

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56633; File No. SR-ISE-2007-60)

October 9, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4 Thereto, Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Indexes Described in Exchange Rules Previously Approved by the Commission as Underlying Benchmarks for Derivative 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 July 12, 2007, the International Securities Exchange, LLC (“Exchange” or “ISE”) 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 August 6, 2007, ISE submitted Amendment No. 1 to the proposed rule change. On August 7, 2007, ISE withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change. On August 15, 2007, ISE filed Amendment No. 3 to the proposed rule change, and on October 9, 2007, ISE filed Amendment No. 4 to the proposed rule change.<sup>3</sup> This order provides notice of the proposal, 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

ISE proposes to revise its Rule 2123 to include generic listing standards for series of Investment Company Units (“ICUs”) that are based on U.S. indexes or portfolios, international or global indexes or portfolios, or on indexes or portfolios described in proposed rule changes

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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> Amendment No. 4 replaces and supersedes the original rule filing and all previous amendments thereto.

previously approved by the Commission under Section 19(b)(2) of the Act for the trading of ETFs, options, or other specified index-based securities. Additionally, the Exchange proposes to adopt ISE Rule 2131 to allow for the listing and trading of Portfolio Depositary Receipts (“PDRs”)<sup>4</sup> that are based on U.S. indexes or portfolios, international or global indexes or portfolios, or on indexes or portfolios previously approved by the Commission under Section 19(b)(2) of the Act for the trading of ETFs, options, or other specified index-based securities. Further, the Exchange proposes to modify subsection (c)(4) of ISE Rule 2123 to eliminate the requirement that the calculation methodology for the index underlying a series of ICUs be one of those enumerated in subsection (c)(4). The text of the proposed rule change is available at ISE, on ISE’s Web site (<http://www.ise.com>), and from 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, ISE 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. ISE 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 revise its Rule 2123 and adopt ISE Rule 2131 to include generic listing standards for series of ICUs and PDRs that are based on U.S. indexes or portfolios, international or global indexes or portfolios, or on indexes or portfolios described in

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<sup>4</sup> ICUs and PDRs are referred to collectively as “ETFs.”

rules previously approved by the Commission under Section 19(b)(2) of the Act for the trading of ETFs, options, or other specified index-based securities. Additionally, proposed ISE Rule 2131 includes generic listing standards for PDRs based on an index or portfolio that consists of stocks listed on U.S. exchanges. This proposed rule change would enable the Exchange to list and trade ETFs pursuant to Rule 19b-4(e) under the Act<sup>5</sup> if each of the conditions set forth in ISE Rules 2123 or 2131, as applicable, is satisfied. Rule 19b-4(e) 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,<sup>6</sup> if the Commission has approved, pursuant to Section 19(b) of the Act, 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>7</sup> The Commission has approved similar proposals by other exchanges.<sup>8</sup>

a. Background on ETFs

Currently, ISE Rule 2123 provides standards for the listing of ICUs on the Exchange. ICUs are securities issued by a unit investment trust, an open-end management investment

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

<sup>6</sup> 17 CFR 240.19b-4(c)(1).

<sup>7</sup> When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. See 17 CFR 240.19b-4(e)(2)(ii).

<sup>8</sup> See Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86); Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-Nasdaq-2006-050); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101); Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-Amex-2006-78); Securities Exchange Act Release No. 44532 (July 10, 2001), 66 FR 37078 (July 19, 2001) (SR-Amex-2001-25) (modifying generic listing standards for PDRs).

company (“open-end mutual fund”) registered under the Investment Company Act of 1940<sup>9</sup> (“1940 Act”), or similar entity based on a portfolio of securities (including fixed income securities) that seeks to provide investment results that correspond generally to the price and yield performance of an index or portfolio of securities. The net asset value (“NAV”) is calculated once a day after the close of the regular trading day. Proposed ISE 2131 allows for the listing and trading of PDRs on the Exchange. PDRs represent securities based on a unit investment trust that holds the securities that comprise an index or portfolio underlying a series of PDRs. Pursuant to ISE Rules 2123 and 2131, ICUs and PDRs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined NAV. When aggregated in the same specified minimum number, ICUs and PDRs must be redeemable by the issuer for the securities and/or cash, with a value equal to the next determined NAV.

To meet the investment objective of providing investment returns that correspond to the price and the dividend and yield performance of the underlying index, an ETF may use a “replication” strategy or a “representative sampling” strategy with respect to the ETF portfolio.<sup>10</sup>

An ETF using a replication strategy invests in each stock of the underlying index in about the same proportion as that stock is represented in the index itself. An ETF using a representative sampling strategy generally invests in a significant number, but not all of the component securities of the underlying index, and will hold stocks that, in the aggregate, are

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<sup>9</sup> 15 U.S.C. 80a.

<sup>10</sup> In either case, an ETF, by its terms, may be considered invested in the securities of the underlying index to the extent the ETF invests in sponsored American Depository Receipts (“ADRs”), Global Depository Receipts (“GDRs”), or European Depository Receipts (“EDRs”) that trade on exchanges with last-sale reporting representing securities in the underlying index.

intended to approximate the full index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code (“IRC”).<sup>11</sup>

ETFs listed pursuant to these proposed generic listing standards (discussed below) or that are traded pursuant to unlisted trading privileges (“UTP”) would be traded, in all other respects, under the Exchange’s existing trading rules and procedures that apply to ETFs, and would be covered under the Exchange’s surveillance program for equities. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of ETFs listed pursuant to the proposed new listing standards or traded pursuant to UTP. In addition, the Exchange has a general policy prohibiting the dissemination of material, non-public information by its employees.

The Exchange believes that adopting generic listing standards and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for a public comment period and Commission approval. The proposed rules have the potential to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular index or portfolio to comply with the proposed generic listing standards under Rule 19b-4(e) would not, however, preclude the Exchange from

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<sup>11</sup> For an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC, including requirements with respect to the nature and value of the ETF’s assets.

submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade an ETF based on that index or portfolio.

b. Proposed Generic Listing Standards for PDRs Based on U.S. Stocks

The Commission has previously approved generic listing standards for ETFs based on indexes or portfolios that consist of stocks listed on U.S. exchanges.<sup>12</sup> Proposed Rule 2131 sets forth generic listing standards for PDRs based on an index or portfolio of U.S. Component Stocks, which shall meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$75 million (.01(a)(1)(i) of the Supplementary Material to Rule 2131);
- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares (.01(a)(1)(ii) of the Supplementary Material to Rule 2131);
- The most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 65% of the weight of the index or portfolio (.01(a)(1)(iii) of the Supplementary Material to Rule 2131);
- The index or portfolio shall include a minimum of 13 component stocks (.01(a)(1)(iv) of the Supplementary Material to Rule 2131); and

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<sup>12</sup> See ISE Rule 2123; Securities Exchange Act Release No. 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (SR-ISE-2006-48) (approving generic listing standards for ICUs); Securities Exchange Act Release No. 44532 (July 10, 2001), 66 FR 37078 (July 19, 2001) (SR-Amex-2001-25) (modifying generic listing standards for PDRs).

- All securities in the index or portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS stocks as defined in Rule 600 of Regulation NMS under the Act (.01(a)(1)(v) of the Supplementary Material to Rule 2131).

c. Proposed Listing and Trading Requirements for ETFs Based on International or Global Indexes or Portfolios

To list an ICU or PDR pursuant to the proposed generic listing standards for international and global indexes or portfolios, the index or portfolio underlying the ETF must satisfy all the conditions contained in proposed ISE Rule 2123(c)(2)(ii) or (iii) and .01(a)(2) or (3) of the Supplementary Material to proposed ISE Rule 2131, respectively. However, for ICUs and PDRs traded on the Exchange pursuant to UTP, only the provisions of proposed ISE Rules 2123(c)(3), (c)(5), (e), (f), and (i); 2131(c) and (e)(2)(ii); and .01(c), (e), (f), and (g) of Supplementary Material to proposed ISE Rule 2131, respectively, will apply. These paragraphs relate to the dissemination of information, surveillance procedures, trading halts, prospectus delivery, trading hours, and minimum price variation.

As with the existing generic listing standards for ETFs based on domestic indexes or portfolios, these generic listing standards for international and global indexes or portfolios are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio. While the standards in this proposal are based on the standards contained in the current generic listing standards for ETFs based on domestic indexes or portfolios, they have been adapted as appropriate to apply to international and global indexes or portfolios. The proposed criteria for the underlying component securities in the international and global indexes are similar to those for the domestic indexes or portfolios, but with modifications for the issues and risks associated with non-U.S.

securities. In addition, the Commission has previously approved similar generic listing standards as those proposed in this filing.<sup>13</sup>

ISE Rules 2123(b) and 2131(a) would include definitions of “U.S. Component Stock” and “Non-U.S. Component Stock.” These new definitions would provide the basis for the standards for indexes or portfolios with either domestic or international stocks, or a combination of both. A “Non-U.S. Component Stock” would mean an equity security that is not registered under Section 12(b) or 12(g) of the Act,<sup>14</sup> and that is issued by an entity that: (a) is not organized, domiciled, or incorporated in the United States; and (b) is an operating company (including a real estate investment trust (REIT) or income trust, but excluding an investment trust, unit trust, mutual fund, or derivative). This definition is designed to create a category of component stocks that are issued by companies that are not based in the United States, but are not subject to oversight through Commission registration, and would include sponsored GDRs and EDRs. A “U.S. Component Stock” would mean an equity security that is registered under Section 12(b) or 12(g) of the Act or an ADR, the underlying equity security of which is registered under Section 12(b) or 12(g) of the Act.

An ADR with an underlying equity security that is registered pursuant to the Act is considered a U.S. Component Stock because the issuer of that underlying security is subject to Commission jurisdiction and must comply with Commission rules. The Exchange proposes that, to list an ETF based on an international or global index or portfolio pursuant to the generic listing standards, such index or portfolio must meet the following criteria:

- 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

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<sup>13</sup> See supra note 8.

<sup>14</sup> 15 U.S.C. 78l(b) or (g).



million (proposed ISE Rule 2123(c)(2)(ii)(A) and .01(a)(2)(i) of the Supplementary Material to proposed ISE Rule 2131);

- Component stocks representing 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 (proposed ISE Rule 2123(c)(2)(ii)(B) and .01(a)(2)(ii) of the Supplementary Material to proposed ISE Rule 2131);
- The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio (proposed ISE Rule 2123(c)(2)(ii)(C) and .01(a)(2)(iii) of the Supplementary Material to proposed ISE Rule 2131);
- The index or portfolio shall include a minimum of 20 component stocks (proposed ISE Rule 2123(c)(2)(ii)(D) and .01(a)(2)(iv) of the Supplementary Material to proposed ISE Rule 2131); and
- Each U.S. Component Stock in the index or portfolio must be listed on a national securities exchange and be an NMS stock as defined in Rule 600 of Regulation NMS under the Act, and each Non-U.S. Component Stock in the index or portfolio must be listed on an exchange that has last-sale reporting (proposed ISE Rule 2123(b)(2)(ii)(E) and .01(a)(2)(v) of the Supplementary Material to proposed ISE Rule 2131).

The Exchange believes that these proposed standards are reasonable for international and global indexes and portfolios and, when applied in conjunction with the other listing

requirements, would result in the listing and trading on the Exchange of ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that the proposed standards would result in ETFs that are adequately diversified in weighting for any single security or small group of securities to significantly reduce concerns that trading in an ETF based on an international or global index or portfolio could become a surrogate for the trading of securities not registered in the United States.

The Exchange further notes that, while these standards are similar to those for indexes and portfolios that include only U.S. Component Stocks, they differ in certain important respects and are generally more restrictive, reflecting greater concerns over portfolio diversification with respect to ETFs investing in components that are not individually registered with the Commission. First, in the proposed standards, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million, compared to a minimum market value of at least \$75 million for indexes with only U.S. Component Stocks.<sup>15</sup> Second, in the proposed standards, the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, in contrast to a 30% standard for an index or portfolio comprised of only U.S. Component Stocks. Third, in the proposed standards, the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio, compared to a 65% standard for indexes comprised of only U.S. Component Stocks. Fourth, the minimum number of component stocks in the proposed standards is 20, in contrast to a minimum of 13 in the standards for an index or portfolio with only U.S. Component Stocks. Finally, the proposed standards require that each

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<sup>15</sup> Market value is calculated by multiplying the total shares outstanding by the price per share of the component stock.

Non-U.S. Component Stock included in the index or portfolio be listed and traded on an exchange that has last-sale reporting.

The Exchange also proposes to modify ISE Rule 2123(c)(3) and to adopt .01(b)(2) of the Supplementary Material to proposed ISE Rule 2131 to require that the index value for an ETF listed pursuant to the proposed standards for international and global indexes be widely disseminated by one or more major market data vendors at least every 60 seconds during the time when the ETF shares trade on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. In contrast, the index value for an ETF listed pursuant to the existing standards for domestic indexes must be disseminated at least every 15 seconds during the trading day. This modification reflects limitations, in some instances, on the frequency of intra-day trading information with respect to Non-U.S. Component Stocks and that, in many cases, trading hours for overseas markets overlap only in part, or not at all, with Exchange's trading hours.

In addition, ISE Rule 2123(c)(3) is being modified and .01(c) of the Supplementary Material to proposed ISE Rule 2131 is being adopted to define the term "Intraday Indicative Value" ("IIV") as the estimate of the value of a share of each ETF that is updated at least every 15 seconds during ISE's trading hours. The Exchange also proposes to clarify in ISE Rule 2123(c)(3) that the IIV would be updated during the hours the ETF trades on the Exchange to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated.

The Exchange is also proposing to add an ISE Rule 2123(c)(6) and .01(h) of the Supplemental Material to proposed ISE Rule 2131 regarding the creation and redemption process

for ETFs and compliance with federal securities laws for, in particular, ETFs listed pursuant to the new generic listing standards for international and global indexes or portfolios described in rules previously approved by the Commission under Section 19(b)(2) of the Act. These new provisions would apply to ICUs listed pursuant to ISE Rule 2123(c)(2)(ii) or (iii) or PDRs listed pursuant to .01(a)(2) and (3) of the Supplementary Material to proposed ISE Rule 2131, respectively. These new standards would require that the statutory prospectus or the application for exemption from provisions of the 1940 Act<sup>16</sup> for the ETF being listed pursuant to these new standards state that the ETF must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.<sup>17</sup>

d. Proposed Listing and Trading Requirements for ETFs Based on Indexes or Portfolios Described in a Previously Approved Rule

The Commission has approved generic listing standards providing for the listing pursuant to Rule 19b-4(e) of other derivative securities products based on indexes or portfolios described in rules previously approved by the Commission under Section 19(b)(2) of the Act. The Exchange proposes to add generic listing standards for ETFs that are based on such indexes or portfolios. The Exchange believes that the application of this standard to ETFs is appropriate because the underlying index or portfolio would have been subject to Commission review in the context of the approval of those other proposed rule changes.

This new generic listing standard would be limited to stock indexes and portfolios and would require that each component stock be either: (a) a U.S. Component Stock that is listed on

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<sup>16</sup> 15 U.S.C. 80a.

<sup>17</sup> 15 U.S.C. 77a. et seq.

a national securities exchange and is an NMS stock as defined in Rule 600 of Regulation NMS under the Act; or (b) a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

e. Other Proposals

The Exchange is proposing to delete general language addressing the applicability of trading halts, which appears in ISE Rule 2123(b)(3), and to add a paragraph (e) to ISE Rule 2123 to more thoroughly address trading halts. The Exchange is also adopting ISE Rule 2131(e)(2)(ii) to address trading halts in PDRs. Specifically, proposed Rule 2123(e) and 2131(e)(2)(ii) require the Exchange to halt trading in a series of ICUs or PDRs (as applicable) whenever a market-wide trading halt has been implemented in response to extraordinary market conditions. In exercising its discretion to halt or suspend trading in a series of ETFs, the Exchange may consider factors such as the extent to which trading in the underlying securities is not occurring or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, in addition to other factors that may be relevant. When the Exchange is the listing market for a series of ETFs, if the IIV or the official index value applicable to that ETF series is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the index value occurs. If the interruption to the dissemination of the IIV or the official index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

When the Exchange is trading a series of an ETF pursuant to UTP, the Exchange will immediately halt trading in that ETF series if a temporary interruption occurs in the calculation or wide dissemination of the applicable IIV or value of the underlying index by a major market

data vendor and the listing market halts trading in such ETF series. Further, if the IIV or the value of the underlying index continues not to be calculated or widely available as of the next business day, the Exchange will not begin trading in that series of ETFs. If an interruption in the calculation or wide dissemination of the IIV or the value of the underlying index continues, the Exchange may resume trading in the ETF series only if calculation and wide dissemination of the IIV or the value of the underlying index resumes or trading in such series resumes in the listing market.

The Exchange proposes to adopt ISE Rule 2131(f) to limit its liability with respect to the dissemination of information related to PDRs. ISE already has in place a similar provision in ISE Rule 2123(e). Further, proposed ISE Rule 2131(f) is identical to NYSE Arca Rule 8.100(f) (Limitation of Liability of the Corporation).

The Exchange also proposes to eliminate the requirement that the prescribed calculation methodology for the index underlying a series of ICUs must be one of those enumerated in the ISE Rule 2123(c)(4). The proposed rule change is based on approved rule changes of the Amex, NYSE, and NYSE Arca.<sup>18</sup>

The Exchange is proposing other minor and clarifying changes to ISE Rule 2123. ISE Rule 2123(c)(2)(i)(E) has been modified to reflect the adoption of Regulation NMS. Proposed Rule 2123(c) has been added to make sure that an entity that advises an index provider or calculator and related entities has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETFs.

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<sup>18</sup> See Securities Exchange Act Release No. 55546 (March 27, 2007), 72 FR 15929 (April 3, 2007) (SR-NYSEArca-2007-14) (approving the elimination of the requirement regarding index weighting and calculation methodology); Securities Exchange Act Release No. 55545 (March 27, 2007), 72 FR 15928 (April 3, 2007) (SR-NYSE-2007-12); Securities Exchange Act Release No. 55544 (March 27, 2007), 72 FR 15923 (April 3, 2007) (SR-Amex-2007-07).

Additionally, the Exchange is proposing to amend Appendix A to Chapter 21 (ISE Stock Exchange, LLC Trading Rules) to include reference to ISE Rules 702 (Trading Halts) and 703 (Trading Halts Due To Extraordinary Market Volatility) to clarify that both of these rules apply to securities traded on the ISE Stock Exchange.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5) of the Act.<sup>19</sup> The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) requirements that the rules of an exchange be designed 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.

### 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.

### 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:

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<sup>19</sup> 15 U.S.C. 78f(b)(5).

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-ISE-2007-60 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-ISE-2007-60. 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 ISE. 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-ISE-2007-60 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, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act<sup>21</sup> 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Currently, the Exchange must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act<sup>22</sup> and Rule 19b-4 thereunder<sup>23</sup> to list and trade, or trade pursuant to UTP, any ETF based on an index or portfolio comprised of foreign securities. The Exchange also must file a proposed rule change to list and trade, or trade pursuant to UTP, ETFs based on indexes or portfolios described in rule changes that have previously been approved by the Commission as underlying benchmarks for derivative securities. However, Rule 19b-4(e) provides that the listing or trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a

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<sup>20</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78s(b)(1).

<sup>23</sup> 17 CFR 240.19b-4.

surveillance program for the product class. ISE's proposed rules for the listing and trading of ETFs pursuant to Rule 19b-4(e) based on (1) certain indexes or portfolios with components that include foreign securities or (2) indexes or portfolios described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities, fulfill these requirements. Use of Rule 19b-4(e) by ISE to list and trade such ETFs should promote competition, reduce burdens on issuers and other market participants, and make such ETFs available to investors more quickly.<sup>24</sup>

The Commission previously has approved generic listing standards for other exchanges that are substantially similar to those proposed here by ISE.<sup>25</sup> This proposal does not appear to raise any novel regulatory issues. Therefore, the Commission finds that ISE's proposal is consistent with the Act on the same basis that it approved the other exchanges' generic listing standards for ETFs based on U.S. component stocks, international or global indexes or portfolios, and indexes or portfolios described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities.

Proposed ISE Rule 2123(c) and .01(a) of the Supplementary Material to proposed ISE Rule 2131 establish standards for the composition of an index or portfolio underlying an ETF that may be listed or traded on ISE. These requirements are designed, among other things, to require that components of an index or portfolio underlying the ETF are adequately capitalized

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<sup>24</sup> The Commission notes, however, that the failure of a particular ETF to meet these generic listing standards would not preclude ISE from submitting a separate proposed rule change to list and trade the ETF.

<sup>25</sup> See, e.g., Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86); Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 19571 (February 15, 2007) (SR-NASDAQ-2006-50); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101); Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2007) (SR-Amex-2006-78).

and sufficiently liquid, and that no one security dominates the index. The Commission believes that, taken together, these standards are reasonably designed to ensure that securities with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and when applied in conjunction with the other applicable listing requirements will permit the listing and trading of only ETFs that are sufficiently broad-based in scope to minimize potential manipulation. The Commission further believes that the proposed listing standards are reasonably designed to preclude ISE from listing and trading ETFs that might be used as surrogate for trading in unregistered securities. The requirement that each component security underlying an ETF be an NMS stock (in the case of a U.S. Component Stock) or listed on an exchange and subject to last-sale reporting (in the case of a Non-U.S. Component Stock) also should contribute to the transparency of the market for these ETFs.

The proposed generic listing standards will permit ISE to list and trade an ETF if the Commission has previously approved an SRO rule change that contemplates listing and trading a derivative product based on the same underlying index. ISE would be able to rely on that earlier approval order, provided that: (1) each of the securities comprising the underlying index is (a) a U.S. Component Stock listed on a national securities exchange, and an NMS stock, as that term is defined by Rule 600 of Regulation NMS; or (b) a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting; and (2) ISE complies with the commitments undertaken by the other SRO set forth in the prior order, including any surveillance-sharing and information dissemination.

The Commission believes that ISE's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>26</sup> which sets forth Congress' finding that it is in the public interest and appropriate for

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<sup>26</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. ISE's proposal requires the value of the index or portfolio underlying an ETF based on a global or international index to be disseminated at least once every 60 seconds during the time when the ETF shares trade on the Exchange.<sup>27</sup> ISE has represented that, if an underlying index or portfolio value is no longer calculated or available, it would commence delisting proceedings for the associated ETF.

In addition, an IIV, which represents an estimate of the value of a share of each ETF, must be updated and disseminated at least once every 15 seconds during trading hours for the ETF on the Exchange. The IIV must reflect changes in the exchange rate between the U.S. dollar and the currency in which any index or portfolio component stock is denominated. The Commission believes that the proposed rules regarding the dissemination of the index value and the IIV are reasonably designed to promote transparency in the pricing of ETFs and thus are consistent with the Act.

The Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF appropriately. These generic listing standards provide that the issuer of an ETF must represent that it will calculate the NAV and make it available daily to all market participants at the same time.<sup>28</sup>

The Commission believes that the proposal is reasonably designed to preclude trading of ETFs when transparency is impaired. Proposed ISE Rules 2123(e) and 2131(e)(2)(ii) provide

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<sup>27</sup> See proposed ISE Rule 2123(c)(3) and .01(b)(2) to the Supplemental Material to proposed ISE Rule 2131. If an index or portfolio value does not change for some of the time that the ETF trades on the Exchange, the last official calculated value must remain available throughout Exchange trading hours. See proposed ISE Rule 2123(c)(3) and .01(c) to the Supplemental Material to proposed ISE Rule 2131.

<sup>28</sup> See proposed ISE Rules 2123(a)(6) and 2131(e)(1)(ii).

that, when ISE is the listing market, ISE may halt trading when an interruption occurs in the calculation or dissemination of the IIV or index value applicable to an ETF. If the interruption continues, ISE would halt trading no later than the beginning of the next trading day. In addition, proposed ISE Rules 2123(e) and 2131(e)(2)(ii) set forth trading halt procedures when ISE trades the ETF pursuant to UTP. This rule is substantially similar to those recently adopted by other exchanges and found by the Commission to be consistent with the Act.<sup>29</sup>

In approving this proposal, the Commission relied on ISE's representation that its surveillance procedures are adequate to properly monitor the trading of the ETFs listed pursuant to the proposed new listing standards or traded on a UTP basis.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30<sup>th</sup> day after the date of publication of the notice of filing thereof in the Federal Register. The Commission notes that ISE's proposal is substantially similar to other proposals that have been approved by the Commission.<sup>30</sup> The Commission does not believe that ISE's proposal raises any novel regulatory issues and, therefore, that good cause exists for approving the filing before the conclusion of a notice-and-comment period. Accelerated approval of the proposal will expedite the listing and trading of additional ETFs by ISE, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>31</sup> to approve the proposed rule change, as amended, on an accelerated basis.

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<sup>29</sup> See NYSE Arca Equities Rule 7.34; NYSE Rule 1100(f)(2); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101); Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR-NYSEArca-2006-77).

<sup>30</sup> See supra notes 8 and 12.

<sup>31</sup> 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-ISE-2007-60), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>32</sup> Id.

<sup>33</sup> 17 CFR 200.30-3(a)(12).