

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55343; File No. SR-NYSE-2007-12)

February 23, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend Section 703.16 of the NYSE Listed Company Manual to Eliminate Requirement Regarding Index Calculation Methodology

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 February 5, 2007 the New York Stock Exchange LLC (“NYSE” 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 February 15, 2007, the Exchange filed 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 703.16 of the NYSE Listed Company Manual (“Manual”), the Exchange’s generic listing standard for investment company units (“ICUs”), to eliminate the requirement that the calculation methodology for the index underlying a series of ICUs must be one of those enumerated in Section 703.16(C)(4)(a). The proposed rule text is available at the NYSE, the Commission’s Public Reference Room, and www.nyse.com.

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. The text of these statements may be

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

examined at the places specified in Item IV below. The NYSE 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 Section 703.16 of the Manual, which includes the Exchange's generic listing standard for ICUs (which include exchange-traded funds), to eliminate the requirement that the calculation methodology for the index underlying a series of ICUs must be one of those enumerated in Section 703.16(C)(4)(a). This Amendment No. 1 replaces the Exchange's initial filing in its entirety.

The Exchange has adopted listing standards applicable to ICUs which are consistent with the listing criteria currently used by other national securities exchanges, and trading standards pursuant to which the Exchange may either list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges ("UTP") basis.³ An ICU is defined in Section 703.16 of the Manual as a security that represents an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. A registered investment company is registered under the Investment Company Act of 1940.⁴

³ In 1996, the Commission approved Section 703.16 of the Listed Company Manual, which sets forth the rules related to the listing of ICUs. See Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR-NYSE-95-23). In 2000, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Listed Company Manual and Exchange Rule 1100. See Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR-NYSE-2000-46).

⁴ 15 U.S.C. 80a.

The “generic” listing criteria of Section 703.16 of the Manual permit listing of ICUs that satisfy such criteria in reliance upon Rule 19b-4(e) under the Act,⁵ without a filing pursuant to Rule 19b-4 under the Act. Section 703.16(C)(4)(a) of the Manual requires, among other criteria, that, if a series of ICUs is listed for trading on the Exchange in reliance upon Rule 19b-4(e), the index underlying the series must follow one of these calculation weighting methodologies: market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology or a methodology weighting components of the index based on any, some or all of the following: sales, cash flow, book value and dividends.

The Exchange proposes to delete Section 703.16(C)(4)(a) and thereby eliminate the calculation methodology limitation.⁶ In recent years, academics and market professionals have explored and defined a growing list of innovations in index construction. Most recently, the Commission approved amendments to the generic listing criteria to accommodate new index weighting methodologies based on ranking companies by financial data such as sales, cash flow, book value and dividends.⁷ The Exchange believes there are multiple ways for indexes to be constructed to serve useful market purposes. Additional methodologies are under active development by academics and market professionals and permitting only certain specified index weighting methods does not take into account the rapid innovation in this area. The Exchange believes that, with respect to ICUs listed pursuant to Rule 19b-4(e), applying the numerical weighting and liquidity criteria and index dissemination requirements in Section 703.16, without imposing constraints on the index methodology, will provide greater flexibility to indexers and

⁵ 17 CFR 240.19b-4(e).

⁶ The Exchange also proposes to redesignate current subparagraphs (b) and (c) of Section 703.16(C)(4) as (a) and (b), respectively.

⁷ See Securities Exchange Act Release No. 54649 (October 24, 2006); 71 FR 63816 (October 31, 2006) (SR-NYSE-2006-88).

ICU issuers to develop indexes that meet the investment objectives of investors. In addition, the proposed rule change would allow ICUs based on a non-traditional weighting methodology to be brought to market more quickly, thereby reducing burdens on ICU issuers and other market participants and promoting competition.

The Exchange notes that the numerical criteria in Section 703.16 already define the concentration limits, diversity requirements and liquidity requirements of the companies in the underlying index. For example, the generic listing standards for domestic indexes require, among other things, that an index include at least 13 stocks, that the most heavily weighted component stock of an index cannot exceed 30% of the index weight and the five most heavily weighted component stocks of an index cannot exceed 65% of the index weight. The generic listing standards for international or global indexes require, among other things, that the index include at least 20 component stocks, that the most heavily weighted index component stock cannot exceed 25% of the index weight, and the five most heavily weighted component stocks cannot exceed 60% of the index weight. ICUs and their underlying indexes would continue to be subject to all other requirements of Section 703.16 of the Manual. Under these circumstances, the Exchange believes that removal of the index weighting requirements of Section 703.16(C)(4)(a) will not compromise investor protection.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁸ of the Act in general and furthers the objectives of Section 6(b)(5)⁹ 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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

impediments to, and perfect the mechanism 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 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. 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 the self-regulatory organization 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.

The Exchange has requested accelerated approval of this proposed rule change. The Commission has determined that a 15-day comment period is appropriate in this case.

IV. 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 (www.sec.gov/rules/sro.shtml); or
- Send e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2007-12 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-NYSE-2007-12. 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 (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 will also be available for inspection and copying at the principal office of the NYSE. 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-2007-12 and should be submitted by [insert date 15 days from date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).