

trading in the Shares if the circuit breaker parameters of Amex Rule 117 have been reached. In exercising its discretion to halt or suspend trading in the Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) and other relevant factors. In addition, Amex Rule 1002A(b)(ii) provides that, if the IIV or the Underlying Index value applicable to that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value 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.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Amex's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares.

(2) Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular regarding the application of Commentary .06 to Amex Rule 1000A-AEMI to the Funds and the prospectus and/or product description delivery requirements that apply to the Funds. The Information Circular will also provide guidance with regard to member firm compliance responsibilities when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares, as well as applicable Exchange rules. In addition, the Information Circular will disclose that the procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's prospectus, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof.

(3) The Exchange represents that the Trust is required to comply with Rule

10A-3 under the Act<sup>15</sup> for the initial and continued listing of the Shares.

This approval order is based on the Exchange's representations.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Amex-2007-60), as modified by Amendment Nos. 1 and 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Nancy M. Morris,

Secretary.

[FR Doc. E7-19752 Filed 10-5-07; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56588; File No. SR-NYSE-2007-92]

#### Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rules 104(b) and 123D

October 1, 2007.

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 September 28, 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 and II below, which Items have been substantially prepared by the NYSE. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NYSE proposes to amend its Rule 104(b) to provide for an automated opening message that will be effectuated through the Specialist Application

Programmed Interface ("SAPI"), to allow specialists to open a security on a quote. Additionally, the Exchange seeks to amend its Rule 123D (Openings and Halts in Trading) to clarify that specialists may open a security on a trade or a quote. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at <http://www.nyse.com>, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange is filing this proposed rule change to amend its Rules 104(b) and 123D to allow specialists to open a security on a quote by sending a message from the SAPI to the NYSE Display Book<sup>®</sup> system for publication of a quote when there is no opening trade.<sup>5</sup> The proposed rule change merely provides the specialist with the ability to electronically open a security on a quote, which currently may be accomplished manually.

###### Proposed Rule 104(b)

The Exchange seeks to add this electronic opening quote message provision to Exchange Rule 104(b), which includes other SAPI trading and quoting messages. The Exchange believes that, with increased automation of trading, specialists should be able to perform their trading and quoting functions both electronically and manually. To do otherwise would unnecessarily limit their effectiveness in

<sup>5</sup> The Display Book<sup>®</sup> system is an order management and execution facility. The Display Book system receives and displays orders to the specialists, contains the Book, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

<sup>15</sup> 17 CFR 240.10A-3.

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

the market and disadvantage investors. The proposed Rule 104(b) provision refers to proposed Rule 123D, which clarifies that a specialist is permitted to open a security in which he or she is registered on either a trade or a quote.

#### Rule 123D: Specialist Obligations at the Opening

The provisions of Exchange Rule 123D require a specialist to open the securities in which he or she is registered. According to Rule 123D, specialists must, among other things, do the following when opening and reopening their assigned securities:

- Open a registered security as close to the opening bell as possible;
- Open securities in a timely, fair and orderly manner; and
- Provide timely and impartial information at all phases of the opening process.

The proposed rule change will codify the practice of the specialist in the opening process, which is that the specialist may open an assigned security on a trade or on a quote. The specialist may open a security on a quote when there is no trade upon which to open. The practice has been and will remain that if a specialist opens a security on a quote, he or she must provide the highest bid price and lowest offer price available to them.<sup>6</sup> The proposed amendment to Rule 123D refers to the proposed amendment of Rule 104(b) as described above.

#### Delayed or Untimely Openings

Specialists' delayed or untimely openings of securities potentially disadvantage market participants, as investors are unable to trade such securities at the NYSE until the security is opened. The ability to open a security on a quote via an automated quoting message will enable the specialist to open their assigned securities in a timely manner, thereby providing investors with access to the NYSE market as close to 9:30 a.m. as possible. Opening securities in a timely, fair and orderly manner is consistent with the specialist's obligations under Exchange Rules 123D and 104. Therefore, the Exchange believes it is imperative to provide the specialist with an automated message that will assist the specialist in opening their assigned securities on a quote. Through this rule filing, the Exchange is merely seeking to automate an approved specialist

<sup>6</sup> The specialist must also be guided by Exchange Rules 79A.30 (one or two points or more away from the last sale) and 115A (Orders at Openings or in Unusual Situations) when opening and reopening securities.

function that is presently performed manually.

When a specialist on the NYSE fails to timely open a security that also trades on other exchanges, the investor will generally trade that particular security on other exchanges so as not to miss the market. As a consequence of late openings, the NYSE could lose market volume and market data revenue.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> 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. The Exchange also believes that the proposed rule change is designed to support the principles of Section 11A(a)(1) of the Act<sup>8</sup> in that it seeks to assure economically efficient execution of securities transactions by making it easier for specialists to open securities in which they are registered on a quote in a timely fashion by providing an automated quoting message that is effectuated through the SAPI.

#### 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

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section

<sup>7</sup> 15 U.S.C. 78(f)(b)(5).

<sup>8</sup> 15 U.S.C. 78k-1(a)(1).

19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it should assist the specialist in its ability to open securities in a timely, fair, and orderly manner. The Commission notes that the Exchange has represented that this proposal would merely automate the ability that specialists currently have to manually open trading in a security on a quote when there is no opening trade. For these reasons, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.<sup>10</sup>

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-92 on the subject line.

<sup>9</sup> In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The NYSE has satisfied this requirement.

<sup>10</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

*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-2007-92. 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 the 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-2007-92 and should be submitted on or before October 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Nancy M. Morris,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56589; File No. SR-NYSE-2007-85]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Temporary Waiver of the Specialist Marketing and Investor Education Fee for Specialists in Certain Listed Investment Company Units**

October 1, 2007.

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 September 25, 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 and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by NYSE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes, for the period from August 1, 2007 to December 1, 2007, to waive the Specialist Marketing and Investor Education Fee ("Fee") for those specialists in listed Investment Company Units ("ICUs") otherwise subject to such fee that have been reallocated following the previous specialist's withdrawal from registration as specialist in such ICUs.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. NYSE has substantially 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 currently imposes the Fee on Exchange specialists in ICUs in circumstances where the Exchange undertakes to provide funds to a third party for marketing and investor education in connection with the listing of those ICUs (also known as exchange traded funds).<sup>5</sup> The Exchange states that the fee is imposed in a fair and equitable manner on all specialists trading the securities subject to a third party fee or payment.

The amount paid by the specialists is calculated and apportioned following each calendar quarter among the specialist units allocated ICUs that are subject to an Exchange payment to third parties. This amount represents five-sixths (83.33%) of the annual amount payable by the Exchange, as apportioned for the quarter. Such amount is apportioned to specialist units for each ICU that is subject to the Fee, calculated based on the "Notional NYSE ADV" for each relevant ICU. Notional NYSE ADV is defined as the average daily share volume on the NYSE for the calendar quarter for the particular ICU multiplied by the average consolidated closing price for the quarter for such ICU.

One of the specialist units previously registered in a number of the ICUs subject to the Fee notified the Exchange in July 2007 of its intention to withdraw from registration as specialist from the Exchange in all listed products. As a result, the Exchange was required to reallocate these ICUs to other specialist units within a short time frame following notification by the previous specialist unit. This reallocation was accomplished on August 1, 2007. Under these circumstances, given that the specialist firms, to which the ICUs were reallocated on short notice, were not able to anticipate or budget for the expense, the Exchange considered it necessary, appropriate, and equitable to waive the Fee with respect to such reallocated ICUs for the period August 1, 2007 to December 1, 2007.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> See Securities Exchange Act Release No. 51872 (June 17, 2005), 70 FR 36683 (June 24, 2005) (SR-NYSE-2005-42).

<sup>11</sup> 17 CFR 200.30-3(a)(12).