

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57387; File No. SR-ISE-2007-99)

February 27, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Allow for the Listing and Trading of Index-Linked Exchangeable Notes

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 October 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 February 26, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.³ 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 its rules to provide for the listing and trading of index-linked exchangeable notes. The text of the proposed rule change is available at the Exchange’s principal office, on the Exchange’s Web site (www.ise.com), and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange proposed changes to ISE Rule 2101 that consolidate into a single rule certain requirements for products traded on the Exchange pursuant to unlisted trading privileges (“UTP”) that have been established in various new products proposals previously approved by the Commission. ISE will trade index-linked exchangeable notes pursuant to UTP, so the provisions of proposed ISE Rule 2101 would apply to this type of product.

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 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 rules that would allow it to list and trade, or trade pursuant to UTP, index-linked exchangeable notes. Index-linked exchangeable notes allow investors to hold a single, exchange-listed note exchangeable for the cash value of the underlying stocks (“Underlying Stocks”) of an index (“Underlying Index,” “Index,” “Underlying Indices,” or “Indices”), and thereby acquire -- in a single security and single trade -- exposure to a specific index of equity securities.

Each Underlying Index or Underlying Stock (as applicable) must be:

- An index that has been created by a third party and: (1) has been described in an exchange rule for the trading of options, Portfolio Depositary Receipts, Investment Company Units, index-linked exchangeable notes, or index-linked securities which has been approved by the Commission under Section 19(b)(2) of the Act,⁴ and the standards set forth in the Commission approval order are satisfied; or (2) is an index that meets the requirements of the exchange rules

⁴ 15 U.S.C. 78s(b)(2).

adopted pursuant to Rule 19b-4(e) under the Act⁵ (each, a “Third-Party Index”);
or

- An index that has been created by the issuer and: (1) has been described in an exchange rule for the trading of options, Portfolio Depositary Receipts, Investment Company Units, index-linked exchangeable notes, or index-linked securities that has been approved by the Commission pursuant to Section 19(b)(2) of the Act, and the standards set forth in the Commission approval order are satisfied; or (2) is an index which meets the requirements of the exchange rules adopted pursuant to Rule 19b-4(e) of the Act (each, an “Issuer Index”).
- Each issuer of an Underlying Stock shall be a reporting company under the Act that is listed on a national securities exchange and is subject to last-sale reporting; and
- An Issuer Index will meet the procedures and criteria in ISE Rule 2002(d)⁶ or the criteria set forth in proposed Rule 2133(d)(ii) and the index concentration limits in Rule 2002(d).

a. Description of index-linked exchangeable notes

Index-linked exchangeable notes are debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer, or at maturity for a cash amount (the “Cash Value Amount”) based on the reported market prices of the Underlying Stocks of an Underlying Index. Each index-linked exchangeable note is intended to provide investors with an instrument

⁵ 17 CFR 240.19b-4(e).

⁶ ISE Rule 2002(d) sets forth the criteria for trading options on a broad-based index.

that closely tracks the Underlying Index. Despite being linked to an Index, they will trade as individual securities. The linkage is on a one-to-one basis so that a holder of notes is fully exposed to depreciation and appreciation of the Underlying Stocks.

Index-linked exchangeable notes are expected to trade at a cost lower than the cost of trading each of the Underlying Stocks separately (because of reduced commission and custody costs) and also give investors the ability to maintain index exposure without any management or administrative fees and ongoing expenses. The initial offering price for an index-linked exchangeable note will be established on the date the note is priced for sale to the public. In addition, index-linked exchangeable notes will not include embedded options or leverage. Because index-linked exchangeable notes are debt securities, a holder will not be recognized by issuers of the Underlying Stocks as the owner of those stocks and will have no rights as a stockholder with respect to those stocks.

Additional issuances of a series of index-linked exchangeable notes may be made subsequent to the initial issuance of that series (and prior to the maturity of that series) for purposes of providing market liquidity. Each series of index-linked exchangeable notes may or may not provide for quarterly interest coupons based on dividends or other cash distributions paid on the Underlying Stocks during a prescribed period and an annual supplemental coupon based on the value of the Underlying Index during a prescribed period. Index-linked exchangeable notes will generally be acquired, held, or transferred only in round-lot amounts (or round-lot multiples) of 100 notes.

Beginning on a specified date and up to a specified date prior to the maturity date or any call date, the holder of index-linked exchangeable notes may exchange some or all of its notes for their Cash Value Amount, plus any accrued but unpaid quarterly interest coupons. A holder

will generally be required to exchange a certain specified minimum amount of notes, although this minimum requirement may be waived following a downgrade in the issuer's credit rating below specified thresholds or the occurrence of other specified events.

Index-linked exchangeable notes may be subject to call by the issuer on specified dates or during specified periods, upon at least 30, but not more than 60, days notice to holders. The call price would be equal to the Cash Value Amount, plus any accrued but unpaid quarterly interest coupons.

At maturity, the holder of an index-linked exchangeable note will receive a cash amount equal to the Cash Value Amount, plus any accumulated but unpaid quarterly and annual supplemental interest coupons. Although a specific maturity date will not be established until the time of the initial offering of a series of notes, the notes will provide for maturity within a period of not less than one or more than 30 years from the date of issue.

In connection with the initial listing of each series of index-linked exchangeable notes, the Exchange has established that a minimum of 150,000 notes held by at least 400 holders be required to be outstanding when trading begins (except if traded in thousand dollar denominations, then no minimum number of holders is necessary). Beginning 12 months after the initial issuance of a series of index-linked exchangeable notes, the Exchange will consider the suspension of trading in or removal from listing of that series of notes under any of the following circumstances: (1) the series has fewer than 50,000 notes issued and outstanding; (2) the market value of all notes of that series issued and outstanding is less than \$1 million; or (3) such other event shall occur or such other condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

b. Eligibility Standards for Issuers

The following standards would apply to issuers of index-linked exchangeable notes:

- **Assets/Equity.** The issuer shall have assets in excess of \$100 million and net worth of at least \$10 million. If the issuer does not have pre-tax income from continuing operations of at least \$750,000 in the last fiscal year or two of the last three fiscal years, the Exchange will require the issuer to have the following: (1) total assets of at least \$200 million and net worth of at least \$10 million; or (2) total assets of at least \$100 million and net worth of at least \$20 million.⁷
- **Distribution.** Minimum public distribution of 150,000 notes with a minimum of 400 public note-holders. This minimum public note-holder requirement will not be applicable to an issue traded in thousand dollar denominations or if the securities are redeemable at the option of the holders on at least a weekly basis.⁸
- **Principal Amount/Aggregate Market Value.** Not less than \$4 million.⁹
- **Tangible Net Worth.** The issuer will be expected to have a minimum tangible net worth in excess of \$250 million, and to have a pre-tax income from continuing operations that substantially exceeds \$750,000 in the last fiscal year or two of the last three fiscal years. In the alternative, the issuer will be expected: (1) to have a minimum tangible net worth of \$150 million, and to otherwise substantially exceed the earnings requirements set forth above (in the first bullet point); and (2) not to have issued index-linked exchangeable notes where the original issue price of all the issuer's other index-linked exchangeable note offerings (combined with

⁷ See proposed ISE Rule 2133(a)(2).

⁸ See proposed ISE Rule 2133(a)(1).

⁹ See proposed Rule 2133(a)(3).

other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange exceeds 25% of the issuer's net worth.¹⁰

c. Description of the Underlying Indices

An Underlying Index will either be a Third-Party Index or an Issuer Index. All changes to an Underlying Index, including the deletion and addition of Underlying Stocks, index rebalancing, and changes to the calculation of the index, will be made in accordance with the Commission's order under Section 19(b)(2) of the Act¹¹ or the Exchange rules under which that index was approved, as the case may be.

If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor must erect and maintain a "firewall," around personnel who have access to information concerning changes and adjustments to the index and the index must be calculated by a third party who is not a broker-dealer or fund advisor.¹²

d. Eligibility Standards for Issuer Indices and Their Underlying Stocks

Pursuant to proposed ISE Rule 2133(d), Issuer Indices and their Underlying Stocks must either meet the procedures and criteria set forth in ISE Rule 2002(d) or satisfy the following minimum standards:

- Each Underlying Stock of an Issuer Index must: (1) have a minimum market capitalization of \$3 billion and, during the 12 months preceding listing of the index-linked exchangeable note, traded at least 2.5 million shares; (2) have a minimum market capitalization of \$1.5 billion and, during the 12 months

¹⁰ See proposed Rule 2133(c).

¹¹ 15 U.S.C. 78s(b)(2).

¹² See proposed ISE Rule 2133(g).

preceding listing of the index-linked exchangeable note, traded at least 10 million shares; or (3) have a minimum market capitalization of \$500 million and, during the 12 months preceding listing of the index-linked exchangeable note, traded at least 15 million shares;

- Each issuer of an Underlying Stock must be a reporting company under the Act that is listed on a national securities exchange and is subject to last-sale reporting; in addition, if any Underlying Stock is the stock of a non-U.S. company that is traded in the U.S. market as a sponsored American Depositary Share (“ADS”), ordinary share or otherwise, then for each such security the Exchange shall either:
 - (1) have in place a comprehensive surveillance sharing agreement with the primary exchange on which each non-U.S. security is traded (in the case of an ADS, the primary exchange on which the security underlying the ADS is traded);
 - (2) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market or in markets with which the Exchange has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADS) at least 50% of the combined worldwide trading volume in such securities (i.e., each non-U.S. security, other related non-U.S. securities, and other classes of common stock related to each non-U.S. security) over the six-month period preceding the date of listing; or (3)
 - (a) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in such securities (i.e., each non-U.S. security and in other related non-U.S. securities) over the six-

month period preceding the date of selection of the non-U.S. security for an index-linked exchangeable note listing; (b) the average daily trading volume for each non-U.S. security in the U.S. markets over the six months preceding the selection of each non-U.S. security for an index-linked exchangeable note listing is 100,000 or more shares; and (c) the trading volume is at least 60,000 shares per day in the U.S. markets on a majority of the trading days for the six months preceding the date of selection of each non-U.S. security for an index-linked exchangeable note listing; and

- If any underlying security to which the instrument is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADS, ordinary share, or otherwise, then the minimum number of holders of such underlying linked security shall be 2,000; and
- The index concentration limits set forth in ISE Rule 2002(d) are met.¹³

e. Exchange Rules Applicable to Index-Linked Exchangeable Notes

Index-linked exchangeable notes will be subject to all Exchange rules governing the trading of equity securities.

In addition, pursuant to Rule 10A-3 under the Act¹⁴ and Section 3 of the Sarbanes-Oxley Act of 2002,¹⁵ the Exchange will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.

Pursuant to proposed ISE Rule 2101, new derivative securities products traded on the Exchange pursuant to UTP, including index-linked exchangeable notes, will be subject to a

¹³ See ISE Rule 2002(d).

¹⁴ 17 CFR 240.10A-3.

¹⁵ Section 3 of Pub. L. 107-204, 116 Stat. 745 (2002).

number of requirements previously made as representations. For example, pursuant to proposed ISE Rule 2101(a)(2)(i), the Exchange will distribute a Regulatory Information Circular prior to the commencement of trading in such new derivative securities product that generally will include the same information as the information circular provided by the listing exchange, including: (1) the special risks of trading the new derivative securities product; (2) the Exchange's rules that will apply to the new derivative securities product, including the suitability rule; (3) information about the dissemination of value of the underlying assets or indexes; and (4) the risk of trading during the Pre-Market Session due to the lack of calculation or dissemination of information about the underlying assets and/or index value.

Proposed ISE Rule 2101(a)(2)(ii) reminds Equity EAMs that they are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the new derivative securities product is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Equity EAMs regarding the application of the provisions of this subparagraph to a new derivative securities product by means of a Regulatory Information Circular.

Additionally, the proposed rule change sets forth procedures for halting trading in certain circumstances. When the Exchange is the listing market for index-linked exchangeable notes, if the official index value applicable to that index-linked exchangeable note is interrupted, the Exchange may halt trading during the day in which the interruption occurs; if the 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.¹⁶ The Exchange also will immediately halt trading in a new derivative securities product trading on the Exchange pursuant to UTP upon notification by the listing market of a halt due to a temporary interruption in the calculation or wide dissemination of the Intraday Indicative Value (“IIV”) or the value of the underlying index.¹⁷ If the interruption persists until the scheduled commencement of trading on the next business day, the Exchange will not commence trading of the product on that day.¹⁸ The Exchange may resume trading in the product 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.¹⁹ Further, for new derivative securities products trading on the Exchange on a UTP basis where a net asset value (“NAV”) is disseminated, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, the Exchange will immediately halt trading; the Exchange may resume trading in the product only when trading in the new derivative securities product resumes on the listing market.²⁰

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5),²¹ in that the proposed rule change is designed to promote just and equitable principles of trade, 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.

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

¹⁶ See proposed ISE Rule 2133(h).

¹⁷ See proposed ISE Rule 2101(a)(2)(iii)(A).

¹⁸ See id.

¹⁹ See id.

²⁰ See proposed ISE Rule 2101(a)(2)(iii)(B).

²¹ 15 U.S.C. 78f(b)(5).

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:

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-ISE-2007-99 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.

All submissions should refer to File Number SR-ISE-2007-99. 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-2007-99 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.²² In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act²³ 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.

²² 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).

²³ 15 U.S.C. 78f(b)(5).

Currently, the Exchange would have to file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act²⁴ and Rule 19b-4 thereunder²⁵ to list or trade any index-linked exchangeable notes. Rule 19b-4(e), however, provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“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 surveillance program for the product class. The Exchange’s proposed rules fulfill these requirements. Use of Rule 19b-4(e) by ISE to list or trade equity securities such as index-linked exchangeable notes should promote competition, reduce burdens on issuers and other market participants, and make offerings available to investors more quickly.

The Commission has approved generic listing standards for index-linked exchangeable notes on other national securities exchanges similar to those being proposed by ISE.²⁶ ISE’s proposal does not appear to raise any novel regulatory issues, and the Commission is approving it on the same basis as those earlier proposals.

Additionally, the Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price index-linked exchangeable notes appropriately. If a broker-dealer or fund advisor is responsible for maintaining (or has a

²⁴ 15 U.S.C. 78s(b)(1).

²⁵ 17 CFR 240.19b-4.

²⁶ See Securities Exchange Act Release No. 49532 (April 7, 2004), 69 FR 19593 (April 13, 2004) (SR-PCX-2004-01); Securities Exchange Act Release No. 46370 (August 16, 2002), 67 FR 54509 (August 22, 2002) (SR-CBOE-2002-29); Securities Exchange Act Release No. 45082 (November 19, 2001), 66 FR 59282 (November 27, 2001) (SR-Phlx-2001-92); Securities Exchange Act Release No. 44621 (July 30, 2001), 66 FR 41064 (August 6, 2001) (SR-Amex-2001-29).

role in maintaining) the underlying index, such broker-dealer or fund advisor would be required to erect and maintain a “firewall” to prevent the flow of non-public information regarding the underlying index from the personnel involved in the development and maintenance of such index to others such as sales and trading personnel.²⁷ The Commission also believes that the Exchange’s proposed trading halt rules, discussed above, are reasonably designed to prevent trading when transparency is impaired.

Further, the Commission believes that the trading rules and procedures to which products will be subject pursuant to this proposal are consistent with the Act. Products traded pursuant to the proposed rule change would be subject to ISE’s previously approved rules governing the trading of Equity Securities.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of new derivative securities products, including index-linked exchangeable notes. The proposed rule change also requires that the Exchange enter into a comprehensive surveillance sharing agreement (“CSSA”) with markets trading components of the index or portfolio on which the new derivative securities product is based to the same extent as the listing exchange’s rules require the listing market to enter into a CSSA with such markets. This approval is based on that recommendation.

Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the Federal Register. ISE’s proposal is similar to other proposals that have been approved by the

²⁷ See proposed ISE Rule 2133(h).

Commission.²⁸ The Commission believes that ISE's proposal does not raise any novel issues, and accelerated approval of the proposal will expedite the listing and trading of additional products by the Exchange, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,²⁹ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-ISE-2007-99), as modified by Amendment No. 1 thereto, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Florence E. Harmon
Deputy Secretary

²⁸ See supra at note 26.

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).