

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58060; File No. SR-Amex-2008-49)

June 30, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 107 of the Company Guide

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 June 13, 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 and II below, which Items have been prepared substantially by Amex. Amex filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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

The Exchange proposes to make certain non-substantive housekeeping changes to various subsections of Section 107 of the Amex Company Guide (the “Company Guide”). The text of the proposed rule change is available at Amex, the Commission’s Public Reference Room, and [www.amex.com](http://www.amex.com).

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

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

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make certain non-substantive changes to the rule text of Section 107 of the Company Guide. The Exchange in this proposal seeks to reduce the duplications in subsections of Sections 107D through 107I by consolidating provisions that apply to all securities listed under Section 107 of the Company Guide (the "Section 107 Securities").

Over the past several years, the Exchange has adopted a variety of "generic" listing standards applicable to Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income-Linked Securities, Futures-Linked Securities and Combination-Linked Securities. Sections 107D, 107E, 107F, 107G, 107H and 107I of the Company Guide detail the listing requirements for Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income-Linked Securities, Futures-Linked Securities and Combination-Linked Securities, respectively. In each of these Sections, the subparagraphs (a) through (f), and (i) through (k) provide for substantively identical requirements. As a result, the Exchange proposes to delete these subparagraphs and consolidate these "general requirements" into proposed new Commentaries .01 and .02 to Section 107 of the Company Guide.

Proposed paragraphs (a) through (f) of proposed Commentary .01 would consolidate substantively the same information contained in subparagraphs (a) through (f) of Sections 107D through I. The criteria set forth in proposed Commentary .01 to Section 107 of the Company Guide would be applicable to Section 107 Securities as follows:

- Both the issue and the issuer of the security must meet the “General Criteria” in Section 107A.
- The issue have a minimum term of one (1) year but not greater than thirty (30) years.
- The issue must be non-convertible debt of the issuer.
- Payment at maturity may or may not provide for a multiple of the direct or inverse performance of the underlying reference asset; however, in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds twice the performance of the underlying reference asset.
- The issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000, and to otherwise substantially exceed the earnings requirements set forth in Section 101(a) of the Company Guide. In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirement set forth in Section 101(a) of the Company Guide, and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange exceeds 25% of the issuer's net worth.
- The issuer must be in compliance with Rule 10A-3 under the Act.

Proposed Commentary .02 relating to trading halts, firewalls, surveillance procedures and proposed paragraphs (b) through (d) of proposed Commentary .02 would consolidate paragraphs (i) through (k) of Sections 107D through I. Proposed paragraph (a) of Commentary .02 is substantively identical to the trading halt provisions found in Section 107D(h)(4) and subparagraphs (h)(3) of Sections 107E through I of the Company Guide. The proposed trading halt provision would apply to all the Section 107 Securities and would allow the Exchange to halt trading if the value of the underlying reference asset or indicative value is not being disseminated.<sup>5</sup> The criteria set forth in proposed Commentary .02 to Section 107 of the Company Guide would be applicable to Section 107 Securities as follows:

- Trading Halts. If the value of the underlying reference asset or indicative value is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption 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.
- Firewalls. If the value of a security is based in whole or in part on an index or portfolio maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel responsible for the maintenance of such index or portfolio who have access to information concerning changes and adjustments to the index or portfolio, and the index or portfolio shall be calculated by a third party who is not a broker-dealer. Any advisory committee, supervisory board or similar entity that advises an index license provider or that makes decisions regarding the index or

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<sup>5</sup> Currently, Section 107D permits the Exchange to halt trading if the value of the underlying index is not being disseminated, and does not permit a trading halt if the indicative value is not being disseminated.

portfolio composition, methodology and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio.

- Surveillance Procedures. The Exchange will implement written surveillance procedures for the listing and trading of securities, including adequate comprehensive surveillance sharing agreements, as applicable.
- Securities listed pursuant to Sections 107D through I of the Company Guide will be treated as equity instruments subject to the Exchange's equity trading rules, except that (i) such securities listed and traded as bond or debt securities will be subject to the rules applicable to bond or debt securities and (ii) securities redeemable at the option of the holders thereof on at least a weekly basis will be subject to the trading rules applicable to exchange-traded funds.

The Exchange represents that as set forth above, the substantive requirements in proposed Commentaries .01 and .02 to Section 107 of the Company Guide are substantively identical to the corresponding paragraphs of Sections 107D through I of the Company Guide.

The listing requirements for each of the Section 107 Securities would now refer to Commentary .01 rather than individually setting forth the “General Criteria” for each issue and issuer. Commentary .02 specifically provides that it applies to the listing and trading of the Section 107 Securities with respect to trading halts, firewalls, surveillance procedures and the characterization of the Section 107 Securities.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the

requirements of Section 6(b) of the Act<sup>6</sup>. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act<sup>7</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Exchange believes that the proposal will provide better clarity and streamline its Section 107 listing requirements.

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

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

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<sup>6</sup> 15 U.S.C. 78f(b).

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Commission Rule 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> 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 set forth in Rule 19b-4(f)(6)(iii) under the Act.<sup>11</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change would allow the proposed non-substantive revisions to streamline and clarify Section 107 of the Company Guide to be effective immediately. For this reason, the Commission designates the proposal to be operative upon filing with the Commission.<sup>12</sup>

At any time within 60 days of the filing of the 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.

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<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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 Commission notes that Amex has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

#### 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-2008-49 on the subject line.

##### Paper comments

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

All submissions should refer to File Number SR-Amex-2008-49. 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 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of Amex. 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-2008-49 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.<sup>13</sup>

Florence E. Harmon  
Acting Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).