

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54731; File No. SR-NYSE-2006-54)

November 9, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to List and Trade Two Series of Commodity-Linked Securities of Wachovia Corporation

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 July 25, 2006, New York Stock Exchange LLC (the "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 prepared by the Exchange. On November 3, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, 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 list and trade two series of Commodity-Linked Securities (the "Securities") of Wachovia Corporation, one having an aggregate principal amount of \$45,000,000 and the other having an aggregate principal amount of \$40,000,000. The return on the Securities, in excess of the principal amount, is linked to the performance of an equally weighted basket (the "Basket") of the following five commodities: WTI crude oil, natural gas, copper, aluminum, and gold (each, a "Component Commodity" and, collectively, the "Component Commodities").

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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> Amendment No. 1 replaced and superseded the original filing in its entirety.

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, as amended, 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, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 703.19 of the NYSE Listed Company Manual (the "Manual"), the Exchange may approve for listing and trading securities not otherwise covered by the criteria of Sections 1 and 7 of the Manual, provided that the issue is suited for auction market trading. The Exchange proposes to list and trade, under Section 703.19 of the Manual, the Securities, the return on which, in excess of the principal amount, is linked to the performance of the Basket. The Securities are debt securities and are part of a series of debt securities entitled "Medium-Term Notes, Series G" that Wachovia may issue from time to time. The Securities rank equally with all other unsecured and unsubordinated debt of Wachovia. The principal amount of each Security is \$25, and they will be traded on the Exchange's equity trading floor.

The Exchange believes that the Securities conform to the initial listing standards for equity securities under Section 703.19 of the Manual, as Wachovia is a listed company in good standing, each series of Securities has at least 400 holders at the time of listing, each series of Securities has a minimum life of one year, and the minimum public market value of each series of Securities at the time of listing will exceed \$4 million.

The Exchange states that the Securities will mature (the “Maturity Date”) on November 3, 2008, with respect to the Series 1 Securities and August 6, 2009 with respect to the Series 2 Securities. The maturity payment amount, in excess of the principal amount, will be linked to the performance of the Basket, which in turn is based on the performance of the Component Commodities.

Each Component Commodity represents 20% of the Basket. The Component Commodities are set forth below:

- WTI Crude Oil (Bloomberg symbol “CL1”)
- Natural Gas (Bloomberg symbol “NG1”)
- Copper (Bloomberg symbol “LOCADY”)
- Aluminum (Bloomberg symbol “LOAHDY”)
- Gold (Bloomberg symbol “GOLDLNPM”)

The weighting of each Component Commodity is fixed and will not change during the term of the Securities. Similarly, the Component Commodities that comprise the Basket will not change, except as described below under “Adjustments to the Basket and the Component Commodity Prices.”

The Series 1 Securities pay a fixed 2% interest rate semi-annually on May 3 and November 3, beginning on May 3, 2006. At maturity, for each Series 1 Security a holder owns, such holder will receive a cash payment equal to the sum of the principal amount of the Security and the Basket performance amount, plus any accrued but unpaid interest. The “Basket performance amount” per Series 1 Security will equal the greater of (i) \$0, and (ii) the product of the principal amount of the Series 1 Security and the percentage change in the level of the Basket, as further described below. If the Basket ending level is less than or equal to the Basket

starting level, the Basket performance amount will be \$0, and the maturity payment amount will be \$25, plus any accrued but unpaid interest.

The Series 2 Securities make no payment of interest, periodic or otherwise. At maturity, for each Series 2 Security a holder owns, such holder will receive a cash payment equal to the sum of the principal amount of the Series 2 Security and the Basket performance amount. The Basket performance amount per Series 2 Security will equal the greater of (i) \$0, and (ii) the product of the principal amount of the Series 2 Security, the percentage change in the level of the Basket, as further described below, and a participation rate of 150%. If the Basket ending level is less than or equal to the Basket starting level, the Basket performance amount will be \$0, and the maturity payment amount will be \$25.

The Exchange states that the Securities will provide for participation in the positive performance of the Component Commodities during their term while reducing the risk exposure to investors through principal protection. The Securities are not callable by Wachovia.

The Basket performance amount per Security will be determined by the calculation agent.<sup>4</sup> The Basket performance amount per Series 1 Security will equal the greater of:

- (i) \$0, and
- (ii)  $\$25 \times (\text{Basket ending level} - \text{Basket starting level}) / \text{Basket Starting Level}$

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<sup>4</sup> Wachovia Bank, National Association, a subsidiary of Wachovia, will serve as the calculation agent. Wachovia may at any time change the calculation agent without notice to holders of Securities. Wachovia has represented to the Exchange that it has policies prohibiting insider trading that are applicable to all of its employees and that it implements and maintains procedures reasonably designed to prevent the use and dissemination by employees involved in the activities of Wachovia Bank, National Association in its capacity as calculation agent, in violation of applicable laws, rules and regulations, of material non-public information relating to the Securities.

The Basket performance amount per Series 2 Security will equal the greater of:

- (i) \$0, and
- (ii)  $\$25 \times ((\text{Basket ending level} - \text{Basket starting level}) / \text{Basket starting level}) \times$

the Participation Rate.

The Participation Rate for the Series 2 Securities is 150%.

The “Basket starting level” for both Series 1 and Series 2 Securities is 1,000.

The “Basket ending level” will be determined by the calculation agent and will equal the closing level of the Basket on the valuation date. The closing level of the Basket will be calculated based on the weighted levels of the Component Commodities and will equal the sum of the products of (i) the component multiplier of each Component Commodity and (ii) the closing price (as described below) of the Component Commodity on the valuation date.

The “component multiplier” equals the quotient of (i) the initial weight of each Component Commodity (20%) multiplied by the Basket starting level divided by (ii) the closing price of each Component Commodity on the pricing date of the initial offering of the Securities (October 27, 2005 for the Series 1 Securities and January 30, 2006 for the Series 2 Securities).

The “closing price” of each Component Commodity will be determined by reference to its official closing price or cash settlement price on the relevant exchange or market on the valuation date, as reported by Bloomberg LP, as follows:

- In the case of WTI crude oil, the U.S. dollar closing settlement price per barrel of West Texas Intermediate light sweet crude oil on the New York Mercantile Exchange (the “NYMEX”) of the first nearby futures contract;<sup>5</sup>

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<sup>5</sup> The trading day in WTI crude oil and Henry Hub Natural Gas on the NYMEX is between 10:00 a.m. and 2:30 p.m. New York Time.

- In the case of natural gas, the official U.S. dollar settlement price per MMBtu of natural gas on the NYMEX of the Henry Hub Natural Gas futures contract in respect of the first nearby month; in the case of copper, the official U.S. dollar settlement price per ton of copper-Grade A on the London Metals Exchange (the “LME”) for cash delivery;<sup>6</sup>
- In the case of aluminum, the official U.S. dollar settlement price per ton of high grade primary aluminum on the LME for cash delivery; or
- In the case of gold, the afternoon U.S. dollar fixing price per troy ounce of unallocated gold bullion for delivery in London through a member of the London Bullion Market Association (“LBMA”) authorized to effect such delivery.<sup>7</sup>

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<sup>6</sup> The Exchange states that the LME is the principal non-ferrous metals exchange in the world on which contracts for copper and aluminum, among other metals, are traded. While there is a futures market for each of copper and aluminum, Wachovia has informed the Exchange that it is using the respective U.S. dollar settlement prices as those prices are the generally accepted standards for determining the market price of those commodities. The LME is not a cash-cleared market. Both inter-office and floor trading are cleared and guaranteed by a system run by the London Clearing House, whose role is to act as a central counterparty to trades executed between clearing members. The bulk of trading on the LME is transacted through inter-office dealing that allows the LME to operate as a 24-hour market. Liquidity for copper and aluminum primarily exists during the two daily trading sessions on the floor of the LME, from 11:40 a.m. to 1:15 p.m. and from 3:10 p.m. to 4:35 p.m., London time, and declines substantially outside of these trading sessions.

<sup>7</sup> The Exchange states that the LBMA is the principal gold clearing center for over-the-counter gold bullion transactions. Twice daily during London trading hours a “fixing” occurs that provides reference prices for that day’s trading. Information regarding clearing volume estimates by the LBMA can be found at [http://www.lbma.org.uk/clearing\\_table.htm](http://www.lbma.org.uk/clearing_table.htm). The three measures published by LBMA are: volume, the amount of metal transferred on average each day measured in million of troy ounces; value, measured in U.S. dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London. Additionally, the NYMEX publishes price and volume statistics for transactions in contracts for the future delivery of gold.

Wachovia has informed the Exchange that, in deciding whether to base the pricing of each individual Component Commodity on its cash price or on a related futures contract, it used the pricing source in each case that it believed was most widely used as an indicator of the market price of that commodity.

The “valuation date” means the fifth business day prior to the maturity date. However, if that date occurs on a day on which the calculation agent has determined that a market disruption event has occurred or is continuing, then the valuation date will be postponed until the next succeeding business day on which the calculation agent determines that a market disruption event does not occur or is not continuing. If the valuation date is postponed, then the maturity date of the Securities will be postponed by an equal number of business days.

The Securities are cash-settled in U.S. dollars and do not give the holder any right to receive a futures contract, dividend payments, or any other ownership right or interest in the Component Commodities that comprise the Basket. The Securities are designed for investors who desire to participate or gain exposure to the Component Commodities that comprise the Basket, who are willing to hold the investment to maturity, and who want to limit risk exposure by receiving principal protection of their investment amount.

The Basket is not a recognized market index and was created solely for the purpose of offering the Securities.

#### Adjustments to the Basket and the Component Commodities Prices

The composition of the Basket and/or the method of determining the closing price for each Component Commodity may be adjusted from time to time by the calculation agent, in its sole discretion, as follows:

- In the event that an official closing price is not available for a Component Commodity for whatever reason, including any discontinuance of trading in the relevant Component Commodity by the NYMEX, the LME, or the LBMA, then the calculation agent may, in its sole discretion, take such action, including adjustments to the Basket or to the method of determining such closing price as it deems appropriate. By way of example, and without limitation, if a contract which serves as the basis for determining the closing price of a particular Component Commodity is discontinued by the exchange or market on which it traded, the calculation agent may, in its sole discretion, determine such closing price for that Component Commodity by reference to another contract for the Component Commodity traded on another exchange or market or to its bid for the Component Commodity for delivery on the valuation date.
- In the event that the terms of any contract used for determining the closing price of any Component Commodity are changed in a material respect by the commodity exchange upon which the contracts trade, the calculation agent may take such action, including adjustments to the Basket or to the method of determining the closing price of that Component Commodity, as it deems appropriate.

No adjustments will be made unless the calculation agent determines, in its sole discretion, that such adjustment is appropriate to maintain the validity of the closing price as an economic benchmark for the affected Component Commodity. The calculation agent at any time, or from time to time, if any, may make such adjustments, on or prior to the maturity date.

If any adjustments are of a more than temporary nature, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act seeking Commission approval to continue to trade the Securities and, unless approved, the Exchange will commence delisting the Securities.

#### Available Information

The hypothetical maturity payment amount per Security (the “Closing Values”) will be published once every NYSE trading day (as opposed to at least every 15 seconds during the trading day) at approximately 5:00 p.m., New York City time, calculated on each day as if such day were the valuation date. The Closing Value will be accessible by going to Bloomberg page “WSSN” and selecting the “commodity-linked” option.

The Exchange believes that this daily dissemination of the Closing Value is appropriate because the Securities are debt securities traded on the NYSE’s equity floor, the value of which is linked to the Basket, and there will be no creation or redemption of shares as there would be with an exchange-traded fund (“ETF”).

As discussed in the prospectus supplement dated October 27, 2005 relating to the Series 1 Securities and the prospectus supplement dated May 13, 2005 relating to the Series 2 Securities, the trading price of the Securities will be affected by many factors that interrelate in complex ways. The negative effect of one factor may offset the positive effect on the trading price of the Securities of another factor and the negative effect of one factor may exacerbate the decrease in the trading price of the Securities caused by another factor. For example, increased price volatility with respect to one or more of Component Commodities may offset some or all of any increase in the trading price of the Securities attributable to another factor, such as an increase in the prices of one or more of the Component Commodities. In addition, a change in interest rates may offset other factors that would otherwise change the prices of the Component Commodities

and, therefore, may significantly change the trading price of the Securities. The Exchange states that the following bullet points summarize the expected impact on the trading price of the Securities given a change in a specific factor, assuming all other conditions remain constant:

- the level of the Basket at any given point in time;
- changes in Component Commodity prices;
- the volatility (frequency and magnitude of changes in prices) of the Component Commodities and in particular market expectations regarding the volatility of the Component Commodities;
- interest rates generally, as well as changes in interest rates and the yield curve;
- changes in correlation among the prices of the Component Commodities;
- the time remaining to maturity of the Securities;
- Wachovia's credit worthiness, as represented by its credit ratings or as otherwise perceived in the market; and
- geopolitical, economic, financial, political, regulatory or judicial events, as well as other conditions that affect commodities' markets in general and that may affect the market prices of the Component Commodities.

Pricing information with respect to the Component Commodities is available as follows:

- The official U.S. dollar settlement price per ton of copper-Grade A on the LME for cash delivery is publicly available on the Web site of the LME at [http://www.lme.com/dataprices\\_daily\\_metal.asp](http://www.lme.com/dataprices_daily_metal.asp).
- The official U.S. dollar settlement price per ton of high-grade primary aluminum on the LME for cash delivery is publicly available on the Web site of the LME at [http://www.lme.com/dataprices\\_daily\\_metal.asp](http://www.lme.com/dataprices_daily_metal.asp).

- The U.S. dollar closing settlement price per barrel of West Texas Intermediate light sweet crude oil on the NYMEX of the first nearby futures contract is publicly available on the Web site of the NYMEX at <http://www.nymex.com/index.aspx>.
- The official U.S. dollar settlement price per MMBtu of natural gas on the NYMEX of the Henry Hub Natural Gas futures contract in respect of the first nearby month is publicly available on the Web site of the NYMEX at <http://www.nymex.com/index.aspx>.
- The afternoon U.S. dollar fixing price per troy ounce of unallocated gold bullion for delivery in London through a member of the LBMA authorized to effect such delivery is publicly available on the Web site of the LBMA at [http://www.lbma.org.uk/statistics\\_current.htm](http://www.lbma.org.uk/statistics_current.htm). Complete real-time data for gold futures and options prices traded on the NYMEX is available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site at <http://www.nymex.com/index.aspx>.

Real time intraday trading prices and daily closing prices for the Component

Commodities are available by subscription from major market vendors.

#### Market Disruption Event

A market disruption event with respect to a Component Commodity, as determined by the calculation agent in its sole discretion, means the occurrence or existence of any of the following events:

- the failure of the relevant exchange, market or price source to announce or publish the closing price for a Component Commodity or the temporary or permanent discontinuance or unavailability of the relevant exchange, market, or price source;
- the failure of trading to commence, or the permanent discontinuation of trading, in the relevant futures contracts on the relevant exchange or market, or the disappearance of, or the disappearance of trading in, the relevant Component Commodity;
- a material change in the formula for or the method of calculating the closing price for a Component Commodity;
- a material change in the content, composition, or constitution of a Component Commodity or relevant futures contracts;
- a suspension, absence or material limitation imposed on trading in the futures contracts or the relevant Component Commodity on its respective exchange or in any additional futures contract, options contract, or Component Commodity on any exchange or principal trading market as specified in the relevant agreement or confirmation; for this purpose, an absence of trading in the primary exchange on which options or futures contracts related to any Component Commodities or the relevant Component Commodities are traded will not include any time when that exchange itself is closed for trading under ordinary circumstances; or
- any other event, if the calculation agent determines in its sole discretion that the event materially interferes with Wachovia's ability or the ability of any of its affiliates to unwind all or a material portion of a hedge with respect to the Securities.

The following events will not constitute market disruption events:

- a decision to permanently discontinue trading (without implementation of such decision) in the option or futures contract relating to any Component Commodity or in any Component Commodity on the NYMEX, the LME, or the LBMA; or
- a limitation on the hours or numbers of days of trading that results from an announced change in the regular business hours of the relevant exchange.

#### Continued Listing Criteria

The Exchange prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Act<sup>8</sup>

The Exchange will delist the Securities if:

- The Securities do not meet the continued listing criteria of Section 703.19 of the Exchange's Listed Company Manual.
- The Closing Value ceases to be published every NYSE trading day.
- Such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Additionally, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act, seeking approval to continue trading the Securities and, unless approved, the Exchange will commence delisting the Securities if:

- Wachovia removes a Component Commodity from the Basket or adds a new Component Commodity to the Basket, changes the weighting of the Component Commodities in the Basket, or changes on a more than temporary basis the source of the closing price of any of the Component Commodities; or
- A Market Disruption Event occurs which is of a more than temporary nature.

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<sup>8</sup> 15 U.S.C. 78a.

### Trading Halts

If the Closing Value for a series of the Securities is not being disseminated as required, the Exchange may halt trading during the day immediately following the day on which the interruption to the dissemination of the Closing Value first occurs. If the interruption to the dissemination of the Closing Value persists past the trading day following the day on which the interruption occurred, the Exchange will halt trading no later than the beginning of the second trading day following the interruption.

### Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Securities and the Component Commodities. The Exchange's surveillance procedures will incorporate and rely upon existing Exchange surveillance procedures governing equities. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Securities and to detect violations of Exchange rules, thereby deterring manipulation. The Exchange is a party to information sharing agreements with each of the NYMEX and the LME, pursuant to which such exchanges are obligated to provide the Exchange with access to transaction information, including customer identity information with respect to all commodities traded on such exchanges.

In connection with its authorization for listing of the streetTRACKS<sup>®</sup> Gold Shares (the “Shares”), the Exchange states that the Commission found that the unique liquidity and depth of the gold market, along with the existence of an information sharing agreement between the NYSE and the NYMEX and the application of NYSE Rules 1300B and 1301 to the Specialist

trading those Securities, created the basis for the NYSE to monitor fraudulent and manipulative practices in the trading of the Shares.<sup>9</sup>

Similarly, the Exchange believes that the depth and liquidity of the gold market, along with the information sharing agreement between the NYSE and the NYMEX and the application of NYSE Rules 1300B and 1301 to the Specialist trading those Securities, will provide adequate surveillance of the trading of the gold Component Commodity.

### Suitability

The Exchange's existing equity trading rules will apply to trading of the Securities. The Exchange states that it will also have in place certain other requirements to provide additional investor protection. First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Securities.<sup>10</sup> Second, the Securities will be subject to the equity margin rules of the Exchange.<sup>11</sup> Third, the Exchange will, prior to trading the Securities, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Securities and highlighting the special risks and characteristics of the Securities. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Securities: (1) to determine that such transaction is suitable for the customer; and (2) to have a reasonable basis for believing that the

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<sup>9</sup> See Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22).

<sup>10</sup> NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

<sup>11</sup> See NYSE Rule 431.

customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

#### Information Memorandum

The information memorandum will note to members prospectus delivery requirements for the Securities.<sup>12</sup> The information memorandum will discuss the special characteristics and risks of trading this type of security. Specifically, the information memorandum, among other things, will discuss the following: what the Securities are, applicable Exchange rules, dissemination of information regarding the Closing Value, trading information, and applicable suitability rules.

The information memorandum will also reference the fact that there is no regulated source of last sale information regarding physical commodities and that the Commission has no jurisdiction over the trading of physical commodities such as crude oil, natural gas, copper, aluminum and gold, or the futures contracts on which a portion of the value of the Securities is based.

#### Specialist Trading Obligations

Supplementary Material .10 to NYSE Rule 1301B applies the provisions of NYSE Rule 1300B(b) and NYSE Rule 1301B to certain securities listed on the Exchange pursuant to Section 703.19 ("Other Securities") of the Manual. Specifically, NYSE Rules 1300B(b) and 1301B apply to securities listed under Section 703.19 of the Manual where the price of such securities is based, in whole or in part, on the price of: (a) a commodity or commodities; (b) any futures contracts or other derivatives based on a commodity or commodities; or (c) any index based on either (a) or (b) above.

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<sup>12</sup> Telephone conversation between John Carey, Assistant General Counsel, NYSE, Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, and Angela Muehr, Attorney, Division, Commission, on November 8, 2006.

As a result of application of NYSE Rule 1300B(b), the specialist in the Securities, the specialist's member organization and other specified persons will be prohibited under paragraph (m) of Exchange Rule 105 Guidelines from acting as market maker or functioning in any capacity involving market-making responsibilities in the Basket components, the commodities underlying the Basket components, or options, futures or options on futures on the Basket, or any other derivatives (collectively, "derivative instruments") based on the Basket or based on any Basket component or any physical commodity underlying a Basket component. If the member organization acting as specialist in the Securities is entitled to an exemption under NYSE Rule 98 from paragraph (m) of NYSE Rule 105 Guidelines, then that member organization could act in a market making capacity in the Basket components, the commodities underlying the Basket components, or derivative instruments based on the Basket or based on any Basket component or commodity underlying a Basket component, other than as a specialist in the Securities themselves, in another market center.

Under NYSE Rule 1301B (a), the member organization acting as specialist in the Securities will be: (1) obligated to conduct all trading in the Securities in its specialist account (subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange); (2) required to file with the Exchange and keep current a list identifying all accounts for trading in the Basket components or the physical commodities underlying the Basket components, or derivative instruments based on the Basket or based on the Basket components or the physical commodities underlying the Basket components, which the member organization acting as specialist may have or over which it may exercise investment discretion; and (3) prohibited from trading in the Basket components or the physical commodities underlying the Basket components, or derivative instruments based on the Basket

or based on the Basket components or the physical commodities underlying the Basket components, in an account in which a member organization acting as specialist, controls trading activities which have not been reported to the Exchange as required by NYSE Rule 1301B.

Under NYSE Rule 1301B(b), the member organization acting as specialist in the Securities will be required to make available to the Exchange such books, records, or other information pertaining to transactions by the member organization and other specified persons for its or their own accounts in the Basket components or the physical commodities underlying the Basket components, or derivative instruments based on the Basket or based on the Basket components or the physical commodities underlying the Basket components, as may be requested by the Exchange. This requirement is in addition to existing obligations under Exchange rules regarding the production of books and records.

Under NYSE Rule 1301B(c), in connection with trading the Basket components or the physical commodities underlying the Basket components, or derivative instruments based on the Basket or based on the Basket components or the physical commodities underlying the Basket components, the specialist could not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the Basket components or the physical commodities underlying the Basket components, or derivative instruments based on the Basket or based on the Basket components or the physical commodities underlying the Basket components.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>13</sup> in general and furthers the objectives of Section 6(b)(5),<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments and perfect the mechanisms of a free and open market, 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, as amended, 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 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, as amended, 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

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

<sup>14</sup> 15 U.S.C. 78s(b)(5).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2006-54 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-54. 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. 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- NYSE-2006-54 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 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>15</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires that an exchange have rules designed, among other things, 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.

##### A. Surveillance

Information sharing agreements with primary markets are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. The Commission believes that the Exchange's comprehensive surveillance sharing agreements with the LME and the NYMEX for the purpose of providing information in connection with trading of the Securities and Component Commodities create the basis for NYSE to monitor for fraudulent and manipulative practices in the trading of the Securities.

Moreover, NYSE Rules, including Rule 1301B, give NYSE the authority to request the Exchange specialist in the Securities to provide NYSE Regulation with information to monitor for fraudulent and manipulative trading facilities. The Commission believes that these rules provide the NYSE with the tools necessary to adequately surveil trading in the Securities.

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<sup>15</sup> In approving this 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>16</sup> 15 U.S.C. 78f(b)(5).

B. Dissemination of Information

The Commission believes that sufficient venues exist for obtaining reliable information so that investors in the Securities can monitor the Component Commodities relative to the indicative value of their Securities. There is a considerable amount of information about the Component Commodities available through public Web sites, and real time intraday prices and daily closing prices for the Component Commodities are available by subscription from major market vendors.

The Exchange will calculate and disseminate the Closing Value once each trading day. The Commission believes that this daily dissemination of an indicative basket amount is appropriate because there will be no creation or redemption of shares as there would be with an ETF. Additionally, the Securities are debt, whose value, while linked to the basket, is at least 100% of the principal investment amount, and whose value is affected by factors, such as interest rates, time remaining to maturity, and the issuer's creditworthiness, that make an intraday indicative value not as determinative. The Closing Value will be published at approximately 5:00 p.m., New York City time, calculated on each day as if such day were the valuation date. The Closing Value will be accessible by going to Bloomberg page "WSSN" and selecting the "commodity-linked" option. Wachovia will determine the value of the Securities at maturity, which will consist of at least 100% of the principal investment amount, plus the Basket Performance Amount.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Securities are consistent with the Act. The Securities will trade as equity securities under Section 703.19 of the Manual and will be subject to NYSE rules applicable to equity trading including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening and customer suitability requirements. The

Commission believes that the listing and delisting criteria for the Securities should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Securities. The Exchange represents that it would file a proposed rule change, pursuant to Rule 19b-4 under the Act,<sup>17</sup> if Wachovia removes a Component Commodity from the Basket, adds a new Component Commodity to the Basket, changes the weighting of the Component Commodities in the Basket, or changes on a more than temporary basis the source of the closing price of any of the Component Commodities; or a market disruption event occurs which is of a more than temporary nature. Finally, the Commission notes that the Information Memorandum the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Securities, including their prospectus delivery obligations.

D. Accelerated Approval

The Commission finds good cause for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the Federal Register. The Commission notes that this product is similar to other products already approved by the Commission.<sup>18</sup> The Commission presently is not aware of any issue that would cause it to revisit such earlier findings or preclude the trading of these Securities on the Exchange. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, opportunities for investors to trade in such Securities.

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

<sup>18</sup> See, e.g., Securities Exchange Act Release No. 54033 (June 22, 2006), 71 FR 37131 (June 29, 2006) (order approving the listing and trading of principal protected notes linked to the Metals-China Basket).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended (SR-NYSE-2006-54), is hereby approved on an accelerated basis.<sup>19</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Nancy M. Morris  
Secretary

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<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).