

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57693; File No. SR-Amex-2008-07)

April 21, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Currency Forward Pricing for Currency-Linked Securities

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 February 6, 2008, the American Stock Exchange LLC (“Exchange” or “Amex”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On April 17, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as amended, and approves the proposal on an accelerated basis.

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

The Exchange proposes to amend Section 107F of the Amex Company Guide (the “Company Guide”) to permit the listing of currency-linked securities (“Currency-Linked Securities”) based on a Currency Reference Asset consisting of pricing information for one or more currencies that is the generally accepted forward price<sup>3</sup> for the currency exchange rate(s) in question. The text of the proposed rule change is available at [www.amex.com](http://www.amex.com), Amex, and the Commission’s Public Reference Room.

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

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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> This proposal would permit the use of a generally accepted forward price based on forward contracts that are either “deliverable” or “non-deliverable.”

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

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

1. Purpose

The Exchange proposes to amend Section 107F(g)(ii) of the Company Guide to permit the listing of Currency-Linked Securities where the pricing information for some or all of the components of the Currency Reference Asset is the generally accepted forward price for the currency exchange rate(s) in question.

The foreign exchange market is predominantly an over-the-counter (“OTC”) market operating 24 hours a day, five days a week.<sup>4</sup> London, New York and Tokyo are the principal geographic centers of the worldwide foreign exchange market with approximately 58% of all foreign exchange business executed in the U.K., U.S., and Japan. Other smaller markets include Singapore, Zurich, and Frankfurt. The foreign currency market is the largest and most liquid financial market in the world. In 2007, the average daily spot turnover accounted for over \$1

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<sup>4</sup> For information relating to the foreign exchange market generally, see Securities Exchange Act Release No. 54351 (August 23, 2006), 71 FR 51245 (August 29, 2006) (SR-Amex-2006-44).

trillion USD and the average daily forward turnover accounted for \$362 billion USD.<sup>5</sup> Over 85% of currency derivative products (swaps, options and futures) are traded OTC.<sup>6</sup>

Foreign exchange rates are influenced by national debt levels and trade deficits, domestic and foreign inflation rates and investors' expectations concerning inflation rates, domestic and foreign interest rates and investors' expectations concerning interest rates, currency exchange rates, investment and trading activities of mutual funds, hedge funds and currency funds, and global or regional political, economic or financial events and situations. Additionally, expectations among market participants that a currency's value soon will change may also affect exchange rates.

There are three major kinds of transactions in the traditional foreign currency markets: spot transactions, outright forwards and foreign exchange swaps. "Spot" trades are foreign currency transactions that settle typically within two business days with the counterparty to the trade. Spot transactions account for approximately 35% of reported daily volume in the traditional foreign currency markets. "Forward" trades, which are transactions that settle on a date beyond spot, account for 12% of the reported daily volume, and "swap" transactions, in which two parties exchange two currencies on one or more specified dates over an agreed period and exchange them again when the period ends, account for the remaining 53% of volume.

Forward rates are quoted among dealers in premiums or discounts from the spot rate. The premium or discount is measured in "points" that represent the interest rate differential between two currencies for the period of the forward, converted into foreign exchange. In addition to the liquidity in the forward foreign exchange market, the forward market is also

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<sup>5</sup> See Bank for International Settlements, Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in 2007 (December 2007) (Table E1) (the "2007 BIS Report").

<sup>6</sup> Id. at Table E38.

transparent. Bloomberg, Reuters and other major market data providers disseminate quotes for the forward market provided by OTC dealers.

Most trading in the global OTC foreign currency markets is conducted by regulated financial institutions such as banks and broker-dealers. In addition, in the United States, the Foreign Exchange Committee of the New York Federal Reserve Bank has issued Guidelines for Foreign Exchange Trading, and central bank sponsored committees in Japan and Singapore have published similar best practice guidelines. In the United Kingdom, the Bank of England has published the Non-Investment Products Code, which covers foreign currency trading. The Financial Markets Association, whose members include major international banking organizations, has also established best practices guidelines called the Model Code.<sup>7</sup>

Participants in the U.S. OTC market for foreign currencies are generally regulated by their oversight regulators. For example, participating banks are regulated by the banking authorities.

As set forth above, this proposal would amend Section 107F(g)(ii) of the Company Guide to permit the listing of Currency-Linked Securities where the pricing information for some or all of the components of the Currency Reference Asset is the generally accepted forward price for the currency exchange rate in question. The generally accepted forward price is typically calculated as follows:<sup>8</sup>

$$\text{Forward Rate} = \text{Spot Rate} \times \left( \frac{1 + \text{Terms Currency Interest Rate} \times \text{Forward Days} / \text{Interest Rate Year}}{1 + \text{Base Currency Interest Rate} \times \text{Forward Days} / \text{Interest Rate Year}} \right)$$

$$\text{Points} = \text{Forward Rate} - \text{Spot Rate}$$

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<sup>7</sup> See supra note 4.

<sup>8</sup> See Federal Reserve Bank of New York, All About...The Foreign Exchange Market in the United States, p. 38. (<http://www.newyorkfed.org/education/addpub/usfxm/>)

The Exchange believes that the liquidity and transparency<sup>9</sup> of the OTC foreign currency market provides an adequate basis for using forward pricing information in connection with Currency-Linked Securities.

Based upon the trading volumes of forward contracts, the ability for an issuer to use forward pricing information under Section 107F(g)(ii) of the Company Guide for any component of a Currency Reference Asset will be restricted to the following currencies (collectively, “High Volume Currencies”): US Dollar, Euro, Japanese Yen, British Pound Sterling, Swiss Franc, Canadian Dollar, Australian Dollar, Brazilian Real, Chinese Renminbi, Czech Koruna, Danish Krone, Hong Kong Dollar, Hungarian Forint, Indian Rupee, Indonesian Rupiah, Korean Won, Mexican Peso, Norwegian Krone, New Zealand Dollar, Philippine Peso, Polish Zloty, Russian Ruble, Swedish Krona, South African Rand, Singapore Dollar, Taiwan Dollar, Thai Baht or New Turkish Lira. The trading volume in these currencies is as follows:<sup>10</sup>

FX Forward Average Daily Volume in Millions

Currency	2001	2004	2007	Average
U.S. Dollar	110,795	170,357	289,435	190,196
Euro	54,327	88,243	137,391	93,320
Japanese Yen	33,257	47,135	61,453	47,282
British Pound Sterling	16,826	31,338	46,274	31,479
Swiss Franc	6,637	11,307	21,186	13,043
Canadian Dollar	4,335	8,947	15,280	9,521

<sup>9</sup> For example, Bloomberg, Reuters, and other major market data providers disseminate pricing information for the forward market provided by OTC market makers.

<sup>10</sup> See 2007 BIS Report, *supra* note 5, Statistical Annex Table—Foreign Exchange Markets; BIS, Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2004, Statistical Annex Tables—Foreign Exchange Markets (2004); and BIS, Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2001, Statistical Annex Tables—Foreign Exchange Markets (2001).

Currency	2001	2004	2007	Average
Australian Dollar	5,416	9,788	20,463	11,889
Brazilian Real	1,259	1,072	5,259	2,530
Chinese Renminbi	55	811	4,572	1,813
Czech Koruna	96	253	1,432	594
Danish Krone	888	1,347	2,841	1,692
Hong Kong Dollar	3,055	2,221	6,022	3,766
Hungarian Forint	28	308	1,357	564
Indian Rupee	428	1,531	5,815	2,591
Indonesian Rupiah	103	267	1,292	554
Korean Won	1,671	6,048	10,013	5,911
Mexican Peso	673	1,716	4,594	2,328
Norwegian Krone	1,187	2,543	6,498	3,409
New Zealand Dollar	579	1,462	6,639	2,893
Philippine Peso	73	232	1,123	476
Polish Zloty	439	483	2,644	1,189
Russian Ruble	52	253	1,253	519
Swedish Krona	3,207	4,158	8,543	5,303
South African Rand	825	1,122	3,458	1,802
Singapore Dollar	825	1,242	2,962	1,676
Taiwan Dollar	603	2,798	4,724	2,708
Thai Baht New	231	490	847	523
New Turkish Lira	164	239	535	313
<u>Total (divided by 2)</u>	<u>125,018</u>	<u>199,858</u>	<u>337,956</u>	<u>220,944</u>

The total amount of contracts reflected in the chart above is divided by two because each contract is denominated in two currencies. For example, one contract will reflect cross rates in two currencies: US Dollars against the Euro, the Singapore dollar against the Turkish Lira, etc. The daily notional turnover for the currency forward contracts reflected in the chart above ranged from 535 million USD to 289 billion USD in April 2007.

In connection with this proposal, the generally accepted forward price will be used for pricing purposes only to the extent that the Currency Reference Asset (as defined in Section

107F of the Company Guide) is based on the generally accepted forward price. In the event a Currency Reference Asset is based upon the generally accepted forward price and such forward price becomes unavailable due to a holiday, the generally accepted spot price may be used for calculating the pricing information of the Currency Reference Asset. The pricing information of the Currency Reference Asset on the following business day must be based upon the generally accepted forward price. This exception will permit certain hedged products that use forward pricing information to use the spot price, which is quoted in the United States, when the generally accepted forward price, which is derived from the generally accepted spot price, is unavailable due to a foreign holiday.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</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 open market and a national market system. Specifically, the Exchange believes that the proposal to permit the use of generally accepted foreign currency forward pricing in connection with Currency-Linked Securities may better reflect the large, growing market in foreign exchange worldwide.

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

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

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2008-07 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-2008-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be



available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal 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-2008-07 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>14</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.

The Commission believes that opportunities to invest in derivative securities products based not only on the spot value, but also on the forward price, of a foreign currency provide additional choices to accommodate particular investment needs and objectives, should benefit investors. The Commission notes that the foreign exchange market as a whole, which is

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<sup>13</sup> In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

predominantly OTC, is a highly liquid market.<sup>15</sup> The Commission also notes that outright forward transactions account for a material percentage of reported daily volume on the foreign exchange markets.

In the interest of assuring sufficient liquidity of the underlying components and thereby protecting investors of Currency-Linked Securities that are based on the generally accepted forward price for the currency exchange rate in question, the use of forward pricing information for any such component of a Currency Reference Asset would be limited to the High Volume Currencies. The Commission notes that Currency-Linked Securities that satisfy the applicable requirements under Section 107F of the Company Guide would be able to be listed and traded pursuant to Rule 19b-4(e) under the Act.<sup>16</sup> The Commission believes that, to list and trade Currency-Linked Security products based on forward prices of foreign currencies pursuant to Rule 19b-4(e) under the Act, limiting such foreign currencies to the High Volume Global Currencies is an appropriate measure to assure sufficient liquidity in the underlying components.<sup>17</sup> In addition, the forward price should be used for pricing purposes only to the extent that the Currency Reference Asset is based on the forward price.<sup>18</sup> The Commission

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<sup>15</sup> See supra note 5 and accompanying text.

<sup>16</sup> See 17 CFR 240.19b-4(e). Rule 19b-4(e)(1) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4 under the Act (17 CFR 240.19b-4(c)(1)), if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), the SRO’s trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.

<sup>17</sup> The Commission further notes that the Exchange may seek to list and trade a Currency-Linked Security product based on forward prices of non-High Volume Global Currencies by filing a proposed rule change pursuant to Section 19(b)(1) of the Act.

<sup>18</sup> The proposal also states that, with respect to a Currency-Linked Security that is based on the forward price of a foreign currency, if the forward price is not available due to a holiday, the spot price may be used for calculating the pricing information of the

believes that the proposed rule change, which seeks to expand the types of components on which Currency-Linked Securities are based, should promote the listing and trading of additional Currency-Linked Securities and thereby support greater options and competition in such products, to the benefit of investors and the public interest.

The Commission finds good cause for approving this proposal before the 30<sup>th</sup> day after the publication of notice thereof in the Federal Register. The Commission has approved substantively identical proposed rule change by another national securities exchange<sup>19</sup> and does not believe that this proposal raises any novel regulatory issues. Accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Currency-Linked Securities.

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Currency Reference Asset. The pricing information on the following business day must be based on the forward price. See proposed Commentary .01 to Section 107F of the Company Guide.

<sup>19</sup> See Securities Exchange Act Release No. 54760 (March 10, 2008), 73 FR 13942 (March 14, 2008) (SR-NYSEArca-2008-12).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-Amex-2008-07), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).