

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57818; File No. SR-Amex-2008-30)

May 15, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index or Portfolio Underlying Portfolio Depository Receipts and Index Fund Shares

I. Introduction

On March 25, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Commentary .03 to Amex Rule 1000-AEMI (Portfolio Receipts or “PDRs”) and Commentary .02 to Amex Rule 1000A-AEMI (Index Fund Shares or “IFSs,” and together with PDRs, collectively, “ETFs”) to modify certain eligibility criteria for components of an index or portfolio underlying ETFs. On April 1, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the Federal Register on April 14, 2008.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

The Exchange proposes to amend Commentary .03 to Amex Rule 1000-AEMI and Commentary .02 to Amex Rule 1000A-AEMI to exclude ETFs and securities defined as Managed Fund Shares (Amex Rule 1000B), Trust Issued Receipts (Amex Rule 1200),

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57631 (April 8, 2008), 73 FR 20074.

Commodity-Based Trust Shares (Amex Rule 1200A), Currency Trust Shares (Amex Rule 1200B), Partnership Units (Amex Rule 1500), and Paired Trust Shares (Amex Rule 1600) (together with ETFs, collectively, “Derivative Securities Products”) when applying certain quantitative listing requirements of Commentary .03 to Amex Rule 1000-AEMI and Commentary .02 to Amex Rule 1000A-AEMI. In this way, the Exchange seeks to enable the listing and trading of ETFs that are linked to, or based on, components that are Derivative Securities Products pursuant to Rule 19b-4(e) under the Act.⁴

Amex Rules 1000-AEMI and 1000A-AEMI provide that the Exchange may approve a series of PDRs and IFSSs, respectively, for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Act,⁵ if such series satisfies the criteria set forth in such Rules. In its proposal, the Exchange seeks to exclude Derivative Securities Products when applying certain quantitative listing requirements of Commentary .03 to Amex Rule 1000-AEMI and Commentary .02 to Amex Rule 1000A-AEMI relating to the listing of PDRs and IFSSs, respectively, based on a U.S. index or portfolio or an international or global index or portfolio.

With respect to Commentary .03 to Amex Rule 1000-AEMI and Commentary .02 to Amex Rule 1000A-AEMI, the Exchange proposes to exclude Derivative Securities Products, as components, when applying the following existing component eligibility requirements: (1) component stocks that, in the aggregate, account for at least 90% of the weight of the index or

⁴ Rule 19b-4(e) under the Act 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 Rule 19b-4(c)(1) (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).

⁵ See id.

portfolio each must have a minimum market value of at least \$75 million (Commentary .03(a)(A)(1) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(1) to Amex Rule 1000A-AEMI); (2) component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares (Commentary .03(a)(A)(2) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(2) to Amex Rule 1000A-AEMI); and (3) the most heavily weighted component stock must not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks must not exceed 65% of the weight of the index or portfolio (Commentary .03(a)(A)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(3) to Amex Rule 1000A-AEMI). Component stocks, in the aggregate, excluding Derivative Securities Products, would still be required to meet the criteria of these provisions. Thus, for example, when determining compliance with Commentaries .03(a)(A)(1) and (2) to Amex Rule 1000-AEMI and Commentaries .02(a)(A)(1) and (2) to Amex Rule 1000A-AEMI, component stocks that, in the aggregate, account for at least 90% of the remaining index weight, after excluding any Derivative Securities Products, would be required to have a minimum market value of at least \$75 million and minimum monthly trading volume of 250,000 shares during each of the last six months, respectively. In addition, with respect to Commentary .03(a)(A)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(3) to Amex Rule 1000A-AEMI, when determining the component weight for the most heavily weighted stock and the five most heavily weighted component stocks for an underlying index that includes a Derivative Securities Product, the weight of such Derivative Securities Products included in the underlying index or portfolio would not be considered.

In addition, the Exchange proposes to modify the requirements in Commentary .03(a)(A)(4) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(4) to Amex Rule 1000A-AEMI, which provide that the underlying index or portfolio must include a minimum of 13 component stocks. Specifically, the Exchange proposes that there shall be no minimum number of component stocks if: (1) one or more series of ETFs constitute, at least in part, components underlying a series of ETFs; or (2) one or more series of Derivative Securities Products account for 100% of the weight of the index or portfolio. Thus, for example, if the index or portfolio underlying a series of ETFs includes one or more series of ETFs, or if it consists entirely of other Derivative Securities Products, then there would not be required to be any minimum number of component stocks (i.e., one or more components comprising the underlying index or portfolio would be acceptable). However, if the index or portfolio consists of Derivative Securities Products other than ETFs (e.g., Commodity-Based Trust Shares or Currency Trust Shares), as well as securities that are not Derivative Securities Products (e.g., common stocks), then there would have to be at least 13 components in the underlying index or portfolio.

Consistent with current Commentary .03(a)(A)(5) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(5) to Amex Rule 1000A-AEMI, all securities in the index or portfolio would have to be “US Component Stocks” (as defined in Amex Rules 1000-AEMI(b)(3) and 1000A-AEMI(b)(4))⁶ listed on a national securities exchange and NMS Stocks, as defined in Rule 600 of under the Act.⁷

⁶ “US Component Stock” is an equity security that is registered under Section 12(b) or 12(g) of the Act or an American Depositary Receipt, the underlying equity security of which is registered under Section 12(b) or 12(g) of the Act. See Amex Rules 1000-AEMI(b)(3) and 1000A-AEMI(b)(4).

⁷ See 17 CFR 242.600(b)(47).

With respect to Commentary .03(a)(B) to Amex Rule 1000-AEMI and Commentary .02(a)(B) to Amex Rule 1000A-AEMI, the Exchange proposes to exclude Derivative Securities Products, as components, when applying the following existing component eligibility requirements: (1) component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least \$100 million (Commentary .03(a)(B)(1) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(1) to Amex Rule 1000A-AEMI); (2) component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares (Commentary .03(a)(B)(2) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(2) to Amex Rule 1000A-AEMI); and (3) the most heavily weighted component stock must not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks must not exceed 60% of the weight of the index or portfolio (Commentary .03(a)(B)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(3) to Amex Rule 1000A-AEMI). Thus, for example, when determining compliance with Commentaries .03(a)(B)(1) and (2) to Amex Rule 1000-AEMI and Commentaries .02(a)(B)(1) and (2) to Amex Rule 1000A-AEMI, component stocks that, in the aggregate, account for at least 90% of the remaining index weight, after excluding any Derivative Securities Products, would be required to have a minimum market value of at least \$100 million and minimum worldwide monthly trading volume of 250,000 shares during each of the last six months, respectively. In addition, with respect to Commentary .03(a)(B)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(3) to Amex Rule 1000A-AEMI, when determining the component weight for the most heavily weighted stock and the five most heavily weighted component stocks for an underlying index that includes a Derivative Securities Product, the

weight of such Derivative Securities Products included in the underlying index or portfolio would not be considered.

In addition, the Exchange proposes to modify the requirements in Commentary .03(a)(B)(4) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(4) to Amex Rule 1000A-AEMI, which provide that the underlying index or portfolio must include a minimum of 20 component stocks. Specifically, the Exchange proposes that there shall be no minimum number of component stocks if: (1) one or more series of ETFs constitute, at least in part, components underlying a series of ETFs; or (2) one or more series of Derivative Securities Products account for 100% of the weight of the index or portfolio. Thus, for example, if the index or portfolio underlying a series of ETFs includes one or more series of ETFs, or if it consists entirely of other Derivative Securities Products, then there would not be required to be any minimum number of component stocks (i.e., one or more components comprising the underlying index or portfolio would be acceptable). However, if the index or portfolio consists of Derivative Securities Products other than ETFs (e.g., Commodity-Based Trust Shares or Currency Trust Shares), as well as securities that are not Derivative Securities Products (e.g., common stocks), then there would have to be at least 20 components in the underlying index or portfolio.

Consistent with current Commentary .03(a)(B)(5) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(5) to Amex Rule 1000A-AEMI, each component that is a US Component Stock (which would include each Derivative Securities Product) would be required to be listed on a national securities exchange and be an NMS Stock, as defined in Rule 600 under the Act, and each component that is a Non-US Component Stock (as defined in Amex Rules 1000-

AEMI(b)(4) and 1000A-AEMI(b)(5))⁸ would be required to be listed and traded on an exchange that has last-sale reporting.

III. Discussion and Commission's Findings

After careful review and based on the Exchange's representations, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of an exchange 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, protect investors and the public interest.

Under Commentary .03 to Amex Rule 1000-AEMI and Commentary .02 to Amex Rule 1000A-AEMI, one or more series of Derivative Securities Products may be included as a component comprising the index or portfolio underlying a series of ETFs.¹¹ The Commission

⁸ "Non-US Component Stock" is an equity security that is not registered under Section 12(b) or 12(g) of the Act and that is issued by an entity that (1) is not organized, domiciled, or incorporated in the United States, and (2) is an operating company (including Real Estate Investment Trusts and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). See Amex Rules 1000-AEMI(b)(4) and 1000A-AEMI(b)(5).

⁹ 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).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ Under Commentary .03 to Amex Rule 1000-AEMI and Commentary .02 to Amex Rule 1000A-AEMI, a series of a Derivative Securities Product may be included as a U.S. Component Stock or Non-U.S. Component Stock underlying a series of PDRs or IFSs, respectively, so long as the shares of such series meet the definitions of U.S. Component

notes that, based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations. However, because Derivative Securities Products are themselves subject to specific initial and continued listing requirements, the Commission believes that it would be reasonable to exclude Derivative Securities Products, as components, when applying certain quantitative listing requirements related to the listing of PDRs and IFSs. For example, the index component eligibility standards for ETFs require, among others, that there be a minimum of 13 component stocks in an underlying U.S. index or portfolio and a minimum of 20 component stocks in an international or global index or portfolio. If one or more series of ETFs constitutes, at least in part, a component of a U.S. or international index underlying a series of ETFs, the Commission believes that not requiring a minimum number of components underlying such overlying ETFs would be reasonable because each component ETF already requires a minimum of 13 or 20 component stocks, as the case may be. In addition, if the index or portfolio underlying a series of ETFs consists entirely of other component Derivative Securities Products, then there would be no required minimum number of component stocks. The Commission notes that, if a series of ETFs is based on the performance of an underlying index or portfolio composed, in part, of: (1) an ETF and another non-Derivative Securities Product (e.g., common stock), or (2) a Derivative

Stock and Non-U.S. Component Stock, as applicable. See supra notes 6 and 8. See also Commentaries .03(a)(A)(5) and .03(a)(B)(5) to Amex Rule 1000-AEMI and Commentaries .02(a)(A)(5) and .02(a)(B)(5) to Amex Rule 1000A-AEMI (requiring that, in any event, all securities in the applicable index or portfolio must be a U.S. Component Stock listed on a national securities exchange and an NMS Stock, as defined in Rule 600 under the Act, or, in the case of an international or global index or portfolio, must be a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting).

Securities Product other than an ETF, then the minimum number of component stock requirement will continue to apply.

In addition, because component Derivative Securities Products may comprise 100% of the weight of any index underlying a series of ETFs, the Commission believes that providing for an exception to the concentration limits contained in Commentary .03(a)(A)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(3) to Amex Rule 1000A-AEMI with respect to component Derivative Securities Products is reasonable. The Commission further notes that component Derivative Securities Products that are U.S. Component Stocks comprising, at least in part, an index or portfolio underlying a series of Units must meet the definition of NMS Stock¹² and already have been listed and trading on a national securities exchange pursuant to a proposed rule change approved by the Commission pursuant to Section 19(b)(2) of the Act¹³ or submitted by a national securities exchange pursuant to Section 19(b)(3)(A) of the Act,¹⁴ or would have been listed by a national securities exchange pursuant to the requirements of Rule 19b-4(e) under the Act.¹⁵ Component Derivative Securities Products that are Non-U.S. Component Stocks comprising, at least in part, an international or global index or portfolio underlying a series of Units must already have been listed and trading on an exchange that has last-sale reporting.

The Commission believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and

¹² See supra note 7.

¹³ 15 U.S.C. 78s(b)(2)

¹⁴ 15 U.S.C. 78s(b)(3)(A)

¹⁵ See supra note 4.

trading criteria set forth in the proposal are intended to protect investors and the public interest. The Commission notes that it has approved a substantively identical proposal of another national securities exchange.¹⁶ The Commission is not aware of any regulatory issue that should cause it to revisit that finding and, as such, believes it is reasonable and consistent with the Act for the Exchange to modify the index component eligibility criteria for ETFs in the manner described in the proposal.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-Amex-2008-30), 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁶ See Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR-NYSEArca-2008-29).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).