

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55661; File No. SR-Amex-2007-29]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Notes Linked to the Performance of the Dow Jones-AIG Commodity Index Total Return

April 24, 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 March 2, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Amex. On April 5, 2007, Amex 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 list and trade notes linked to the performance of the Dow Jones-AIG Commodity Index Total Return (the “Index”). The text of the proposal is available at Amex, the Commission’s Public Reference Room, and <http://www.amex.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, Amex 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, and the most significant aspects of such statements are set forth in sections A, B, and C below.

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

##### 1. Purpose

Under section 107(A) of the Amex *Company Guide* (the “Company Guide”), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants, including index and currency warrants. Amex proposes to list for trading under section 107(A) of the Company Guide floating rate notes (the “Notes”) linked to the performance of the Index.<sup>3</sup> The Exchange submits that it recently received approval to list and trade notes linked to the performance of the Dow Jones-AIG ExEnergy Sub-Index, which is a subset of the Index.<sup>4</sup> The Notes will provide for participation in the positive performance of the Index during their term.

The Exchange states that the Notes will conform to the initial listing guidelines under section 107(A) of the Company Guide and the continued listing guidelines under sections 1001–1003 of the Company Guide. The Notes are senior, non-convertible debt securities of Lehman and have a term of thirteen months. The Notes are cash-settled in U.S. dollars and do not give the holder any right or other ownership interest in the Index or commodities comprising the Index. The Notes are designed for investors who desire to participate in, or gain exposure to, an index composed of a basket of actively-traded commodities and receive monthly coupon interest payments, and who are willing to forego principal protection on the Notes during such term. Lehman will issue the Notes in denominations of whole units, with each unit representing a single Note. The original public offering price will be \$1,000 per Note.

Unless the Notes have been redeemed earlier, at maturity, a holder would receive per each \$1,000 Note, a cash amount equal to the Daily Value (as defined herein) per \$1,000 Note as of the Valuation Date,<sup>5</sup> plus accrued and unpaid coupon payments, to, but

<sup>3</sup> Lehman Brothers Holdings Inc. (“Lehman”), Dow Jones & Company, Inc. (“Dow Jones”) and AIG International, Inc. (“AIGI”) have entered into a non-exclusive license agreement providing for the use of the Index by Lehman and certain affiliates and subsidiaries thereof in connection with certain securities including the Notes.

<sup>4</sup> See Securities Exchange Act Release No. 54790 (November 20, 2006), 71 FR 68645 (November 27, 2006) (SR-Amex-2006-01).

<sup>5</sup> The “Valuation Date” will generally be the third business day before the stated maturity date.

excluding, the stated maturity date. The “Daily Value” as of any Index Business Day<sup>6</sup> is calculated as follows: \$1,000 + (\$1,000 × 3 × (Index Return<sup>7</sup> – (Treasury Bill Return<sup>8</sup> + Adjustment Rate<sup>9</sup>))). The sum of the Treasury Bill Return and the Adjustment Rate reflects a combination of (1) The cost of Lehman providing investors with exposure to the Index through the Notes, and (2) the fee to investors purchasing the Notes.

Lehman may redeem the Notes early if, on any Index Business Day prior to the Valuation Date, the Daily Value per \$1,000 Note falls below a certain pre-determined amount. This day is known as the “Early Redemption Determination Date.” This pre-determined amount will be determined at the time of issuance of the Notes. In the event of redemption, Lehman will pay an amount per \$1,000

<sup>6</sup> An “Index Business Day” means a business day or, but for the occurrence of a Market Disruption Event (as defined herein), a day that would have been a business day, on which the Index is calculated by the Sponsors and published by Dow Jones, or if applicable, on which any successor Index is calculated. A “Market Disruption Event” means any of the following events, as determined in its sole discretion by Lehman Brothers Inc. (the “Calculation Agent”): (1) The Index value is not calculated by the Sponsors and published by Dow Jones (or any successor Index is not calculated and published by the sponsors thereof); (2) the termination or suspension of, or material limitation or disruption in, the trading on a relevant exchange of any futures contract included in the Index (or any successor Index); (3) the settlement price on a relevant exchange of any futures contract included in the Index (or any successor Index) has increased or decreased by an amount equal to the maximum permitted price change from the previous day’s settlement price; or (4) the settlement price of any futures contract included in the Index (or any successor Index) is not published by the relevant exchange.

<sup>7</sup> The “Index Return” is equal to the difference between the Closing Index Level (the closing level of the Index on any Index Business Day) and the Initial Index Level (the Closing Index Level on the date of the prospectus supplement), divided by the Initial Index Level. If the third business day before the stated maturity date is not an Index Business Day or the Calculation Agent determines that one or more Market Disruption Events has occurred on that day, the Calculation Agent will, subject to certain limitations, calculate the Index Return by determining the Closing Index Level on the next Index Business Day on which there is not a Market Disruption Event (the “Final Index Level”). If such postponement causes the Valuation Date to occur within three business days prior to the scheduled stated maturity date, the stated maturity date will be postponed until three business days after the date that the Final Index Level is determined.

<sup>8</sup> The daily “Treasury Bill Return” on any calendar day is the one-day return calculated using the weekly auction high rate for the 91-day Treasury Bill. The Treasury Bill Return as of any Index Business Day means a rate determined by the Calculation Agent by compounding the daily Treasury Bill Return on each calendar day during the term of the Notes.

<sup>9</sup> The “Adjustment Rate” means a rate, as determined by the Calculation Agent, which will equal the quotient of (1) The product of 0.30% times the number of calendar days from and including the date of the prospectus supplement to and including the Index Business Day, and (2) 365.

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

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

Note equal to the Daily Value per \$1,000 Note calculated as of the first Index Business Day following the Early Redemption Determination Date, plus accrued and unpaid coupon payments to, but excluding, the Early Redemption Determination Date.

If an event of default occurs and the maturity of the Notes are accelerated, Lehman will pay holders an amount equal to the amount that would have been payable at maturity, calculated as though the date of acceleration was the stated maturity date, and the date three Index Business Days before the date of acceleration was the Valuation Date. If a bankruptcy proceeding is commenced, the claims of a holder of a Note may be limited.

#### Index Description

The Index, developed by AIGI, is a proprietary index that is calculated by Dow Jones, AIGI, and AIG Financial Products Corp. ("AIG-FP" and, together with AIGI and Dow Jones, the "Sponsors") and published by Dow Jones.<sup>10</sup> The methodology for determining the composition and weighting of the Index and for calculating its level is subject to modification by the Sponsors at any time. Dow Jones disseminates the Index level at least every 15 seconds from 8 a.m. to 3 p.m. Eastern Time ("ET"),<sup>11</sup> and publishes a daily Index level at approximately 4 p.m. ET on each DJ-AIG Business Day<sup>12</sup> on its Web site at

<sup>10</sup> AIG-FP is not a broker-dealer or futures commission merchant; however, AIG-FP may have such affiliates. Therefore, AIG-FP (1) Maintains and agrees to continue to maintain procedures reasonably designed to prevent the use and dissemination by relevant employees of AIG-FP, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Index or the Dow Jones-AIG Commodity Index and (2) agrees to periodically check the application of such procedures as they relate to personnel of AIG-FP responsible for such changes. Dow Jones has informed the Exchange that it does not have any affiliates engaged in the securities or commodities trading businesses and, as such, do not believe that such firewall procedures are necessary in its case. In addition, the Supervisory and Advisory Committees (as defined herein) are subject to written policies that acknowledge their obligations with respect to material non-public information.

<sup>11</sup> Any disseminated Index value after 3 p.m. ET is static due to the close of auction trading of various commodities futures contracts.

<sup>12</sup> "DJ-AIG Business Day" is a day on which the weighting of the Index commodities that are open for trading, in the aggregate, is greater than 50% of the overall weight of the commodities comprising the Index. For example, based on the weighting of the Index commodities for 2007, if the Chicago Board of Trade ("CBOT") and the New York Mercantile Exchange ("NYMEX") are closed for trading on the same day, such day would not constitute a DJ-AIG Business Day.

<http://www.djindexes.com> and on Bloomberg's Web site.

The Index is re-weighted and re-balanced each year in January on a price-percentage basis. The annual weightings for the Index are determined each year in June or July by AIG-FP under the supervision of the Index Supervisory Committee,<sup>13</sup> announced after approval by such Committee and implemented the following January.

The Index is designed to track rolling futures positions in a diversified basket of 19 exchange-traded futures contracts on physical commodities. The 19 physical commodities selected for 2007 are aluminum, coffee, copper, corn, cotton, crude oil, gold, heating oil, lean hogs, live cattle, natural gas, nickel, silver, soybeans, soybean oil, sugar, unleaded gasoline, wheat, and zinc. Unlike equities, which typically entitle the holder to a continuing stake in a corporation, commodity futures contracts normally specify a certain date for the delivery of the underlying physical commodity. The Index tracks what is known as a rolling futures position, which is a position where, on a periodic basis, futures contracts on physical commodities specifying delivery on a nearby date must be sold and futures contracts on physical commodities that have not yet reached the delivery period must be purchased. An investor with a rolling futures position is able to avoid delivering underlying physical commodities while maintaining exposure to those commodities. The rollover for each Index component occurs over a period of five DJ-AIG Business Days each month according to a pre-determined schedule.

The 19 physical commodities selected for inclusion in the Index for 2007, and their respective weightings, are as follows:

Commodity	Weighting (percent)
crude oil .....	12.723561
natural gas .....	12.546191
soybeans .....	7.747790
gold .....	6.825901
aluminum .....	6.803820
copper .....	6.187758
live cattle .....	6.141286
corn .....	5.627129
wheat .....	4.715495
unleaded gasoline .....	3.940958
heating oil .....	3.789289

<sup>13</sup> On February 21, 2007, Dow Jones announced a change to the Dow Jones-AIG Commodity Index Oversight Committee structure providing for a two-tier committee structure consisting of a "Supervisory Committee" and an "Advisory Committee." The Supervisory Committee makes all final decisions relating to the Index with the advice and recommendation from the Advisory Committee.

Commodity	Weighting (percent)
cotton .....	3.146094
sugar .....	3.122271
coffee .....	3.021718
lean hogs .....	3.013524
soybean oil .....	2.845646
zinc .....	2.798069
nickel .....	2.715318
silver .....	2.288179
Total (rounded) .....	100.000000

Futures contracts on the Index are currently listed for trading on CBOT. The Index commodities currently trade on United States ("U.S.") exchanges, with the exception of aluminum, nickel and zinc, which trade on the London Metal Exchange ("LME").

#### Designated Contracts for Each Index Commodity

The Sponsors have established a two-tier committee structure to assist them in connection with the operation of the Index.<sup>14</sup> The two committees are the "Supervisory Committee" and the "Advisory Committee."<sup>15</sup> The Supervisory Committee provides final decisions regarding the composition and maintenance of the Index with the advice and recommendation of the Advisory Committee. The Supervisory Committee is comprised of three members appointed by Dow Jones and AIG-FP from their respective organizations. The Advisory Committee is comprised of nine prominent members of the financial and academic communities selected by AIG-FP. Both Committees meet annually to consider any changes to be made to the Index for the coming year. The Committees may also meet at such other times as may be necessary. A futures contract, known as a "Designated Contract," is selected by the Supervisory Committee for each Index commodity.<sup>16</sup> With the exception of several LME contracts, the Supervisory Committee selects the futures contract that is traded in the U.S. and denominated in U.S. dollars. If more than one of those contracts exists, the Supervisory Committee will select

<sup>14</sup> See *id.*

<sup>15</sup> Lehman has informed the Exchange that none of the members of the Supervisory or Advisory Committees is an officer, director, or employee of Lehman.

<sup>16</sup> The Supervisory Committee may exclude any otherwise eligible contract from the Index if it determines that it has inadequate liquidity. The Index currently includes contracts traded on LME, which is located in London. During the hours when the LME is closed, Dow Jones uses the last price and the settlement price once they are available in order to publish the Index value through the end of the trading day. The Index value does not reflect any after-hours or overnight trading in contracts traded on LME.

the most actively traded contract. Data concerning this Designated Contract will be used to calculate the Index value. If a Designated Contract is terminated or replaced, a comparable futures contract would be selected, if available, to replace that Designated Contract.

The Designated Contracts for the Index commodities included in the Index for 2007 are traded on LME, CBOT, the New York Board of Trade ("NYBOT"),<sup>17</sup> the Chicago Mercantile Exchange, Inc. ("CME"), and NYMEX. The particular commodities futures exchanges for each commodity futures contract are as follows: (1) Aluminum, nickel, and zinc—LME at <http://www.lme.com>; (2) corn, soybeans, soybean oil, and wheat—CBOT at <http://www.cbot.com>; (3) live cattle and lean hogs—CME at <http://www.cme.com>; (4) coffee, cotton, and sugar—NYBOT at <http://www.nybot.com>; and (5) copper, crude oil, gold, heating oil, natural gas, silver, and unleaded gasoline—NYMEX at <http://www.nymex.com>. In addition, various market data vendors and financial news publications publish futures prices and data. The Exchange represents that futures quotes and last sale information for the commodities underlying the Index are widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters.

#### Determination of Relative Weightings

The relative weightings of the component commodities included in the Index are determined annually according to both liquidity and dollar-adjusted production data in  $\frac{2}{3}$  and  $\frac{1}{3}$  shares, respectively. Each June, for each commodity designated for potential inclusion in the Index, liquidity is measured by the commodity liquidity percentage ("CLP") and production by the commodity production percentage ("CPP"). The CLP for each commodity is determined by taking a five-year average of the product of the trading volume and the historic dollar value of the designated contract for that commodity, and dividing the result by the sum of such products for all commodities which were designated for potential inclusion in the Index. The CPP is determined for each commodity by taking a five-year average of annual world production figures, adjusted by the historic dollar value of the designated contract, and dividing the result by the sum of such production

figures for all the commodities which were designated for potential inclusion in the Index. The CLP and the CPP are then combined (using a ratio of 2:1) to establish the commodity index percentage ("CIP") for each commodity. This CIP is then adjusted in accordance with certain diversification rules in order to determine the commodities which will be included in the Index and their respective percentage weights.

The Index is designed to provide diversified exposure to commodities as an asset class. To ensure that no single commodity or commodity sector dominates the Index, the following diversification rules are applied to the annual re-weighting and re-balancing of the Index as of January of the applicable year:

- No related group of commodities designated as a commodity group (*e.g.*, energy, precious metals, livestock, or grains) may constitute more than 33% of the Index.
- No single commodity may constitute more than 15% of the Index.
- No single commodity, together with its derivatives (*e.g.*, crude oil, together with heating oil and unleaded gasoline), may constitute more than 25% of the Index.

Following the annual re-weighting and re-balancing of the Index in January, the percentage of any single commodity or group of commodities at any time prior to the next re-weighting or re-balancing will fluctuate and may exceed or be less than the percentages set forth above.

Following application of the diversification rules, CIPs are incorporated into the Index by calculating the new unit weights for each Index commodity. Near the beginning of each new calendar year, the CIPs, along with the settlement prices on that date for designated contracts included in the Index, are used to determine a commodity index multiplier ("CIM") for each Index commodity. This CIM is used to achieve the percentage weightings of the Index commodities, in dollar terms, indicated by their respective CIPs. After the CIMs are calculated, they remain fixed throughout the year. As a result, the observed price percentage of each Index commodity will float throughout the year until the CIMs are reset the following year based on new CIPs.

The Index is calculated by the Sponsors by applying the impact of the changes to the futures prices of commodities included in the Index (based on their relative weightings). Once the CIMs are determined, the calculation of the Index is a mathematical process whereby the CIMs

for the Index commodities are multiplied by the prices in U.S. dollars for the applicable designated contracts. These products are then summed (during the rollover period, the sum includes both nearby and deferred contracts weighted according to the specified roll percentage). The percentage change in this sum from the sum of the prior day is then applied to the prior Index level to arrive at the current Index value. Finally, the returns on cash collateral invested in Treasury Bills, which are calculated using the most recent weekly auction high rate for 91-day Treasury Bills, are added to the current Index value to arrive at the Index level.

#### Index Calculation Disruption Events

From time to time, disruptions can occur in trading futures contracts on various commodity exchanges. The daily calculation of the Index may be adjusted in the event that the Sponsors determine that any of the following Index calculation disruption events exists:

- The termination or suspension of, or material limitation or disruption in, the trading of any futures contract used in the calculation of the Index on that day;
- The settlement price of any futures contract used in the calculation of the Index reflects the maximum permitted price change from the previous day's settlement price;
- The failure of an exchange to publish settlement prices for any futures contract used in the calculation of the Index; or
- With respect to any futures contract used in the calculation of the Index that trades on LME, a business day on which LME is not open for trading. The Exchange submits that for a temporary disruption in the trading of a futures contract, AIGI will typically use the prior day's price for an Index commodity or commodities. In exceptional cases, AIGI may employ a "fair value" price. However, the Exchange represents that if the use of a prior day's price or "fair value" pricing for an Index commodity or commodities continues for more than one day, the Exchange will commence delisting the Notes.

#### Exchange Rules Applicable to the Notes

Amex represents that the Notes will trade on the Exchange subject to existing Amex trading rules applicable to the Notes<sup>18</sup> including, among others,

<sup>17</sup> NYBOT recently was purchased by the Intercontinental Exchange ("ICE") and is now a regulated subsidiary of ICE.

<sup>18</sup> E-mail from Jeffrey P. Burns, Associate General Counsel, Amex, to Edward Cho, Special Counsel, Division of Market Regulation ("Division"),

rules governing priority, parity, and precedence of orders, specialist responsibilities, account opening, and customer suitability requirements. In addition, the Notes will be subject to the equity margin rules of the Exchange.<sup>19</sup>

#### Criteria for Initial and Continued Listing

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Act.<sup>20</sup> The Exchange further represents that the Notes will meet the listing requirements set forth in Section 107(A) of the Company Guide as well as the continued listing requirements set forth in Sections 1001 through 1003 of the Company Guide. The Exchange also has a general policy that prohibits the distribution of material, non-public information by its employees.

#### Trading Halts

The Exchange states that it will halt trading in the Notes if the circuit breaker parameters of Amex Rule 117 have been reached. In exercising its discretion to halt or suspend trading in the Notes, the Exchange may consider factors such as those set forth in Amex Rule 918C(b), in addition to other factors that may be relevant. In particular, if the Index value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Index value occurs. If the interruption to the dissemination of the Index value 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.

#### Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, Amex will rely on its existing surveillance procedures governing index-linked securities which are similar to its surveillance procedures governing exchange-traded funds and trust-issued receipts. With regard to the Index components, the Exchange currently has in place a comprehensive surveillance sharing arrangement with ICE, LME, and NYMEX, for the purpose of providing information in connection with trading in or related to futures contracts comprising the Index and traded on their respective exchanges. The

Commission, dated April 24, 2007 (clarifying the scope of the trading rules governing the Notes traded on the Exchange). See *infra* note 23.

<sup>19</sup> See Amex Rule 462.

<sup>20</sup> See 17 CFR 240.10A-3(c)(1).

Exchange also notes that CBOT, CME, and NYBOT are members of the Intermarket Surveillance Group ("ISG"). As a result, the Exchange asserts that it can obtain all necessary market surveillance information,<sup>21</sup> including customer identity information, from CBOT, CME, ICE, LME, NYBOT, and NYMEX, if necessary, due to regulatory concerns that may arise in connection with the commodity futures contracts underlying the Index.

#### Information Circular

The Exchange will, prior to trading the Notes, distribute an Information Circular to its membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations)<sup>22</sup> when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. In addition, the Circular will disclose the applicable trading rules governing the trading of the Notes on the Exchange<sup>23</sup> and that Lehman will deliver a prospectus in connection with the initial sales of the Notes and will reference that the Commission has no jurisdiction over the trading of the physical commodities or the futures contracts or on the commodities upon which the value of the Notes is based.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act,<sup>24</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>25</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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and

<sup>21</sup> E-mail from Jeffrey P. Burns, Associate General Counsel, Amex, to Edward Cho, Special Counsel, Division, Commission, dated April 16, 2007 (confirming the scope of ISG market surveillance information).

<sup>22</sup> With respect to suitability recommendations and risks, the Exchange will require members, member organizations, and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

<sup>23</sup> E-mail from Jeffrey P. Burns, Associate General Counsel, Amex, to Edward Cho, Special Counsel, Division, Commission, dated April 24, 2007 (specifying that information about the particular trading rules governing the Notes traded on the Exchange would also be identified in the Information Circular).

<sup>24</sup> 15 U.S.C. 78f.

<sup>25</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange did not receive any written 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 Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Amex has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. 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 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-Amex-2007-29 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-Amex-2007-29. 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-Amex-2007-29 and should be submitted on or before May 16, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55663; File No. SR-Amex-2007-39]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Additional Exceptions to Rule 126A—AEMI Relating to the Generation of Intermarket Sweep Orders

April 24, 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 April 20, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission

(“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. Amex has filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(5) thereunder,<sup>4</sup> which renders it 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

Amex proposes to adopt changes to Rule 126A—AEMI in order to fully conform the list of circumstances described therein with additional exceptions (a) Listed in Rule 611(b) of Regulation NMS<sup>5</sup> or (b) separately granted by the Commission pursuant to exemptive orders issued pursuant to Rule 611(d) of Regulation NMS.<sup>6</sup> The following resultant changes to Rule 126A—AEMI are proposed: (i) Addition of the “stopped order” exception specified under Rule 611(b)(9) of Regulation NMS;<sup>7</sup> (ii) addition of an exception for “qualified contingent trades”;<sup>8</sup> and (iii) addition of an exception for certain “sub-penny trade-throughs.”<sup>9</sup>

The text of the proposed rule change is available on Amex's Web site at <http://www.amex.com>, at the Exchange's principal office, 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, Amex 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. Amex 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange is currently operating, and has adopted rules in connection with the operation of, its new hybrid market trading platform for equity products and exchange traded funds, designated as AEMI<sup>SM</sup> (the Auction and Electronic Market Integration platform). Rule 126A—AEMI is the Exchange's effectuation of Rule 611 of Regulation NMS (“Order Protection Rule”), whereby trading centers are required to “establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks,” subject to certain exceptions. Rule 126A—AEMI, in relevant part, currently requires AEMI to generate an intermarket sweep order to any away market displaying a protected quotation simultaneously with the execution of a transaction on the Amex that would constitute a trade-through, except when one or more of eight circumstances—all contemplated in Rule 611 of Regulation NMS<sup>10</sup>—exist.

The current proposed changes are intended to expand the list of exceptional circumstances in Rule 126A—AEMI to include: (i) An additional exception from Rule 611(b)(9) of Regulation NMS<sup>11</sup> pertaining to certain “stopped orders” for which the Amex had, at the time of receipt of the order, guaranteed an execution at no worse than a specified price;<sup>12</sup> (ii) an additional exception for “qualified contingent trades”;<sup>13</sup> and (iii) an additional exception for certain “sub-penny trade-throughs.”<sup>14</sup>

The Exchange asserts that the proposal to effect the foregoing changes to the AEMI trading system does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not have the effect of limiting the access to or availability of the system.

<sup>10</sup> 17 CFR 242.611(b).

<sup>11</sup> 17 CFR 242.611(b)(9).

<sup>12</sup> Although Rule 109—AEMI prohibits granting or accepting a stop with respect to a security traded in AEMI, this exemption may still be applicable in certain situations such as error corrections.

<sup>13</sup> See Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006).

<sup>14</sup> See Securities Exchange Act Release No. 54678 (October 31, 2006), 71 FR 65018 (November 6, 2006).

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

<sup>4</sup> 17 CFR 240.19b-4(f)(5).

<sup>5</sup> 17 CFR 242.611(b).

<sup>6</sup> 17 CFR 242.611(d).

<sup>7</sup> 17 CFR 242.611(b).

<sup>8</sup> See Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006).

<sup>9</sup> See Securities Exchange Act Release No. 54678 (October 31, 2006), 71 FR 65018 (November 6, 2006).

<sup>26</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.