

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57631; File No. SR-Amex-2008-30)

April 8, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index or Portfolio Underlying Portfolio Depositary Receipts and Index Fund Shares

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 March 25, 2008, 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. On April 1, 2008, 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 Commentary .03 to Amex Rule 1000-AEMI (Portfolio Depositary Receipts or “PDRs”) and Commentary .02 to Amex Rule 1000A-AEMI (Index Fund Shares or “IFSs,” and together with PDRs, collectively, “ETFs”) to exclude ETFs and securities defined as Managed Fund Shares (Amex Rule 1000B), Trust Issued Receipts (Amex Rule 1200), Commodity-Based Trust Shares (Amex Rule 1200A), Currency Trust Shares (Amex Rule 1200B), Partnership Units (Amex Rule 1500), and Paired Trust Shares (Amex Rule 1600) (together with ETFs, collectively, “Derivative Securities Products”) when applying certain quantitative listing requirements of Commentary .03 to Amex Rule 1000-AEMI and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Commentary .02 to Amex Rule 1000A-AEMI. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and 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, 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 purpose of the proposed rule change is to enable the listing and trading of ETFs that are linked to, or based on, Derivative Securities Products pursuant to Rule 19b-4(e) under the Act.³ To this end, the Exchange proposes to amend Commentary .03 to Amex Rule 1000-AEMI and Commentary .02 to Amex Rule 1000A-AEMI.

Amex Rules 1000-AEMI and 1000A-AEMI provide that the Exchange may approve a series of PDRs and IFSSs, respectively, for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Act,⁴ if such series satisfies the criteria

³ Rule 19b-4(e) 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 Rule 19b-4(c)(1) (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. See 17 CFR 240.19b-4(e).

⁴ See id.

set forth in such Rules. In this proposal, the Exchange seeks to exclude Derivative Securities Products when applying certain quantitative listing requirements of Commentary .03 to Amex Rule 1000-AEMI and Commentary .02 to Amex Rule 1000A-AEMI relating to the listing of PDRs and IFSs, respectively, based on a U.S. index or portfolio or an international or global index or portfolio.

With respect to Commentary .03 to Amex Rule 1000-AEMI and Commentary .02 to Amex Rule 1000A-AEMI, the Exchange proposes to exclude Derivative Securities Products, as components, when applying the following existing component eligibility requirements: (1) component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least \$75 million (Commentary .03(a)(A)(1) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(1) to Amex Rule 1000A-AEMI); (2) component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares (Commentary .03(a)(A)(2) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(2) to Amex Rule 1000A-AEMI); and (3) the most heavily weighted component stock must not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks must not exceed 65% of the weight of the index or portfolio (Commentary .03(a)(A)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(3) to Amex Rule 1000A-AEMI). Component stocks, in the aggregate, excluding Derivative Securities Products, would still be required to meet the criteria of these provisions. Thus, for example, when determining compliance with Commentaries .03(a)(A)(1) and (2) to Amex Rule 1000-AEMI and Commentaries .02(a)(A)(1) and (2) to Amex Rule 1000A-AEMI, component stocks that, in the aggregate, account for at least 90% of the remaining index weight, after excluding

any Derivative Securities Products, would be required to have a minimum market value of at least \$75 million and minimum monthly trading volume of 250,000 shares during each of the last six months, respectively. In addition, with respect to Commentary .03(a)(A)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(3) to Amex Rule 1000A-AEMI, when determining the component weight for the most heavily weighted stock and the five most heavily weighted component stocks for an underlying index that includes a Derivative Securities Product, the weight of such Derivative Securities Products included in the underlying index or portfolio would not be considered.

In addition, the Exchange proposes to modify the requirements in Commentary .03(a)(A)(4) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(4) to Amex Rule 1000A-AEMI, which provide that the underlying index or portfolio must include a minimum of 13 component stocks. Specifically, the Exchange proposes that there shall be no minimum number of component stocks if: (1) one or more series of ETFs constitute, at least in part, components underlying a series of ETFs; or (2) one or more series of Derivative Securities Products account for 100% of the weight of the index or portfolio. Thus, for example, if the index or portfolio underlying a series of ETFs includes one or more series of ETFs, or if it consists entirely of other Derivative Securities Products, then there would not be required to be any minimum number of component stocks (i.e., one or more components comprising the underlying index or portfolio would be acceptable). However, if the index or portfolio consists of Derivative Securities Products other than ETFs (e.g., Commodity-Based Trust Shares or Currency Trust Shares), as well as securities that are not Derivative Securities Products (e.g., common stocks), then there would have to be at least 13 components in the underlying index or portfolio.

Consistent with current Commentary .03(a)(A)(5) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(5) to Amex Rule 1000A-AEMI, all securities in the index or portfolio would have to be “US Component Stocks” (as defined in Amex Rules 1000-AEMI(b)(3) and 1000A-AEMI(b)(4))⁵ listed on a national securities exchange and NMS Stocks, as defined in Rule 600 of under the Act.⁶

With respect to Commentary .03(a)(B) to Amex Rule 1000-AEMI and Commentary .02(a)(B) to Amex Rule 1000A-AEMI, the Exchange proposes to exclude Derivative Securities Products, as components, when applying the following existing component eligibility requirements: (1) component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least \$100 million (Commentary .03(a)(B)(1) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(1) to Amex Rule 1000A-AEMI); (2) component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares (Commentary .03(a)(B)(2) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(2) to Amex Rule 1000A-AEMI); and (3) the most heavily weighted component stock must not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks must not exceed 60% of the weight of the index or portfolio (Commentary .03(a)(B)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(3) to Amex Rule 1000A-AEMI). Thus, for example, when determining compliance with Commentaries .03(a)(B)(1) and (2) to Amex Rule 1000-AEMI and Commentaries

⁵ “US Component Stock” is an equity security that is registered under Section 12(b) or 12(g) of the Act or an American Depositary Receipt, the underlying equity security of which is registered under Section 12(b) or 12(g) of the Act. See Amex Rules 1000-AEMI(b)(3) and 1000A-AEMI(b)(4).

.02(a)(B)(1) and (2) to Amex Rule 1000A-AEMI, component stocks that, in the aggregate, account for at least 90% of the remaining index weight, after excluding any Derivative Securities Products, would be required to have a minimum market value of at least \$100 million and minimum worldwide monthly trading volume of 250,000 shares during each of the last six months, respectively. In addition, with respect to Commentary .03(a)(B)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(3) to Amex Rule 1000A-AEMI, when determining the component weight for the most heavily weighted stock and the five most heavily weighted component stocks for an underlying index that includes a Derivative Securities Product, the weight of such Derivative Securities Products included in the underlying index or portfolio would not be considered.

In addition, the Exchange proposes to modify the requirements in Commentary .03(a)(B)(4) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(4) to Amex Rule 1000A-AEMI, which provide that the underlying index or portfolio must include a minimum of 20 component stocks. Specifically, the Exchange proposes that there shall be no minimum number of component stocks if: (1) one or more series of ETFs constitute, at least in part, components underlying a series of ETFs; or (2) one or more series of Derivative Securities Products account for 100% of the weight of the index or portfolio. Thus, for example, if the index or portfolio underlying a series of ETFs includes one or more series of ETFs, or if it consists entirely of other Derivative Securities Products, then there would not be required to be any minimum number of component stocks (i.e., one or more components comprising the underlying index or portfolio would be acceptable). However, if the index or portfolio consists of Derivative Securities Products other than ETFs (e.g., Commodity-Based Trust Shares or Currency Trust Shares), as

⁶ See 17 CFR 242.600(b)(47).

well as securities that are not Derivative Securities Products (e.g., common stocks), then there would have to be at least 20 components in the underlying index or portfolio.

Consistent with current Commentary .03(a)(B)(5) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(5) to Amex Rule 1000A-AEMI, each component that is a US Component Stock (which would include each Derivative Securities Product) would be required to be listed on a national securities exchange and be an NMS Stock, as defined in Rule 600 under the Act, and each component that is a Non-US Component Stock (as defined in Amex Rules 1000-AEMI(b)(4) and 1000A-AEMI(b)(5))⁷ would be required to be listed and traded on an exchange that has last-sale reporting.

The Exchange believes it is appropriate to exclude Derivative Securities Products from certain index component eligibility criteria for ETFs insofar as Derivative Securities Products are themselves subject to specific quantitative listing and continued listing requirements of a national securities exchange on which such Derivative Securities Products are listed. Derivative Securities Products that are components of an index or portfolio underlying a series of ETFs would have been listed and traded on a national securities exchange pursuant to a proposed rule change approved by the Commission pursuant to Section 19(b)(2) of the Act⁸ or submitted by a national securities exchange pursuant to Section 19(b)(3)(A) of the Act,⁹ or would have been

⁷ “Non-US Component Stock” is an equity security that is not registered under Section 12(b) or 12(g) of the Act and that is issued by an entity that (1) is not organized, domiciled, or incorporated in the United States, and (2) is an operating company (including Real Estate Investment Trusts and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). See Amex Rules 1000-AEMI(b)(4) and 1000A-AEMI(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 15 U.S.C. 78s(b)(3)(A).

listed by a national securities exchange pursuant to the requirements of Rule 19b-4(e) under the Act.¹⁰ Finally, the Exchange notes that Derivative Securities Products are derivatively priced, and, therefore, the Exchange submits that it would not be necessary to apply the generic quantitative criteria (e.g., market capitalization, trading volume, index or portfolio component weighting) applicable to non-Derivative Securities Products (e.g., common stocks) to such products.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5),¹² 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, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposal will facilitate the listing and trading of additional types of ETFs that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in the proposed rules are intended to protect investors and the public interest.

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

The Exchange states that the proposed rule change will impose no 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

¹⁰ See supra note 3.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

Change Received from Members, Participants or Others

The Exchange states that no written comments were solicited or received with respect to 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 Exchange 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.

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. Please include File Number SR-Amex-2008-30 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-2008-30. 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 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-2008-30 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).