

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56322; File No. SR-Amex-2007-59)

August 27, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a Process for the Waiver, Deferral, or Rebate of Initial Listing Fees for Certain Securities That Transfer from Another National Securities Exchange

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 August 10, 2007, 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 substantially prepared by the Amex. The Exchange has designated this proposal as a “non-controversial” proposed rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal 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 amend Section 140 of the Amex Company Guide (the “Company Guide”) to provide a process for the deferral, waiver, or rebate of all or any part of the initial listing fee applicable to index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, and partnership units that transfer to the Amex.

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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).

The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and <http://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

Section 140 of the Company Guide currently provides that index fund shares (defined as securities listed under Amex Rule 1000A-AEMI), trust-issued receipts (defined as securities listed under Amex Rule 1200-AEMI), commodity-based trust shares (defined as securities listed under Amex Rule 1200A-AEMI), currency trust shares (defined as securities listed under Amex Rule 1200B-AEMI), paired trust shares (defined as securities listed under Amex Rule 1400), and partnership units (defined as securities listed under Amex Rule 1500-AEMI)<sup>5</sup> initially listed on the Amex are subject to a \$5,000 initial listing fee for each series. The Securities are not subject to the initial listing application processing fee. The Exchange is proposing to amend Section 140 of the Company Guide to provide that the Board of Governors of the Exchange (the "Board") or its designee may, in its discretion, defer, waive, or rebate all or any part of the \$5,000 initial

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<sup>5</sup> Index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, and partnership units are collectively referred to in this filing as the "Securities."

listing fee applicable to Securities that transfer from another marketplace to the Amex (i.e., the issue becomes listed on Amex and ceases to be listed on the other exchange).

The Board or its designee currently has the authority to defer, waive, or rebate all or any part of the initial listing fees applicable to stocks, bonds, and warrants<sup>6</sup> and to closed-end funds that transfer to the Amex from another marketplace.<sup>7</sup> The Exchange believes that the extension of such authority to Securities that transfer to the Amex will enable the Exchange to respond to specific competitive situations. This is particularly important given the fee waivers currently offered by other markets to transferring issuers. For example, the New York Stock Exchange (“NYSE”) recently amended its Listed Company Manual to remove initial listing fees payable in connection with transfers of any equity security, structured product, or closed-end management investment company listed on another exchange.<sup>8</sup> Similarly, the Nasdaq Stock Market (“NASDAQ”) has waived initial listing fees with respect to any security being transferred from another exchange.<sup>9</sup>

The proposed authority to defer, waive, or rebate the \$5,000 initial listing fee applicable to transferring Securities could be exercised only by the Board or its designee. The Board has delegated this authority to a staff committee which presently has the authority to defer, waive, or rebate initial listing fees for transferring closed-end funds.<sup>10</sup> The committee is comprised of

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<sup>6</sup> See Securities Exchange Act Release No. 50270 (August 26, 2004), 69 FR 53750 (September 2, 2004) (SR-Amex-2004-70).

<sup>7</sup> See Securities Act Release No. 52408 (September 12, 2005), 70 FR 54971 (September 19, 2005) (SR-Amex-2005-024).

<sup>8</sup> See Securities Exchange Act Release No. 55314 (February 20, 2007), 72 FR 8823 (February 27, 2007) (SR-NYSE-2007-17).

<sup>9</sup> See Securities Exchange Act Release No. 51004 (January 10, 2005), 70 FR 2917 (January 18, 2005) (SR-NASD-2004-140).

<sup>10</sup> See supra, note 7.

management representatives from the Office of the Chairman and the ETF Marketplace, Finance, and Listing Qualifications Departments.<sup>11</sup> The committee composition is intended to ensure that fee deferral, waiver, and rebate requests receive an appropriate degree of scrutiny and are only granted under circumstances in which a reduction is warranted for competitive reasons.

While the Exchange expects that the potential deferral, waiver, or rebate of the initial listing fee applicable to Securities will be attractive to issuers considering listing on the Exchange, it is contemplated that such deferrals, waivers, or rebates would be granted only infrequently to attract an important listing that is likely to generate significant transaction fee revenue.<sup>12</sup> The proposed rule change will not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or other regulatory programs. Specifically, issuers of Securities that benefit from any deferral, waiver, or rebate will be reviewed for compliance with Exchange listing standards in the same manner as any other issuer that applies to be listed on the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it will provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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<sup>11</sup> An affirmative vote of a majority of the committee members attending a particular meeting (subject to a three person quorum requirement) would be necessary for deferrals, waivers, or rebates.

<sup>12</sup> If the committee determines to defer, waive, or rebate listing fees in a comprehensive and/or recurring manner that would constitute a stated policy, practice, or interpretation of an existing rule, the Exchange would file an additional rule change pursuant to Rule 19b-4(f)(1) with respect such policy, practice, or interpretation.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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 either solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup> Because the Exchange has designated the foregoing proposed rule as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not 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 the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>17</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that doing so is consistent with the protection of investors and the public interest because the proposal does not raise any novel regulatory issues. The proposed rule is substantially similar to provisions in Nasdaq Rules 4510(a) and 4520(a) and Section 902.02 of

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> The Exchange provided written notice to the Commission 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, as is required by Rule 19b-4(f)(6)(iii).

the NYSE Listed Company Manual.<sup>18</sup> For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.<sup>19</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.

#### 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-2007-59 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-2007-59. 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

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<sup>18</sup> See *supra*, notes 8-9.

<sup>19</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 the filing also will be available for inspection and copying at the principal office of the 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-2007-59 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Nancy M. Morris  
Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).