

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58067; File No. SR-Amex-2008-54)

June 30, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Closed-End Fund of Hedge Fund Listing Requirements

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 June 27, 2008, the American Stock Exchange LLC (“Amex” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 adopt “generic” listing standards for closed-end management investment companies (“Closed-End Funds”) of hedge funds (“Hedge Funds”). The text of the proposed rule change is below. [Bracketing] indicates text to be deleted and italics indicate text to be added.

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Section 101 of the Company Guide

(a) through (e) No Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(f) Closed-End Management Investment Companies—(1)The Exchange will generally authorize the listing of a closed-end management investment company registered under the Investment Company Act of 1940 (a “Closed-End Fund”) that meets the following criteria:

(i) [(1)] Size—market value of publicly held shares or net assets of at least \$20,000,000; or

(ii)[(2)] A Closed-End Fund which is part of a group of Closed-End Funds which are or will be listed on the Exchange, and which are managed by a common investment adviser or investment advisers who are “affiliated persons” as defined in Section 2(a)(3) of the Investment Company Act of 1940 as amended (the “Group”), is subject to the following criteria:

(A) [i.] The Group has a total market value of publicly held shares or net assets of at least \$75,000,000;

(B)[ii.] The Closed-End Funds in the Group have an average market value of publicly held shares or net assets of at least \$15,000,000; and

(C) [iii.] Each Closed-End Fund in the Group has a market value of publicly held shares or net assets of at least \$10,000,000.

(iii) [(3)] Distribution—See Section 102(a).

(2) Closed-End Fund of “Hedge” Funds. A Closed-End Fund of Hedge Funds for purposes of this provision means a Closed-End Fund that invests in one or more “Hedge Funds” as defined in subparagraph (3) below and may include other securities and/or assets. In addition to the requirements set forth above in subparagraph (1) to Section 101(f) of the Company Guide, a Closed-End Fund of Hedge Funds is required to meet the following requirements:

(i) Net Asset Value. In order for a Closed-End Fund of Hedge Funds to be listed by the Exchange, the Closed-End Fund is required to provide for the calculation and prompt public dissemination of its net asset value (“NAV”) on at least a weekly basis.

(ii) Underlying Hedge Funds. A Closed-End Fund of Hedge Funds is permitted to invest only in underlying Hedge Funds that provide for weekly, valuation reports prepared by an unaffiliated, independent third party. The underlying Hedge Fund and the Closed-End Fund or the registered investment adviser on behalf of the Closed-End Fund must enter into a contractual relationship whereby the underlying Hedge Fund agrees to provide the weekly valuation reports to the Closed-End Fund.

(iii) Information Dissemination. A Closed-End Fund must contractually agree to publicly disseminate any material information that an underlying Hedge Fund makes available to its investors. Such material information shall be publicly disseminated at the same time such information is provided to the underlying Hedge Fund’s investors.

(3) Definition of Hedge Fund. A “Hedge” Fund for purposes of this Section 101(f) of the Company Guide means a trust, corporation or similar entity that would be an investment company under section 3(a) of the Investment Company Act of 1940 (the “1940 Act”) but for the exception provided from that definition by either sections 3(c)(1) or 3(c)(7) of the 1940 Act.

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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

The purpose of this proposal is to adopt specific listing criteria for Closed-End Funds³ that substantially invest their assets in underlying "Hedge Funds." A "Hedge Fund" for purposes of this proposal is defined in proposed Section 101(f)(3) of the Amex Company Guide (the "Company Guide") as a trust, corporation or similar entity that would be an investment company under section 3(a) of the Investment Company Act of 1940 (the "1940 Act") but for the exception provided from that definition by either sections 3(c)(1) or 3(c)(7) of the 1940 Act.

Section 3(c)(1) of the 1940 Act exempts from the definition of an investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities. Section 3(c)(7) of the 1940 Act generally exempts any issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified

³ Section 5(a) of the Investment Company Act of 1940 defines a "closed-end" company as any management company other than an open-end company. An "open-end company" means a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer. Closed-end funds generally issue a limited number of shares and are under no obligation to redeem the shares outstanding as is the case of an open-end fund. Shares of closed-end funds typically are listed and traded on a stock exchange. Accordingly, similar to stock of other publicly traded companies, share prices of closed-end funds are determined by the pressures of supply and demand rather than by the value of the underlying assets.

purchasers, and which is not making and does not at that time propose to make a public offering of such securities. Section 3(c)(7) also provides an exception to issuers if in addition to qualified purchasers, outstanding securities of that issuer are beneficially owned by not more than 100 persons who are not qualified purchasers.⁴

General Criteria for Closed-End Funds

Closed-End Fund securities that are listed on the Exchange are required to meet the requirements set forth in Section 101(f) of the Company Guide. The requirements are intended to insure that each security of a Closed-End Fund listed on the Exchange has sufficient market value and public distribution. In this manner, the Exchange believes that Closed-End Fund securities meeting these initial listing requirements are by definition suitable for auction trading.

Section 101(f) of the Company Guide provides the following criteria for the initial listing of a Closed-End Fund security:

- A market value of publicly held shares or net assets of at least \$20,000,000; or
- A Closed-End Fund which is part of a group of Closed-End Funds which are or will be listed on the Exchange, and which are managed by a common investment adviser or

⁴ Section 2(a)(51) of the 1940 Act defines a “qualified purchaser” to mean (i) any natural person who owns not less than \$5 million in investments; (ii) any company that owns not less than \$5 million in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons; (iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or (iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25 million in investments.

investment advisers who are “affiliated persons” as defined in Section 2(a)(3) of the 1940 Act (the “Group”), and subject to the following criteria:

- The Group has a total market value of publicly held shares or net assets of at least \$75,000,000;
- The Closed-End Funds in the Group have an average market value of publicly held shares or net assets of at least \$15,000,000; and
- Each Closed-End Fund in the Group has a market value of publicly held shares or net assets of at least \$10,000,000.

and

- Minimum public distribution of 500,000 shares, together with a minimum of 800 public shareholders or a minimum public distribution of 1,000,000 shares together with a minimum of 400 public shareholders. The Exchange may alternatively consider the listing of a Closed-End Fund’s securities if the Closed-End Fund has a minimum of 500,000 shares publicly held, a minimum of 400 public shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing under this trading provision, the Exchange undertakes a review of the nature and frequency of such trading activity and such other factors as it may determine to be relevant in ascertaining whether such issue is suitable for auction market trading. A security which trades infrequently will not be considered for listing even though average daily volume amounts to 2,000 shares per day or more.

Under the Exchange’s proposal, a Closed-End Fund of Hedge Funds would be required to meet the current initial listing standards for the securities of Closed-End Funds as set forth in

Section 101(f)(1) through (3) of the Company Guide. In addition, the proposal would also add additional listing requirements for the securities of a Closed-End Fund of Hedge Funds to meet in order to be listed on the Exchange as set forth in the Section below.

The Proposal

The proposal seeks to revise Section 101(f) of the Company Guide to provide that in addition to the general listing requirements for securities of Closed-End Funds detailed above, a Closed-End Fund of Hedge Funds is required to meet the following requirements:

- The Closed-End Fund will be required to provide for the calculation and public dissemination of its net asset value (“NAV”) on at least a weekly basis.
- A Closed-End Fund of Hedge Funds will be permitted to invest only in underlying Hedge Funds that provide for weekly, valuation reports prepared by an unaffiliated, independent third party.
- Each underlying Hedge Fund and the Closed-End Fund or the registered investment adviser on behalf of the Closed-End Fund will also be required to enter into a contractual relationship whereby the underlying Hedge Fund agrees to provide the weekly valuation reports to the Closed-End Fund.
- A Closed-End Fund of Hedge Funds will be required to contractually agree to publicly disseminate any material information that an underlying Hedge Fund makes available to its investors. Such material information is required to be publicly disseminated at the same time such information is provided to the underlying Hedge Fund’s investors.

In connection with these proposed requirements, the Exchange would require representations from each Closed-End Fund of Hedge Funds consisting of (i) an obligation by

the Closed-End Fund of Hedge Funds to provide for the calculation and public dissemination of its NAV on at least a weekly basis, (ii) a requirement that the Closed-End Fund of Hedge Funds will invest only in underlying Hedge Funds that provide weekly, independent valuation reports prepared by unaffiliated third parties, and (iii) a commitment that the Closed-End Fund of Hedge Funds has entered into a contractual relationship with the underlying Hedge Fund whereby the Hedge Fund agrees to provide weekly valuation reports to the Closed-End Fund. In addition, the Closed-End Fund of Hedge Funds will also be required to provide a representation to the Exchange that any material information that an underlying Hedge Fund makes available to its investors will also be publicly available via a publicly available website at the same time such information is provided to the Hedge Fund's investors.

The Exchange believes that the additional listing standards for Closed-End Fund of Hedge Funds will provide alternatives to listing markets overseas as well as the traditional over-the-counter ("OTC") markets. For example, the London Stock Exchange recently announced a \$500 million public offering of the BlackRock Absolute Return Strategies Ltd which will provide investors access to BlackRock's Appreciation Strategy of investing in pools of hedge funds.⁵ The Exchange notes that Goldman Sachs recently announced the introduction of a new index mutual fund that is expected to track the average return of the hedge fund universe.⁶

⁵ See MarketWatch, "BlackRock Launches IPO for London-listed fund," dated March 29, 2008.

⁶ See Ignites.com, "Goldman Unveils '40 Act Hedge Fund for the Masses,'" dated June 12, 2008. The Goldman Sachs Absolute Return Tracker Fund tracks the Goldman Sachs ART Index, a benchmark created in January 2007 to replicate the average return of approximately 4,000 hedge funds in the Lipper TASS hedge fund database. See also Securities Act File No. 33-17619 and Investment Company Act File No. 811-05349.

The Exchange submits that the instant proposal would permit the listing of the CINTRA Select Fund⁷ once the Fund's registration statement is declared effective. The CINTRA Select Fund is a Closed-End Fund of Hedge Funds that seeks capital appreciation through underlying Hedge Funds that employ a variety of absolute return investment strategies.

The Exchange believes that the adoption of the proposed Closed-End Fund of Hedge Funds listing standards will attract additional interest in listing and trading Closed-End Fund of "Hedge Funds" on the Exchange for the benefit of investors and the marketplace. We believe an auction-market or exchange listing venue for "hedge fund" products should serve to strengthen the regulatory environment for these products through increased transparency and regulatory oversight.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Exchange Act⁸ in general and furthers the objectives of Section 6(b)(5)⁹ in particular 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange further believes that the proposal is expected to provide investors and the marketplace with additional exchange-listed investment opportunities, promoting increased transparency and regulatory oversight unavailable in the over-the-counter market.

⁷ See CINTRA Select Fund, Inc. Form N-2 (Securities Act File No. 333-96821 and Investment Company Act File No. 811-21165).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Amex consents, the Commission will:

- (A) by order approve such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-Amex-2008-54 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-Amex-2008-54. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-Amex-2008-54 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Acting Secretary

¹⁰ 17 CFR 200.30-3(a)(12).