

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57739; File No. SR-Amex-2008-17)

April 30, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Adopt Listing Rules for Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities

I. Introduction

On February 29, 2008, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to adopt generic listing standards for Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities. On March 20, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on March 27, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

The Exchange proposes to add new Sections 107G, 107H, and 107I of the Amex Company Guide to provide generic listing standards for Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities (collectively, the “New Linked Securities”). The primary purpose of the proposed rule change is to enable the listing and

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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> See Securities Exchange Act Release No. 57539 (March 20, 2008), 73 FR 16395.

trading of the New Linked Securities pursuant to Rule 19b-4(e)<sup>4</sup> under the Act, without individual Commission approval of each such product pursuant to Section 19(b)(2) of the Act.<sup>5</sup> The Exchange represents that within five business days after commencement of trading of a series of New Linked Securities under proposed Sections 107G, 107H, and 107I of the Amex Company Guide, as applicable, the Exchange will file a Form 19b-4(e).<sup>6</sup>

#### General Issuer and Issue Eligibility

As with Index-Linked Securities under current Section 107D of the Amex Company Guide,<sup>7</sup> Commodity-Linked Securities under Section 107E,<sup>8</sup> and Currency-Linked Securities under Section 107F of the Amex Company Guide,<sup>9</sup> the New Linked Securities do not give the

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<sup>4</sup> 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 Section (c)(1) of Rule 19b-4 (17 CFR 240.19b-4(c)(1)), if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), the SRO’s trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. See 17 CFR 240.19b-4(e).

<sup>5</sup> 15 U.S.C. 78s(b)(2). The Exchange also seeks to make a technical change to Section 107D of the Amex Company Guide as part of the proposal. See infra note 7.

<sup>6</sup> 17 CFR 240.19b-4(e)(2)(ii); 17 CFR 249.820.

<sup>7</sup> Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. As part of this proposed rule change, the Exchange seeks to make a technical change to Section 107D of the Amex Company Guide to define such underlying index or indexes as the “Equity Reference Asset.” Such securities may or may not provide for the repayment of the original principal investment amount. See Section 107D and Section 107D(d) of the Amex Company Guide.

<sup>8</sup> Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more commodities, commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in Amex Rule 1200A), or a basket or index of any of the foregoing (the “Commodity Reference Asset”). Such securities may or may not provide for the repayment of the original principal investment amount. See Section 107E of the Amex Company Guide.

<sup>9</sup> Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency

holder any right to receive a portfolio component or any other ownership right or interest in the portfolio or underlying components comprising the applicable Reference Asset (as defined herein) and may or may not provide for the repayment of the original principal investment amount. Likewise, the general standards set forth in Section 107D(a)-(f), Section 107E(a)-(f), and Section 107F(a)-(f) of the Amex Company Guide will similarly apply to the New Linked Securities.<sup>10</sup> Specifically, the Exchange will apply the following requirements to all issuers of New Linked Securities:

- The issuer will be expected to have a minimum tangible net worth of \$250,000,000 and to otherwise exceed certain earnings requirements. In the alternative, the issuer will be expected: (1) to have a minimum tangible net worth of \$150,000,000; and (2) not to have issued index-linked note offerings (including the New Linked Securities), the original issue price of which, combined with all the issuer's other index-linked note offerings listed on a national securities exchange, exceeds 25% of the issuer's tangible net worth at the time of issuance.
- The issuer must be in compliance with Rule 10A-3 under the Act.<sup>11</sup>

In addition, the Exchange will apply the following requirements to each issue of New Linked

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futures or other currency derivatives or Currency Trust Shares (as defined in Amex Rule 1200B), or a basket or index of any of the foregoing (the "Currency Reference Asset"). Such securities may or may not provide for the repayment of the original principal investment amount. See Section 107F of the Amex Company Guide.

<sup>10</sup> See Section 107A of the Amex Company Guide (setting forth the "General Criteria" relating to minimum issuer eligibility requirements based on assets, earnings, and stockholders' equity, and minimum issue requirements based on public distribution, public shareholders, and principal amount/aggregate market value).

<sup>11</sup> See 17 CFR 240.10A-3.

## Securities:

- The issue must have a minimum public distribution of at least 1,000,000 trading units with a minimum of 400 public shareholders. This minimum public distribution and minimum public shareholders requirements will not be applicable to an issue traded in thousand dollar denominations or if the securities are redeemable at the option of the holders thereof on at least a weekly basis.
- The issue must have a principal amount/aggregate market value of not less than \$4 million.
- The issue must have a term of at least one year, but not greater than 30 years.
- The issue must be the nonconvertible debt of the issuer.
- The 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.

### Fixed Income-Linked Securities

Fixed Income-Linked Securities will be subject to the criteria proposed in new Section 107G of the Amex Company Guide for initial and continued listing. Fixed Income-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more indexes or portfolios of debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof, or a basket or index of any of the foregoing (collectively,

“Fixed Income Reference Asset”).

For the initial listing of Fixed Income-Linked Securities, the Fixed Income Reference Asset must either: (1) have been approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the Act and the rules thereunder, and the conditions set forth in the Commission’s approval order, including comprehensive surveillance sharing agreements, continue to be satisfied; or (2) meet the following requirements:<sup>12</sup>

- Components of the Fixed Income Reference Asset that, in the aggregate, account for at least 75% of the weight of the Fixed Income Reference Asset must each have a minimum original principal amount outstanding of \$100 million or more;
- A component of the Fixed Income Reference Asset may be a convertible security; however, once the convertible security component converts to the underlying equity security, the component is removed from the Fixed Income Reference Asset;
- No component of the Fixed Income Reference Asset (excluding Treasury Securities and GSE Securities) may represent more than 30% of the weight of the Fixed Income Reference Asset, and the five highest weighted components in the Fixed Income Reference Asset may not, in the aggregate, account for more than 65% of the weight of the Fixed Income Reference Asset;
- An underlying Fixed Income Reference Asset (excluding one consisting entirely of

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<sup>12</sup> The Exchange notes that the quantitative criteria for Fixed Income Reference Assets are substantially similar to those set forth under Commentary .04 to Amex Rule 1000-AEMI and Commentary .03 to Amex Rule 1000A-AEMI, relating to Portfolio Depositary Receipts and Index Fund Shares, respectively, based on a fixed income index or portfolio. See Securities Exchange Act Release No. 55437 (March 9, 2007), 72 FR 12233 (March 15, 2007) (SR-Amex-2006-118) (approving the adoption of “fixed income” and “combination” generic listing standards for exchange-traded funds).

exempted securities)<sup>13</sup> must include a minimum of 13 non-affiliated issuers;

- Component securities that, in the aggregate, account for at least 90% of the weight of the Fixed Income Reference Asset must be one of the following: (1) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act;<sup>14</sup> (2) from issuers that have a worldwide market value of their outstanding common equity held by non-affiliates of \$700 million or more; (3) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (4) exempted securities as defined in Section 3(a)(12) of the Act;<sup>15</sup> or (5) from issuers that are a government of a foreign country or a political subdivision of a foreign country; and
- The Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per trading day.

The Exchange will commence delisting or removal proceedings:<sup>16</sup>

- If any of the initial listing criteria for Fixed Income-Linked Securities are not continuously maintained;
- If the aggregate market value or the principal amount of the Fixed Income Index-Linked

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<sup>13</sup> “Exempted securities” is defined in Section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)). The Exchange notes that, for purposes of a Fixed Income Reference Asset, an “exempted security” may include Treasury Securities, municipal securities and/or GSE Securities.

<sup>14</sup> See 15 U.S.C. 78m; 15 U.S.C. 78o(d).

<sup>15</sup> See 15 U.S.C. 78c(a)(12).

<sup>16</sup> The Exchange notes that the proposed continued listing standards for each of Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities are substantially similar to those standards under Sections 107D, 107E, and 107F currently applicable to Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities, respectively. See Sections 107D, 107E, and 107F of the Amex Company Guide.

Securities publicly held is less than \$400,000;

- The value of the Fixed Income Reference Asset is no longer calculated or available, and a new Fixed Income Reference is substituted, unless the new Fixed Income Reference Asset meets the requirements of proposed Section 107G of the Company Guide; or
- If such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

#### Futures-Linked Securities

Futures-Linked Securities will be subject to the criteria in proposed Section 107H of the Amex Company Guide for initial and continued listing. Futures-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more indexes or portfolios of: (1) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (2) interest rate futures or options or derivatives on the foregoing (collectively, “Futures Reference Asset”).

The issue must meet one of the initial listing standards set forth below:

- The Futures Reference Asset must have been reviewed and approved for the trading of Futures Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission’s approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- The pricing information for components of a Futures Reference Asset must be derived from a market which is an Intermarket Surveillance Group (“ISG”) member or affiliate member or with which the Exchange has a comprehensive surveillance sharing

agreement. A Futures Reference Asset may include components representing not more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that do not meet the specified requirements; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset.

In addition, the issue must meet both of the following initial listing criteria: (1) the value of the Futures Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during trading on the Exchange; and (2) in the case of Futures-Linked Securities that are periodically redeemable, the indicative value of the subject Futures-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during trading on the Exchange.

The Exchange will commence delisting or removal proceedings:

- If any of the initial listing criteria for Futures-Linked Securities are not continuously maintained;
- If the aggregate market value or the principal amount of the Futures-Linked Securities publicly held is less than \$400,000;
- The value of the Futures Reference Asset is no longer calculated or available, and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of proposed Section 107H of the Amex Company Guide; or
- If such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

#### Combination-Linked Securities

Combination-Linked Securities will be subject to the criteria in proposed Section 107I of



the Amex Company Guide for initial and continued listing. Combination-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, or Futures Reference Assets (collectively, “Combination Reference Asset,” and together with Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, and Futures Reference Assets, collectively, “Reference Assets”). In addition, a Combination Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, London Interbank Offered Rate (“LIBOR”), Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates. The Exchange states that, for purposes of a notional investment as a component of a Multifactor Reference Asset, a long LIBOR weighting would represent a leverage charge offsetting long positions in the underlying Reference Assets.

For the initial listing of a series of Combination-Linked Securities, each component of the Combination Reference Asset must: (1) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission’s approval order, including with respect to comprehensive surveillance sharing agreements, continued to be satisfied; or (2) meet the following requirements:

- Each Reference Asset included in the Combination Reference Asset must meet the applicable initial and continued listing criteria set forth in Sections 107D, 107E, 107F, 107G and/or 107H of the Amex Company Guide;
- The value of the Combination Reference Asset must be calculated and widely

disseminated to the public on at least a 15-second basis during the time the Combination-Linked Securities trade on the Exchange; and

- In the case of Combination-Linked Securities that are periodically redeemable, the indicative value of the Combination-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Combination-Linked Securities trade on the Exchange.

The Exchange will commence delisting or removal proceedings:

- If any of the initial listing criteria for Combination-Linked Securities are not continuously maintained;
- If the aggregate market value or the principal amount of the Combination-Linked Securities publicly held is less than \$400,000;
- The value of the Combination Reference Asset is no longer calculated or available, and a new Combination Reference is substituted, unless the new Combination Reference Asset meets the requirements of Section 107I of the Amex Company Guide; or
- If such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

#### Applicable Exchange Rules

The New Linked Securities traded on the Exchange's equity trading floor will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules and the Exchange's regular trading hours (9:30 a.m. to 4:00 p.m. Eastern Time) will apply to transactions in the New Linked Securities. New Linked Securities listed and traded as bond or debt securities will be subject to the rules applicable to bond or debt securities, however, those New Linked 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.<sup>17</sup>

### Information Circular

Upon evaluating the nature and complexity of each New Linked Security, the Exchange represents that it will prepare and distribute, if appropriate, an Information Circular to member organizations describing the products. Accordingly, the particular structure and corresponding risks of a New Linked Security will be highlighted and disclosed. The Information Circular will disclose whether the New Linked Security will trade as equity or debt, subject to appropriate trading rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening, and margin.

The Information Circular will also detail the Exchange's suitability rule that requires a member organization recommending a transaction in these Securities: (1) to determine that such transaction is suitable for the customer (Amex Rule 411); and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such transaction. In addition, the Information Circular will reference the requirement that Amex member organizations must deliver a prospectus to investors purchasing newly issued New Linked Securities prior to or concurrently with the confirmation of a transaction.

### Surveillance

The Exchange states that it will closely monitor activity in the New Linked Securities to identify and deter any potential improper trading activity. Additionally, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the New Linked

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<sup>17</sup> See proposed Sections 107G(k), 107H(k), and 107I(k) of the Amex Company Guide.

Securities. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, options, and exchange-traded funds.<sup>18</sup> The Exchange has developed procedures to closely monitor activity in the New Linked Securities and the underlying indexes and/or portfolios to identify and deter potential improper trading activity. To the extent applicable, the Exchange will be able to obtain trading and beneficial holder information from the primary trading markets for the portfolio components in relation to the New Linked Securities, either pursuant to bilateral information sharing agreements with those markets or because those markets are SRO members or affiliate members of ISG.

#### Firewall Procedures

If an underlying index is maintained by a broker-dealer, the broker-dealer is required to erect a “firewall” around the personnel responsible for the maintenance of such underlying index or who have access to information concerning changes and adjustments to the underlying index, and the underlying index must 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 underlying index or 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 underlying index or portfolio.<sup>19</sup> The Exchange further proposes to apply Amex Rules 1203A and 1203B<sup>20</sup> and 1204A and 1204B<sup>21</sup> to Futures-Linked Securities and Combination-

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<sup>18</sup> See proposed Sections 107G(j), 107H(j), and 107I(j) of the Amex Company Guide.

<sup>19</sup> See proposed Sections 107G(i), 107H(i), and 107I(i) of the Amex Company Guide.

<sup>20</sup> Amex Rules 1203A and 1203B restrict the ability of the specialist firm for any issue of Commodity-Based Trust Shares and Currency Trust Shares or its affiliates to make markets in and trade the Commodity Reference Asset and/or Currency Reference Asset

Linked Securities, to the extent such Combination-Linked Securities are comprised in part of Futures, Commodity, or Currency Reference Assets.

### Trading Halts

If the indicative value or the Reference Asset value applicable to a series of New Linked Securities 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.<sup>22</sup>

### III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

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components, the commodities or currencies underlying the Commodity Reference Asset or Currency Reference Asset components, or options, futures, or options on futures on the Commodity Reference Asset or Currency Reference Asset, or any other derivatives based on the Commodity Reference Asset or Currency Reference Asset, any Commodity Reference Asset or Currency Reference Asset component, or any physical commodity or commodities underlying a Commodity Reference Asset component or any currency or currencies underlying a Currency Reference Asset component. See Amex Rules 1203A and 1203B. The Exchange maintains that these rules would similarly apply to the trading of the New Linked Securities to the extent such New Linked Securities are comprised in part of a Futures, Commodity, or Currency Reference Asset.

<sup>21</sup> Amex Rules 1204A and 1204B provide that specialists handling Commodity-Based Trust Shares and Currency Trust Shares provide the Exchange with all necessary information relating to their trading in underlying physical assets, commodities or currencies, related futures or options on futures, or any other related derivatives. See Amex Rules 1204A and 1204B. The Exchange maintains that these rules would similarly apply to the trading of New Linked Securities to the extent such New Linked Securities are comprised in part of a Futures, Commodity, or Currency Reference Asset.

<sup>22</sup> See proposed Sections 107G(h)(3), 107H(h)(3), and 107I(h)(3) of the Amex Company Guide.

a national securities exchange.<sup>23</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>24</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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.

A. Generic Listing Standards for the New Linked Securities

To list and trade the New Linked Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act<sup>25</sup> and Rule 19b-4 thereunder.<sup>26</sup> However, Rule 19b-4(e) provides that the listing and 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 surveillance program for the product class.

The Commission notes that it has previously approved substantively identical generic listing standards applicable to the same types of securities as proposed by Amex for another

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<sup>23</sup> In approving this proposed 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>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78s(b)(1).

<sup>26</sup> 17 CFR 240.19b-4.

exchange.<sup>27</sup> With respect to Fixed Income-Linked Securities, in particular, the Commission has approved generic listing standards pursuant to Rule 19b-4(e) for Portfolio Depositary Receipts and Index Fund Shares based on the performance of fixed income securities that are substantially similar to those proposed to be applicable to Fixed Income-Linked Securities.<sup>28</sup> With respect to the proposed generic listing standards for Combination-Linked Securities, the Commission has previously approved generic listing standards pursuant to Rule 19b-4(e) for Portfolio Depositary Receipts and Index Fund Shares based on the performance of a combination of assets.<sup>29</sup> The Commission also notes that the proposed generic standards applicable to Futures-Linked Securities are substantively identical to those currently applicable to Commodity-Linked Securities with respect to the pricing information for the respective underlying assets.<sup>30</sup> Lastly, the Commission notes that the proposed continued listing standards for each of the New Linked Securities are substantively identical to those existing standards applicable to Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities.<sup>31</sup>

In approving the New Linked Securities for Exchange trading, the Commission

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<sup>27</sup> See Securities Exchange Act Release No. 57701 (April 23, 2008) (SR-NYSEArca-2008-20) (approving generic listing standards for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities).

<sup>28</sup> See Commentary .04 to Amex Rule 1000-AEMI and Commentary .03 to Amex Rule 1000A-AEMI (setting forth the generic listing and trading standards for Portfolio Depositary Receipts and Index Fund Shares based on an index or portfolio comprised of fixed income securities, respectively); see supra note 12 and accompanying text.

<sup>29</sup> See Commentary .05 to Amex Rule 1000-AEMI and Commentary .04 to Amex Rule 1000A-AEMI (setting forth the generic listing and trading standards for Portfolio Depositary Receipts and Index Fund Shares, respectively, based on a combination of assets representing equity and fixed income securities and requiring that each index or portfolio of equity or fixed income component securities separately satisfy its own applicable generic criteria for listing and trading pursuant to Rule 19b-4(e)).

<sup>30</sup> See Section 107E of the Amex Company Guide; see also infra note 42 and accompanying text.

considered applicable Exchange rules that govern their trading. The Commission believes that generic listing standards for the New Linked Securities should fulfill the intended objective of Rule 19b-4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.<sup>32</sup> The Exchange's ability to rely on Rule 19b-4(e) to list and trade the New Linked Securities that meet the applicable requirements and minimum standards should reduce the time frame for bringing these securities to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly.

B. Listing and Trading the New Linked Securities

Taken together, the Commission finds that the proposal contains adequate rules and procedures to govern the listing and trading of the New Linked Securities pursuant to Rule 19b-4(e) on the Exchange. Products listed and traded under the proposed generic standards will be subject to the full panoply of Amex rules and procedures that currently govern the trading of equity securities on the Exchange.

The general listing requirements under Section 107D(a)-(f), Section 107E(a)-(f), and Section 107F(a)-(f) of the Amex Company Guide, applicable to Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities, respectively, will similarly

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<sup>31</sup> See supra note 16.

<sup>32</sup> The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) of the Act, requesting Commission approval to list and trade a particular series of the New Linked Securities.



apply to the New Linked Securities under the proposed rule change.<sup>33</sup> With respect to Fixed Income-Linked Securities, the definition of Fixed Income Reference Asset includes the same types of fixed income securities that may underlie Portfolio Depository Receipts under Commentary .04 to Amex Rule 1000-AEMI and Index Fund Shares under Commentary .03 to Amex Rule 1000A-AEMI.<sup>34</sup> In addition, the Exchange's proposed eligibility criteria for Fixed Income Reference Assets, which are substantively identical to the criteria applicable to fixed income-based Portfolio Depository Receipts and Index Fund Shares, include, among other things, minimum standards relating to original principal amount outstanding for each component of the Fixed Income Reference Asset, maximum concentration limits for each such component, and minimum number of non-affiliated issuers of such components.<sup>35</sup> The Commission believes that these requirements should help to ensure that the underlying components of a Fixed Income Reference Asset are adequately capitalized, sufficiently liquid, and diversified. In addition, the Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per business day during the time the Fixed Income-Linked Securities trade on the Exchange.

In the case of Futures-Linked Securities, the underlying asset must either be an index of (1) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing, or (2) interest rate futures, or options on, or derivatives of, such interest rate futures. In addition, as with Commodity Reference Assets, Futures Reference Assets to which Futures-Linked Securities

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<sup>33</sup> See supra note 10 and accompanying text.

<sup>34</sup> Compare proposed Sections 107G, 107H, and 107I of the Amex Company Guide with Commentary .04 to Amex Rule 1000-AEMI and Commentary .03 to Amex Rule 1000A-AEMI.

are linked must either have been reviewed and approved for trading by the Commission or the pricing information of their underlying components must be derived from certain required sources, subject to exceptions.<sup>36</sup> These requirements should help to ensure that the components comprising a Futures Reference Asset are adequately transparent and subject to rules and standards of applicable exchanges that trade such components and that the Exchange is able to obtain information with respect to disruptions in, or unusual trading of, such components.<sup>37</sup> To enhance the transparency of such Futures-Linked Securities, the proposal also would require (1) the value of the Futures Reference Asset to be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Futures-Linked Securities trade on the Exchange, and (2) in the case of Futures-Linked Securities that are periodically redeemable, the indicative value of such securities to be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the time the Futures-Linked Securities trade on the Exchange.

In the case of Combination-Linked Securities, the Combination Reference Asset may be comprised of any combination of two or more Reference Assets and a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, LIBOR, Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates. As stated earlier, the Commission notes that the proposed generic standards applicable to Combination-Linked Securities are substantially similar to those standards applicable to Portfolio Depositary Receipts and Index Fund Shares that are based on a combination of equity and fixed income securities in that each underlying Reference Asset must satisfy its own

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<sup>35</sup> See supra note 12.

<sup>36</sup> See infra note 42 and accompanying text.

applicable minimum criteria and standards for the listing and trading of a series of Combination-Linked Securities.<sup>38</sup> In addition, under the proposed rule change, (1) the value of the Combination Reference Asset must be calculated and widely disseminated on at least a 15-second basis during the time such securities trade on the Exchange, and (2) in the case of Combination-Linked Securities that are periodically redeemable, the indicative value must be calculated and widely disseminated on at least a 15-second basis during the time such securities trade on the Exchange.

The Exchange has also developed continued listing criteria that would require it to commence delisting or removal proceedings in circumstances that make further dealings in the New Linked Securities inadvisable.<sup>39</sup> The Commission notes that such standards are substantively identical to those continued listing standards currently applicable to Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities,<sup>40</sup> and the Commission believes that such delisting criteria should help ensure the maintenance of fair and orderly markets for the New Linked Securities. The Commission further notes that, under the proposal, if the indicative value or Reference Asset value applicable to a series of the New

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<sup>37</sup> See id.

<sup>38</sup> See supra note 28.

<sup>39</sup> See proposed Sections 107G(h), 107H(h), and 107I(h) of the Amex Company Guide (providing that the Exchange will commence delisting or removal proceedings for any series of Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities, respectively, if: (a) any of the applicable initial listing criteria are not continuously maintained; (b) the aggregate market value or the principal amount of the applicable security publicly held is less than \$400,000; (c) the value of the applicable Reference Asset is no longer calculated or available and a new Reference Asset is substituted, unless such new Reference Asset meets the requirements under Sections 107G, 107H, or 107I, as applicable; and (d) such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings inadvisable).

<sup>40</sup> See supra note 16.

Linked Securities is not disseminated as required, the Exchange may halt trading of such New Linked Securities during the day on which the interruption first occurs; however, if the interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Such provisions relating to trading halts currently apply to Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities, and the Commission believes that the trading halt requirements should promote the availability of key information relating to the New Linked Securities for the benefit investors and other market participants.<sup>41</sup>

### C. Surveillance

The Commission notes that the New Linked Securities would be subject to the Exchange's existing surveillance procedures applicable to equities, options, and exchange-traded funds. The Exchange has represented that its surveillance procedures are adequate to properly monitor the trading of the New Linked Securities listed pursuant to these proposed generic listing standards and stated that it has developed such procedures to closely monitor activity in the New Linked Securities and their respective underlying indexes and/or portfolios to identify and deter any potential improper trading activity. In addition, the Commission notes that, with respect to the proposed New Linked Securities, the Exchange has represented that it will be able to obtain trading and beneficial holder information from the primary trading markets either pursuant to bilateral information sharing agreements with those markets or because those markets are SRO members or affiliate members of ISG. The Commission further notes that, for

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<sup>41</sup> Compare Sections 107D(h)(4), 107E(h)(4), and 107F(h)(4) of the Amex Company Guide with proposed Sections 107G(h)(3), 107H(h)(3), and 107I(h)(3) of the Amex Company Guide.

Futures-Linked Securities, the pricing information for components of a Futures Reference Asset must be derived from a market that is an ISG member or affiliate member or with which the Exchange has a comprehensive surveillance sharing agreement, subject to certain exceptions.<sup>42</sup>

D. Information Circular

The Exchange has represented that it will prepare and distribute, if appropriate, an Information Circular to member organizations describing the New Linked Securities. Accordingly, the particular structure and corresponding risks of a New Linked Security will be highlighted and disclosed. The Information Circular will disclose whether the New Linked Security will trade as equity or debt, subject to appropriate trading rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening, and margin. The Information Circular will also detail the Exchange's suitability rule and reference the requirement that Amex member organizations must deliver a prospectus to investors purchasing newly issued New Linked Securities prior to or concurrently with the confirmation of a transaction.

E. Firewall Procedures

With respect to a series of New Linked Securities, if an underlying index is maintained by a broker-dealer, the broker-dealer is required to erect a "firewall" around the personnel responsible for the maintenance of such underlying index or who have access to information concerning changes and adjustments to the underlying index, and the underlying index must be

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<sup>42</sup> See proposed Section 107H(g)(ii) of the Amex Company Guide (providing that the Futures Reference Asset may not include components representing more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that are neither ISG members or parties to a comprehensive surveillance sharing agreement with the Exchange and that no such single component may exceed 7% of the dollar weight of the Futures Reference Asset).

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 underlying index or 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 underlying index or portfolio.<sup>43</sup> The Exchange further proposes to apply Amex Rules 1203A and 1203B<sup>44</sup> and 1204A and 1204B<sup>45</sup> to Futures-Linked Securities and Combination-Linked Securities, to the extent such Combination-Linked Securities are comprised in part of Futures, Commodity, or Currency Reference Assets.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>46</sup> that the

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<sup>43</sup> See supra note 19.

<sup>44</sup> See supra note 20.

<sup>45</sup> See supra note 21.

<sup>46</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-Amex-2008-17), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>47</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>47</sup> 17 CFR 200.30-3(a)(12).