

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57148; File No. SR-Amex-2007-137)

January 15, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No.1 Thereto, to Amend Section 107D of the Amex Company Guide

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 December 14, 2007, the American Stock Exchange LLC (“Exchange” or “Amex”) 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. On January 8, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change 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 Section 107D of the Amex Company Guide (“Company Guide”) to: (i) eliminate the requirement that an eligible index for index-linked securities (“Index Securities”) be calculated and weighted following a specified methodology; (ii) provide that indexes based on the equal-dollar or modified equal-dollar weighting methods be rebalanced semi-annually rather than quarterly, as is currently the case; and (iii) eliminate the continued listing requirement prohibiting an index from increasing or decreasing by more than 33 1/3% from the number of index components initially listed.

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

<sup>2</sup> 17 CFR 240.19b-4.

The text of the proposed rule change is available at the Amex, at the Commission's Public Reference Room, and at [www.amex.com](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, its 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 to amend Section 107D of the Company Guide to: (i) eliminate the requirement that an eligible index for Index Securities be calculated and weighted following a specified methodology; (ii) provide that indexes based on the equal-dollar or modified equal-dollar weighting methods be rebalanced semi-annually rather than quarterly, as is currently the case; and (iii) eliminate the continued listing requirement prohibiting an index from increasing or decreasing by more than 33 1/3% from the number of index components initially listed.

Generic Listing Standards - Index Weighting Methodologies

Section 107D of the Company Guide sets forth the generic listing standards for Index Securities. The generic listing standards permit the listing and trading of various qualifying Index Securities, subject to the procedures contained in Rule 19b-4(e) under the Act.<sup>3</sup> The existence of generic listing standards allows qualifying Index Securities to list or trade without

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<sup>3</sup> 17 CFR 240.19b-4(e).

the need to file a rule change for each security under Rule 19b-4 under the Act. By amending its generic listing standards for Index Securities, the Exchange intends to reduce the time-frame for listing Index Securities and thereby reduce the burdens on issuers and other market participants.

The generic listing standards for Index Securities in Section 107D(i)(i) of the Company Guide currently provide that eligible indexes must be calculated based on either a capitalization,<sup>4</sup> modified capitalization,<sup>5</sup> price,<sup>6</sup> equal-dollar<sup>7</sup> or modified equal-dollar<sup>8</sup> weighting methodology. The indexes potentially underlying an issue of Index Securities may differ based on various criteria such as broad-based market measures and narrow-based or industry-specific market measures. Ultimately, it is the diversity of the underlying securities as well as their market coverage that determine whether an index is broad-based or narrow-based. Further, indexes can

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<sup>4</sup> A “capitalization-weighted” index is constructed so that weightings are biased toward the securities of larger companies. In calculating the index value, the market price of each component security is multiplied by the total number of shares outstanding to determine the market capitalization for each company in the index. The sum of the market capitalizations of all components determines the total capitalization for the index. The total market capitalization is then divided by an index divisor to scale the index to a desired reference level, e.g. 100, to establish a baseline for gauging future performance of the index. This will allow a security’s size and capitalization to have a greater impact on the value of the index.

<sup>5</sup> A “modified capitalization-weighted” index is weighted using criteria other than the total, actual number of shares outstanding.

<sup>6</sup> In a “price-weighted” index, the component securities are included based on their price. The value of the price-weighted index is calculated by adding together the last transaction price for each security in the index and dividing the resulting sum by an index divisor to scale the index.

<sup>7</sup> An “equal dollar-weighted” index is calculated by establishing an aggregate market value for every component security of the index and then determining the number of shares of each security by dividing this aggregate market value by the current market price of the security. This method of calculation does not give more weight to price changes of the more highly capitalized component securities. Additionally, the weights of each component security are reset to equal values at regular intervals (e.g., quarterly).

<sup>8</sup> A “modified equal dollar-weighted” index resets component securities at regular intervals, but not necessarily to equal values.

be calculated using different methodologies and, thus, even where indexes are based on the same underlying securities, they may measure the relevant market differently because of differences in their calculation methodology. The methodologies currently permitted under Section 107D(i)(i) of the Company Guide for Index Securities are not all-inclusive and there are other calculation methodologies that are not currently permitted under the Exchange's generic listing standards.<sup>9</sup> The Amex proposes to eliminate the current limitations in the generic listing standards for Index Securities relating to index calculation methodologies, thereby reducing the time-frame for listing Index Securities based on other index calculation methodologies and promoting competition. The Exchange believes that the proposal will further alleviate unnecessary burdens on issuers and other market participants without compromising investor protection.

The Exchange notes that the Commission recently approved a proposal<sup>10</sup> by the Amex to remove similar requirements in the Amex's generic listing standards for exchange-traded funds ("ETFs")<sup>11</sup> that eligible indexes be calculated based on the market capitalization, modified market capitalization, price, equal-dollar, or modified equal dollar weighting methodology. In approving Amex-2007-07, the Commission found that "[a]s the market for ETFs has grown, the variety of weighting and calculation methodologies for underlying indexes has also expanded, limiting the applicability of Amex's current generic ETF listing standards." Similarly, the Exchange believes that growth in the market for Index Securities as well as an expansion in the

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<sup>9</sup> For example, an index can also be a simple average, calculated by simply adding up the prices of the securities in the index and dividing by the number of securities, disregarding the number of shares outstanding. Another type measures daily percentage movements of prices by averaging the percentage of the types of stocks constituting the index.

<sup>10</sup> See Securities Exchange Act Release No. 55544 (Mar. 27, 2007), 72 FR 15923 (Apr. 3, 2007) ("Amex-2007-07").

<sup>11</sup> See Amex Rule 1000-AEMI for portfolio depository receipts and Amex Rule 1000A-AEMI for index fund shares.

weighting and calculation methods for underlying indexes has limited the applicability of Amex's current generic listing standards for Index Securities. The Exchange further notes that the Commission recently approved a similar filing by NYSE Arca, LLC ("NYSEArca") in which NYSEArca proposed the elimination of its requirement that an underlying index used in connection with an issuance of Equity Index-Linked Securities must be calculated based on either a capitalization, modified capitalization, price, equal-dollar, or modified equal-dollar weighting methodology.<sup>12</sup>

#### Rebalancing of Equal-Dollar and Modified Equal-Dollar Indexes

Section 107D(i)(ii) of the Company Guide currently requires that indexes based upon the equal-dollar or modified equal-dollar weighting method be rebalanced quarterly. The Exchange is proposing to amend this requirement to require that the equal-dollar or modified equal-dollar weighting method be rebalanced at least semi-annually. A significant number of currently existing equity indexes that utilize the equal-dollar or modified equal-dollar weighting methodology are rebalanced semi-annually rather than quarterly. As the issuer of Index Securities generally licenses the right to utilize the underlying index from a third party index sponsor, it is often not within the issuer's control to have the index rebalanced more frequently. As such, it is not possible currently under Section 107D(i)(ii) of the Company Guide to list Index Securities based on indexes that are rebalanced semi-annually. However, as these types of indexes are relatively common and detailed information concerning the procedures governing the construction of the underlying index will be available to investors either in the issuer's

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<sup>12</sup> See Securities Exchange Act Release No. 56838 (Nov. 26, 2007), 72 FR 67774 (Nov. 30, 2007) (SR-NYSE-Arca-2007-118). In this filing NYSEArca stated that it was seeking to harmonize NYSEArca rules with the New York Stock Exchange ("NYSE") Equity Index-Linked Securities listing standard in Section 703.22 of the NYSE Listed Company Manual, which has no requirements concerning weighting methodologies.

prospectus or on the index sponsor’s website, the Exchange believes that it is appropriate to allow investors to make their own decisions as to the sufficiency of a semi-annual rebalancing of an equal-dollar index underlying an issuance of Index Securities. Investors and issuers would also benefit from the Amex’s ability to list – without the delay associated with a stand-alone rule filing – Index Securities based on a broader group of indexes. The Exchange further notes that the Commission recently approved a similar proposal by NYSEArca.<sup>13</sup>

#### Continued Listing Criteria for Index-Linked Securities

Section 107D(h) of the Company Guide provides the continued listing criteria for Index Securities. In particular, Section 107D(h)(ii) of the Company Guide provides, as a condition of continued listing that, “the total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components.” The Exchange proposes to delete the 33-1/3% prohibition, but maintain the 10-component requirement of the rule.

The Exchange believes that investors purchase Index Securities because they believe that the underlying index method is accurately described in the offering documentation and that the index sponsor will maintain the index methodology appropriately so that the index will continue to represent the sector, geographic region or other investment characteristics it is designed to track. As such, rather than buying Index Securities on the basis of the current contents of the index, investors are relying on the index sponsor to define and manage the index selection rules so that, over time, the index is sustainable in response to changing market conditions.

Because Index Securities can have a duration of up to thirty (30) years, it is likely that some Index Securities will ultimately change in ways that render them noncompliant with

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<sup>13</sup> See supra note 12.

Section 107D(h)(ii) of the Company Guide. The Exchange believes that an unintended consequence of the 33-1/3% requirement is that it penalizes Index Securities with long-term maturities. Specifically, total industry/country composite indexes are at risk of being delisted prior to the stated maturity date for the Index Security. As a result, issuers may not launch new Index Securities due to concerns regarding the negative impact of delisting the index-linked security based on component changes that reflect expanding or retracting industry sectors or changes in the geographical business environment. The Exchange does not believe that it is protective of investors to require the delisting of Index Securities in such an event. The Exchange further notes that the Commission recently approved a similar proposal by NYSEArca.<sup>14</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to national securities exchanges and, in particular, the requirements of Section 6(b) of the Act.<sup>15</sup> Specifically, the Exchanges believe the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>16</sup> that the rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

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<sup>14</sup> See Securities Exchange Act Release No. 57132 (Jan. 11, 2008) (SR-NYSEArca-2007-125).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change would impose no 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 neither solicited nor received comments on this proposal.

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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2007-137 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-2007-137. 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 submissions, 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 the filings also will be available for inspection and copying at the principal offices 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 No. SR-Amex-2007-137 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 Proposed Rule Changes

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 national securities exchanges.<sup>17</sup> In particular, the Commission finds that the proposal is consistent with the provisions of Section 6(b)(5) of the Act<sup>18</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposal to eliminate the requirement that an eligible index for Index Securities be calculated based on certain specified methodologies would conform the Exchange's requirements to the current listing standards for similar securities on other national securities exchanges.<sup>19</sup> The Commission further believes that the proposal to provide

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<sup>17</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> See supra note 12. See also Section 703.22 of the NYSE Listed Company Manual.

that indexes based on the equal-dollar or modified equal-dollar weighting methods be rebalanced at least semi-annually should benefit investors by providing a wider selection of derivative products based on such indexes. The Commission believes that the proposal to adjust the minimum rebalancing frequency requirement is reasonable, given the increasing number of equal-dollar or modified equal-dollar weighted indexes that are rebalanced on a semi-annual basis, and should allow for the listing and trading of certain Index Securities that would otherwise not be able to be listed and traded on the Exchange.

In addition, the Commission believes that eliminating the requirement prohibiting an index from increasing or decreasing by more than 33 1/3% from the number of index components initially listed reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in Section 6(b)(5) of the Act.<sup>20</sup> The Commission notes that each issue of Index Securities must continue to maintain all of the initial listing standards for Index Securities, including the continued requirement that each underlying index have a minimum of 10 component securities of different issuers. Given the variety of certain equity indexes that focus on specific industry sectors and geographic markets, for example, and the extended duration of maturities for certain Index Securities, the Commission believes that the number of components in an index may increase or decrease by more than 33 1/3% from the number of components in the index at the time of initial listing without adversely impacting the interests of investors. At the same time, the Commission believes that the proposal should benefit investors by creating additional alternatives to investing in such products and competition in the market for Index Securities, while maintaining transparency of the underlying components comprising an index. As such, the Commission

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Id.

believes it is reasonable and consistent with the Act for the Exchange to eliminate the 33 1/3% requirement from the listing standards for Index Securities in the manner described in the proposal.

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the Federal Register. With respect to the Exchange's proposals to: (i) eliminate the requirement that an eligible index for Index Securities be calculated and weighted following a specified methodology; (ii) provide that indexes based on the equal-dollar or modified equal-dollar weighting methods be rebalanced semi-annually rather than quarterly, as is currently the case; and (iii) eliminate the continued listing requirement prohibiting an index from increasing or decreasing by more than 33 1/3% from the number of index components initially listed rule change, the Commission notes that it has recently approved substantially similar proposals for other national securities exchanges.<sup>21</sup> The Commission does not believe that these proposals raise any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>22</sup> to approve the proposed rule change on an accelerated basis.

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<sup>21</sup> See supra notes 12 and 14.

<sup>22</sup> 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>23</sup>, that the proposed rule change (SR-Amex-2007-137), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

Nancy M. Morris  
Secretary

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<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).