Rule 2130, the current or composite value of the Underlying Index will be widely disseminated at least every 15 seconds during the trading day.

Proposed Listing Criteria for Index-Linked Securities

The Exchange will apply the following requirements to all issuers of Index-Linked Securities:

(A) If the issuer is a company listed on the New York Stock Exchange, NYSE Arca, Inc., American Stock Exchange LLC, or The NASDAQ Stock Market LLC, the entity must be a company in good standing (i.e., meets the continued listing criteria of such exchange). If not listed, the issuer must meet the following criteria:

(i) The issuer shall have assets in excess of \$100 million and stockholders’ equity of at least \$10 million. In the case of an issuer which is unable to satisfy the earnings criteria set forth in (ii) below, the Exchange

⁸ Some Index-Linked Securities may provide for “contingent” protection of the principal amount, whereby the principal protection may disappear if the Underlying Index at any point in time during the life of such security reaches a certain predetermined level.

generally will require the issuer to have the following: (x) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (y) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

(ii) The issuer's pre-tax income from continuing operations shall substantially exceed \$750,000 in its last fiscal year, or in two of its last three fiscal years (sovereign issuers will be evaluated on a case-by-case basis).

(B) The issuer will be expected to have a minimum tangible net worth⁹ of \$250,000,000. In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of \$150,000,000; and (ii) not to have issued Index-Linked Securities, the original issue price of which, combined with all the issuer's other Index-Linked Securities listed on a national securities exchange, exceeds 25% of the issuer's tangible net worth at the time of issuance. If the Index-Linked Securities are fully and unconditionally guaranteed by an affiliate of the issuer, the Exchange will rely on such affiliate's tangible net worth for purposes of these requirements and will include in its calculation all Index-Linked Securities that are fully and unconditionally guaranteed by such affiliate.

(C) The issuer must be in compliance with Rule 10A-3 under the Act.¹⁰

The Exchange will apply the following requirements to each issue of Index-Linked Securities:

(1) The issue must have (a) a minimum public distribution of at least 1 million units, except if the Index-Linked Securities are traded in thousand dollar denominations,

⁹ "Tangible net worth" is defined as total assets, less intangible assets and total liabilities. Intangibles include non-material benefits such as goodwill, patents, copyrights, and trademarks.

¹⁰ See 17 CFR 240.10A-3 (setting forth the listing standards relating to audit committees).

and (b) at least 400 holders, except if the Index-Linked Securities are redeemable at the option of the holders thereof on at least a weekly basis¹¹ or the Index-Linked Securities are traded in thousand dollar denominations;

(2) The issue must have a principal amount/aggregate market value of not less than \$4 million;

(3) The issue must have a term of at least one year, but not greater than thirty years;

(4) The issue must be the non-convertible debt of the issuer; and

(5) The issue must not base its payment at maturity on a multiple of the negative performance of an Underlying Index or Indexes, although the payment at maturity may or may not provide for a multiple of the positive performance of an Underlying Index or Indexes.

Index-Linked Securities must have at least 400 holders at the time of listing, except if the Index-Linked Securities are traded in thousand dollar denominations or the Index-Linked Securities are redeemable at the option of the holders thereof on at least a weekly basis. The Exchange believes that a weekly redemption right will ensure a strong correlation between the market price of the Index-Linked Securities and the performance of the Underlying Index, as holders will be unlikely to sell their Index-Linked Securities for less than their redemption value if they have a weekly right to be redeemed for their full value. In addition, in the case of Index-Linked Securities with a weekly redemption feature, the issuer has the ability to issue new Index-Linked Securities from time to time at the indicative value at the time of such sale. This

¹¹ E-mail from Laura Clare, Assistant General Counsel, ISE, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated July 18, 2007 (clarifying the exceptions to the holder distribution requirement).

provides a ready supply of new Index-Linked Securities, thereby lessening the possibility that the market price of such securities will be affected by a scarcity of available Index-Linked Securities for sale. It also assists in maintaining a strong correlation between the market price and the indicative value, as investors will be unlikely to pay more than the indicative value in the open market if they can acquire Index-Linked Securities from the issuer at that price.

The ability to list Index-Linked Securities with these characteristics without any specific requirements as to the number of holders is important to the successful listing of such securities. Issuers issuing these types of Index-Linked Securities generally do not intend to do so by way of an underwritten offering. Rather, the distribution arrangement is analogous to that of an exchange traded fund issuance, in that the issue is launched without any significant distribution event, and the float increases over time as investors purchase additional securities from the issuer at the then indicative value. Investors will generally seek to purchase the securities at a point when the Underlying Index is at a level that they perceive as providing an attractive growth opportunity. In the context of such a distribution arrangement, it is difficult for an issuer to guarantee its ability to sell to sufficient investors on the listing date to meet a specific number-of-holders requirement. However, the Exchange believes that this difficulty in ensuring 400 holders on the listing date is not indicative of a likely long-term lack of liquidity in Index-Linked Securities or, for the reasons set forth in the prior paragraph, of a difficulty in establishing a pricing equilibrium in the Index-Linked Securities or a successful two-sided market.

Equity Index-Linked Securities Listing Standards

Equity Index-Linked Securities will be subject to the criteria in proposed ISE Rule 2130(c) for initial and continued listing. For an Underlying Index to be appropriate for the initial listing of an Equity Index-Linked Security, such Underlying Index must be comprised of at least

ten component securities of different issuers. The Underlying Index must also either (i) be approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act¹² and rules thereunder, and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (ii) meet the following requirements:

- Each component security must have a minimum market value of at least \$75 million, except that, for each of the lowest dollar-weighted component securities in the Underlying Index that in the aggregate account for no more than 10% of the dollar weight of such Underlying Index, the market value can be at least \$50 million;
- 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 dollar-weighted component securities in the Underlying Index that, in the aggregate, account for no more than 10% of the dollar weight of such Underlying Index, the trading volume shall be at least 500,000 shares in each of the last six months;
- Underlying Indexes based upon the equal-dollar or modified equal-dollar weighting methodology must be rebalanced at least quarterly;
- In the case of a capitalization-weighted or modified capitalization-weighted Underlying Index, the lesser of the five highest dollar-weighted component securities in the Underlying Index or the highest dollar-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 have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

¹² 15 U.S.C. 78s(b)(2).

- No component security can represent more than 25% of the dollar weight of the Underlying Index, and the five highest dollar-weighted component securities in the Underlying Index cannot, in the aggregate, account for more than 50% of the dollar weight of the Underlying Index (60% for an Underlying Index consisting of fewer than 25 component securities);
- 90% of the Underlying Index’s dollar weight and at least 80% of the total number of component securities must meet the then current criteria for standardized options trading on a national securities exchange; and
- All component securities must either (A) be securities (other than foreign country securities and American Depository Receipts (“ADRs”)) that are issued by a reporting company under the Act that is listed on a national securities exchange and be an “NMS stock,” as defined in Rule 600 of Regulation NMS,¹³ or (B) be foreign country securities or ADRs, provided that 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 (“ISG”) or parties to comprehensive surveillance sharing agreements with the Exchange cannot, in the aggregate, represent more than 20% of the dollar weight of the Underlying Index.

The Exchange would commence delisting or removal proceedings of an Equity Index-Linked Security if any of the standards set forth in the initial eligibility criteria are not continuously maintained, except that:

¹³ See 17 CFR 242.600(b)(47).

- The criteria that no single component represent more than 25% of the dollar weight of the Underlying Index and the five highest dollar-weighted components in the Underlying Index cannot represent more than 50% (or 60% for Underlying Indexes with less than 25 components) of the dollar weight of the Underlying Index, need only be satisfied for capitalization-weighted, modified capitalization-weighted, and price-weighted Underlying Indexes as of the first day of January and July in each year;
- The total number of components in the Underlying Index may not increase or decrease by more than 33-1/3% from the number of components in the Underlying Index at the time of its initial listing, and in no event may be less than ten components;
- The trading volume of each component security in the Underlying Index must be at least 500,000 shares for each of the last six months, except that for each of the lowest dollar-weighted components in the Underlying Index that, in the aggregate, account for no more than 10% of the dollar weight of the Underlying Index, trading volume must be at least 400,000 shares for each of the last six months; and
- For a capitalization-weighted or modified capitalization-weighted Underlying Index, the lesser of the five highest dollar-weighted component securities in the Underlying Index or the highest dollar-weighted component securities in the Underlying Index that, in the aggregate, represent at least 30% of the total number of stocks in the Underlying Index must have an average monthly trading volume of at least 1,000,000 shares over the previous six months.

In connection with an Equity Index-Linked Security, the Exchange will commence delisting or removal proceedings if an Underlying Index or Indexes fails to satisfy the maintenance standards or conditions for such Underlying Index or Indexes, as set forth by the

Commission in its order under Section 19(b)(2) of the Act¹⁴ approving the Underlying Index or Indexes for the trading of options or other derivatives. The Exchange will also commence delisting or removal proceedings of an Equity Index-Linked Security under any of the following circumstances:

- If the aggregate market value or the principal amount of the Equity Index-Linked Securities publicly held is less than \$400,000;
- If the value of the Underlying Index or composite value of the Underlying Indexes is no longer calculated and widely disseminated on at least a 15-second basis during the time the Equity Index-Linked Securities trade on the Exchange; or
- If such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Commodity-Linked Securities Listing Standards

Commodity-Linked Securities will be subject to the criteria in proposed ISE Rule 2130(d) for initial and continued listing. An issue of Commodity-Linked Securities must meet initial listing standards set forth in either the first or second bullet point below:

- One or more physical commodities or commodity futures, options or other commodity derivatives, Commodity-Based Trust Shares (as defined in ISE Rule 2125), or a basket or index of any of the foregoing (the “Commodity Reference Asset”) to which the Commodity-Linked Security is linked shall have been reviewed and approved for the trading of Commodity-Based Trust Shares, options, or other derivatives by the Commission under Section 19(b)(2) of the Act¹⁵ and rules thereunder, and the conditions

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ Id.

set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or

- The pricing information for each component of a Commodity Reference Asset must be derived from a market which is an ISG member or affiliate member or with which the Exchange has a comprehensive surveillance sharing agreement.

Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association.

In addition, the issue must meet both of the following initial listing criteria:

- The value of the Commodity Reference Asset must be calculated and widely disseminated on at least a 15-second basis during the time the Commodity-Linked Securities trade on the Exchange; and

- In the case of Commodity-Linked Securities that are periodically redeemable, the indicative value of the subject Commodity-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Commodity-Linked Securities trade on the Exchange.

The Exchange will commence delisting or removal proceedings if any of the initial listing criteria described above is not continuously maintained. Notwithstanding the foregoing, an issue of Commodity-Linked Securities will not be delisted for a failure to have in place comprehensive surveillance sharing agreements if the Commodity Reference Asset has at least ten components, and the Exchange has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of the Commodity Reference Asset. The Exchange will also commence delisting or removal proceedings:

- If the aggregate market value or the principal amount of the Commodity-Linked Securities publicly held is less than \$400,000;
- The value of the Commodity Reference Asset is no longer calculated or available and a new Commodity Reference Asset is substituted, unless the new Commodity Reference Asset meets the requirements of proposed ISE Rule 2130; or
- If such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Currency-Linked Securities Listing Standards

Currency-Linked Securities will be subject to the criteria in proposed ISE Rule 2130(e) for initial and continued listing. An issue of Currency-Linked Securities must meet the initial listing standards set forth in either bullet point below:

- One or more currencies, options or currency futures or other currency derivatives, Currency Trust Shares (as defined in ISE Rule 2126), or a basket or index of any of the foregoing (the “Currency Reference Asset”) to which the Currency-Linked Security is linked shall have been reviewed and approved for the trading of Currency Trust Shares, options, or other derivatives by the Commission under Section 19(b)(2) of the Act¹⁶ and rules thereunder, and the conditions set forth in the Commission’s approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- The pricing information for each component of a Currency Reference Asset must be (a) the generally accepted spot price for the currency exchange rate in question or (y) derived from a market which is an ISG member or affiliate member or

¹⁶

Id.

with which the Exchange has in place a comprehensive surveillance sharing agreement and is the pricing source for components of a Currency Reference Asset that has previously been approved by the Commission.

In addition, the issue must meet both of the following initial listing criteria:

- The value of the Currency Reference Asset must be calculated and widely disseminated on at least a 15-second basis during the time the Currency-Linked Securities trade on the Exchange; and
- In the case of Currency-Linked Securities that are periodically redeemable, the indicative value of the subject Currency-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Currency-Linked Securities trade on the Exchange.

The Exchange will commence delisting or removal proceedings if any of the initial listing criteria described above is not continuously maintained. Notwithstanding the forgoing, an issue of Currency-Linked Securities will not be delisted for a failure to have in place comprehensive surveillance sharing agreements if the Currency Reference Asset has at least ten components, and the Exchange has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of the Currency Reference Asset. The Exchange will also commence delisting or removal proceedings under any of the following circumstances:

- If the aggregate market value or the principal amount of the Currency-Linked Securities publicly held is less than \$400,000;
- If the value of the Currency Reference Asset is no longer calculated or available and a new Currency Reference Asset is substituted, unless the new Currency Reference Asset meets the requirements of proposed ISE Rule 2130; or

- If such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Exchange Rules Applicable to Index-Linked Securities

Index-Linked Securities traded on the Exchange will be subject to all Exchange rules governing the trading of equity securities. Accordingly, the Exchange proposes to amend the definition of “Equity Security” to include Index-Linked Securities.¹⁷ The Exchange’s equity margin rules and the Exchange’s regular trading hours (from 9:30 a.m. to 4:00 p.m. Eastern Time) will apply to transactions in Index-Linked Securities.

Regulatory Information Circular

Upon evaluating the nature and complexity of each Index-Linked Security, the Exchange represents that it will prepare and distribute, if appropriate, a Regulatory Information Circular to Electronic Access Members (“EAMs”) describing the product. Accordingly, the particular structure of, and the corresponding risks transacting in, an Index-Linked Security will be highlighted and disclosed. In particular, the Regulatory Information Circular will set forth the Exchange’s suitability rule that requires EAMs recommending a transaction in Index-Linked Securities (1) to determine that such transaction is suitable for the customer (ISE Rule 610), and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such transaction. In addition, the Regulatory Information Circular will reference the requirement that EAMs must deliver a prospectus to investors purchasing newly issued Index-Linked Securities prior to or concurrently with the confirmation of a transaction.

Surveillance

¹⁷ See ISE Rule 2100(c)(7).

The Exchange will closely monitor activity in Index-Linked Securities to identify and deter any potential improper trading activity in such securities. Additionally, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of Index-Linked Securities. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, options, and exchange-traded funds. The Exchange has developed procedures to closely monitor activity in Index-Linked Securities and the Underlying Indexes and their components to identify and deter potential improper trading activity. To the extent applicable, the Exchange will be able to obtain trading and beneficial holder information from the primary trading markets for the components of the Underlying Indexes in relation to Index-Linked Securities, either pursuant to bilateral information sharing agreements with those markets or because those markets are full or affiliate members of ISG.

Firewall Procedures

If the Underlying Index is maintained by a broker-dealer, the broker-dealer shall erect a “firewall” around the personnel responsible for the maintenance of the Underlying Index or who have access to information concerning changes and adjustments to the Underlying Index, and the Underlying Index shall be calculated by a third party who is not a broker-dealer. Any advisory committee, supervisory board, or similar entity that advises an Underlying Index licensor or administrator or that makes decisions regarding the Underlying Index or portfolio 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 applicable Underlying Index or portfolio.

Trading Halts

In the case of Commodity- or Currency-Linked Securities, if the indicative value or the Commodity Reference Asset value or Currency Reference Asset value, as the case may be, applicable to a series of securities is not being disseminated as required, or, in the case of Equity Index-Linked Securities, if the value of the Underlying Index is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. With respect to Index-Linked Securities admitted to dealings by the Exchange pursuant to UTP, the Exchange will halt trading in accordance with proposed ISE Rule 2101(a), if such Index-Linked Security is no longer listed or trading on the primary listing market.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and Section 6(b)(5) of the Act,¹⁹ in particular, in that it is 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 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.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

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

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

The Exchange has neither solicited nor received written comments on 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. Please include File Number SR-ISE-2007-47 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-ISE-2007-47. 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 a.m. and 3:00

p.m. 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-ISE-2007-47 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.²⁰ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,²¹ 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 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.

Generic Listing Standards for Index-Linked Securities

To list and/or trade any issue of Index-Linked Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act²² and

²⁰ 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).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78s(b)(1).

Rule 19b-4 thereunder.²³ However, Rule 19b-4(e) under the Act²⁴ 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) under the Act²⁵ 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/or trading of Index-Linked Securities pursuant to Rule 19b-4(e) fulfill these requirements. The Exchange's ability to rely on Rule 19b-4(e) to list and/or trade Index-Linked Securities that meet the requirements of proposed ISE Rule 2130 should reduce the time frame for bringing these securities to the market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly.

The Commission has previously approved generic listing standards that are substantially similar to ISE's proposal.²⁶ The Commission believes that the proposed generic listing standards for Index-Linked Securities should fulfill the intended objective of Rule 19b-4(e) and allow

²³ 17 CFR 240.19b-4.

²⁴ 17 CFR 240.19b-4(e).

²⁵ 17 CFR 240.19b-4(c)(1).

²⁶ See Securities Exchange Act Release Nos. 55794 (May 22, 2007), 72 FR 29558 (May 29, 2007) (SR-Amex-2007-45) (amending the generic listing standards for Index-Linked Securities and approving generic listing standards for Commodity- and Currency-Linked Securities); and 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR-NYSE-2007-27) (approving generic listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities).

securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.²⁷

Listing and Trading Index-Linked Securities

Taken together, the Commission finds that ISE's proposal contains adequate rules and procedures to govern the listing and trading of Index-Linked Securities pursuant to Rule 19b-4(e) on the Exchange. All such securities listed and/or traded under their respective generic standards will be subject to the full panoply of ISE rules and procedures that currently govern the trading of equity securities on the Exchange.

As set forth more fully above, ISE has proposed size, earnings, and minimum tangible net worth requirements for each issuer, as well as minimum public distribution and shareholder, principal amount/aggregate market value, and minimum term thresholds for each issuance of Index-Linked Securities.²⁸ In addition, the Exchange's proposal requires that the assets (or their derivatives) underlying such securities must either have (1) been reviewed and approved for trading by the Commission, or (2) in the case of Equity Index-Linked Securities, such underlying assets or their derivatives have sufficient market value and trading volume and not constitute an unreasonable percentage of the overall dollar weight of the Underlying Index, or, in the case of

²⁷ The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular equity-, commodity-, or currency-linked product. The Commission further notes that securities that satisfy ISE's proposed generic listing standards for Index-Linked Securities would only be traded on the Exchange pursuant to UTP, pursuant to proposed ISE Rule 2101(a), and that the Exchange would be required to submit a separate filing pursuant to Section 19(b)(2) requesting Commission approval if the Exchange seeks to trade such securities by listing them. See ISE Rule 2101(a).

²⁸ The Commission notes that ISE's proposed initial requirements for all issuers and issuances of Index-Linked Securities are substantially similar to those adopted by other exchanges. See supra note 26.

Commodity- and Currency-Linked Securities, their pricing information be reliable or derived from certain required sources. These requirements are designed to ensure that the trading markets for the underlying components are adequately capitalized and sufficiently liquid. The Commission believes that these requirements should minimize the potential for manipulation.

The Commission also finds that (1) in the case of Equity Index-Linked Securities, the requirement that all component securities must either be securities issued by a reporting company under the Act that is listed on a national securities exchange and be an NMS stock (as defined in Rule 600 of Regulation NMS)²⁹ or be foreign country securities or ADRs, so long as such foreign country securities or foreign country securities underlying the ADRs that are primarily traded on foreign markets, which are not ISG members or parties to comprehensive surveillance sharing agreements, do not in the aggregate represent more than 20% of the dollar weight of the Underlying Index, and (2) in the case of Commodity-Linked and Currency-Linked Securities with at least ten components, the requirement that at least 90% of the dollar weight of the corresponding Commodity Reference Asset or Currency Reference Asset, as the case may be, must have comprehensive surveillance sharing agreements with the Exchange, in each case, should aid the Exchange in identifying potential trading and other violations of its rules. The Commission believes that such a requirement will contribute to the transparency of the applicable Underlying Index. The Commission also notes that, by requiring pricing information for the relevant components to be readily available, the proposed listing standards of ISE Rule 2130 should help ensure a fair and orderly market for Index-Linked Securities listed and/or traded pursuant to Rule 19b-4(e).

²⁹ See 17 CFR 242.600(b)(47).

The Exchange has also developed delisting criteria that will permit it to suspend trading of Index-Linked Securities in circumstances that make further dealings in such products inadvisable. The Commission believes that the delisting criteria should help ensure that a minimum level of liquidity exists for each such security to allow for the maintenance of fair and orderly markets. Also, in the event that the value of the Underlying Index for Index-Linked Securities (or, for Commodity-Linked and Currency-Linked Securities that are periodically redeemable, the corresponding indicative value) is no longer calculated and widely disseminated on at least a 15-second basis, the Exchange may halt trading during the day on which the interruption first occurs; however, if the interruption 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 and will commence delisting proceedings. The Commission also notes that, because Index-Linked Securities would only be traded on the Exchange pursuant to UTP under proposed ISE Rule 2101(a), the Exchange would halt the trading of such securities if such Index-Linked Securities are no longer listed or trading on the original listing market.

Surveillance

The Commission notes that any Index-Linked Securities approved for listing and/or trading would be subject to the Exchange's existing surveillance procedures governing equities, options, and exchange-traded funds, as well as procedures the Exchange represents it has developed to closely monitor activity in such securities and the Underlying Indexes and/or portfolios. The Exchange also has represented that its surveillance procedures are adequate to properly monitor the trading of Index-Linked Securities listed pursuant to the proposed generic listing standards and that it will be able to obtain necessary trading and beneficial holder information from the primary trading markets for the underlying components, either pursuant to

bilateral information sharing agreements with those markets or because those markets are full or affiliate members of ISG.

Regulatory Information Circular

The Exchange has represented that it will distribute, as appropriate, a Regulatory Information Circular to EAMs describing the product, the specific structure of the product, and the corresponding risks of transacting in Index-Linked Securities. In addition, the Regulatory Information Circular will set forth the Exchange's suitability requirements with respect to recommendations in transactions in Index-Linked Securities to customers and the prospectus delivery requirements.

Firewall Procedures

The Exchange has further represented that if the Underlying Index is maintained by a broker-dealer, such broker-dealer will establish a "firewall" around personnel responsible for the maintenance of such Underlying Index or who have access to information concerning changes and adjustments to the Underlying Index. As an added measure, a third-party who is not a broker-dealer will be required to calculate the value of the Underlying Index. In addition, the Exchange has stated that any advisory committee, supervisory board, or similar entity that advises an Underlying Index licensor or administrator or that makes decisions regarding the Underlying Index or portfolio 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 applicable Underlying Index or portfolio.

Acceleration

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1 thereto, before the 30th day after the date of publication of notice of filing

thereof in the Federal Register. The Exchange requested accelerated approval of the proposal to facilitate the prompt trading of Index-Linked Securities pursuant to UTP based on the specified criteria of proposed ISE Rules 2100, 2101, and 2130. The Commission notes that the Exchange's proposed generic listing standards for Index-Linked Securities are substantially based on previously approved listing standards for such securities³⁰ 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, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Index-Linked Securities, subject to the standards and representations discussed herein. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,³¹ 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,³² that the

³⁰ See supra note 26.

³¹ 15 U.S.C. 78s(b)(2).

³² Id.

proposed rule change (SR-ISE-2007-47), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³³

Florence E. Harmon
Deputy Secretary

³³ 17 CFR 200.30-3(a)(12).