

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard.

3. Applicants state that the Funds' shareholders rely on the Adviser, subject to oversight by the Board, to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose costs and unnecessary delays on the Funds and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to the shareholder approval requirements in section 15(a) of the Act and rule 18f-2 under the Act.

*Applicants' Conditions:*

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to this application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination and replacement.

3. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the

discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of a new Subadviser, the Adviser will furnish shareholders of the affected Fund with all information about the new Subadviser that would be included in a proxy statement. The Adviser will meet this condition by providing shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval by the Board, will (i) set the Fund's overall investment strategies, (ii) evaluate, select and recommend Subadvisers to manage all or a part of the Fund's assets, (iii) allocate and, when appropriate, reallocate the Fund's assets among multiple Subadvisers, (iv) monitor and evaluate the performance of the Subadvisers, and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Funds, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

9. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-19441 Filed 11-16-06; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**Federal Register Citation of Previous Announcement: [71 FR 66352, November 14, 2006].**

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street, NE., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Monday, November 20, 2006 at 2 p.m.

**CHANGE IN THE MEETING:** Time Change.

The Closed Meeting scheduled for Monday, November 20, 2006 at 2 p.m. has been changed to Monday, November 20, 2006 at 10 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: November 15, 2006.

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. 06-9269 Filed 11-15-06; 11:00 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-54739; File No. SR-Amex-2006-78]**

**Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Relating to Generic Listing Standards for Series of Portfolio Depositary Receipts and Index Fund Shares Based on International or Global Indexes**

November 9, 2006.

### I. Introduction

On August 18, 2006, 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 (“Exchange Act” or “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt generic listing standards pursuant to Rule 19b-4(e)<sup>3</sup> for series of portfolio deposit receipts (“PDRs”) and index fund shares (“IFSs”) based on international or global indexes. On October 12, 2006, Amex submitted Amendment No. 1 to the proposal.<sup>4</sup> The proposed rule change and Amendment No. 1 thereto were published for comment in the **Federal Register** on October 19, 2006 for a 15-day comment period.<sup>5</sup> The Commission received one comment letter.<sup>6</sup> On November 6, 2006, Amex submitted Amendment No. 2 to the proposal.<sup>7</sup> This order approves the proposed rule change, as amended, on an accelerated basis.

## II. Description of Proposal

As explained more fully in the notice of the proposed rule change, the Exchange proposes to revise Amex Rules 1000 and 1000A to include generic listing standards for series of PDRs and IFSs that are based on international or global indexes.<sup>8</sup> Additionally, the Exchange proposes to revise Amex Rules 1000 and 1000A to include generic listing standards for PDRs and IFSs (PDRs and IFSs together referred to as “exchange-traded funds” or “ETFs”) that are based on indexes or portfolios previously approved by the Commission as an underlying benchmark for the trading of PDRs, IFSs,

options or other specified index-based securities. Finally, Amex proposes other minor clarifying changes to Amex Rules 1000, 1002, 1000A and 1002A.<sup>9</sup>

Specifically, the Exchange proposes to revise Commentary .03 to Rule 1000 and Commentary .02 to Rule 1000A to include generic listing standards for series of ETFs that are based on international or global indexes, or on indexes previously approved by the Commission under Section 19(b)(2) of the Exchange Act for the trading of ETFs, options or other index-based securities. This proposal will enable the Exchange to list and trade ETFs pursuant to Rule 19b-4(e)<sup>10</sup> of the Exchange Act if each of the conditions set forth in Commentary .03 to Rule 1000 or Commentary .02 to Rule 1000A is satisfied. 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 paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, 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.<sup>11</sup>

To list a PDR or an IFS pursuant to the proposed generic listing standards for international or global indexes, the index underlying the PDR or IFS must satisfy all the conditions in Commentary .03 to Rule 1000 (for PDRs) or proposed Commentary .02 to Rule 1000A (for IFSs). As with the existing generic listing standards for ETFs based on domestic indexes, the Exchange states that these generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio.

<sup>9</sup>The standards set out in Commentary .03(a)(A) to Rule 1000 and Commentary .02(a)(A) to Rule 1000A are being modified to make the wording of each requirement consistent; in addition, standard (5) of these Commentaries has been modified to reflect the Commission’s adoption of Regulation NMS, 17 CFR 242.600 *et seq.* Proposed Commentary .03(b)(iv) to Rule 1000 and Commentary .02(b)(iv) to Rule 1000A have been added to require that entities that advise index providers or calculators and related entities have in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF.

<sup>10</sup> 17 CFR 240.19b-4(e).

<sup>11</sup> When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the SRO begins trading the new derivative securities products. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

As proposed, the definition section of each of Rule 1000 and Rule 1000A would be revised to include definitions of U.S. Component Stock and Non-US Component Stock. These new definitions would provide the basis for the standards for indexes with either domestic or international stocks, or a combination of both. A “Non-US Component Stock” would mean an equity security issued by an entity that: (a) Is not organized, domiciled or incorporated in the United States; (b) is not registered under Section 12(b) or 12(g) of the Exchange Act; and (c) is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). This definition is designed to create a category of component stocks that are issued by companies that are not based in the U.S., but that also are not subject to oversight through Commission registration, and would include sponsored Global Depository Receipts (“GDRs”) and European Depository Receipts (“EDRs”). A “US Component Stock” would mean an equity security that is registered under Section 12(b) or 12(g) of the Exchange Act.

The Exchange proposes that to list an ETF based on an international or global index or portfolio pursuant to the generic listing standards, such index or portfolio must meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value<sup>12</sup> of at least \$100 million (Rule 1000, Commentary .03(a)(B)(1) and Rule 1000A, Commentary .02(a)(B)(1));<sup>13</sup>
- Component stocks representing at least 90% of the weight of the index or portfolio shall have a minimum worldwide monthly trading volume<sup>14</sup>

<sup>12</sup>The Exchange stated for purposes of this filing that “market value” is calculated by multiplying the total shares outstanding by the price per share of the component stock.

<sup>13</sup>The BGI Comment Letter notes that certain no-action relief provided by Commission staff under the Exchange Act (the “ETF No-Action Letters”) uses a public float standard, rather than this market value standard, and suggests consistency. The Exchange notes that the ETF No-Action Letters address separate regulatory objectives but is willing to examine modifications to its listing standards in the future. Telephone conference among Marija Willen, Vice President and Associate General Counsel, Amex, Scott Ebner, Vice President, Amex, Florence Harmon, Senior Special Counsel, Division of Market Regulation (“Division”), Commission, and Brian Trackman, Special Counsel, Division, Commission, on November 6, 2006 (“November 6 Telephone Conference”).

<sup>14</sup>The BGI Comment Letter requested clarification that “worldwide monthly trading volume” includes any shares underlying American

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

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

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

<sup>4</sup>In Amendment No. 1, Amex revised the proposed rule text and clarified certain aspects of its proposal.

<sup>5</sup> *See* Securities Exchange Act Release No. 54595 (October 12, 2006), 71 FR 61811.

<sup>6</sup> *See* letter from Ira P. Shapiro, Principal and Associate General Counsel, Barclays Global Investors (“BGI”), dated October 29, 2006 (“BGI Comment Letter”).

<sup>7</sup>In Amendment No. 2, Amex clarified the nature of its surveillance procedures applicable to ETFs that may be listed and traded pursuant to the proposed rule change.

<sup>8</sup> Amex Rules 1000 *et seq.* allow for the listing and trading on the Exchange of PDRs, which represent interests in a unit investment trust registered under the Investment Company Act of 1940 (“1940 Act”) that operates on an open-end basis and that holds the securities that comprise an index or portfolio. Amex Rules 1000A *et seq.* provide standards for the listing and trading of IFSs, which are securities issued by an open-end management investment company based on a portfolio of stocks or fixed income securities that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities index.

during each of the last six months of at least 250,000 shares<sup>15</sup> (Rule 1000, Commentary .03(a)(B)(2) and Rule 1000A, Commentary .02(a)(B)(2));<sup>16</sup>

- The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio (Rule 1000, Commentary .03(a)(B)(3) and Rule 1000A, Commentary .02(a)(B)(3));

- The index or portfolio shall include a minimum of 20 component stocks (Rule 1000, Commentary .03(a)(B)(4) and Rule 1000A, Commentary .02(a)(B)(4)); and

- Each US Component Stock in the index or portfolio shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Exchange Act, and each Non-US Component Stock in the index or portfolio shall be listed on an exchange that has last-sale reporting (Rule 1000, Commentary .03(a)(B)(5) and Rule 1000A, Commentary .02(a)(B)(5)).<sup>17</sup>

Depository Receipts (“ADRs”) traded in the U.S. In response, the Exchange states that any trading of shares represented by ADRs, GDRs, or EDRs, which are traded on a market with last sale reporting, would be included in the calculation of worldwide monthly trading volume. See November 6 Telephone Conference, *supra* note 13.

<sup>15</sup>The BGI Comment Letter asserts that it would be less arbitrary to measure trading volume in terms of dollars rather than shares. The Exchange notes that the share trading volume criteria is consistent with the existing generic listing standards for ETFs based on domestic indexes and other listing standards for derivative products, and the Commission believes the Exchange’s choice is consistent with the Act. Nevertheless, the Exchange is willing to examine the dollar volume criteria in the future. See November 6 Telephone Conference, *supra* note 13.

<sup>16</sup>16 The BGI Comment Letter notes that the ETF No-Action Letters measure liquidity of components in the index or portfolio differently than Amex’s proposed rules measure liquidity. The Exchange notes that the ETF No-Action Letters address separate regulatory objectives but is willing to examine modifications to its listing standards in the future. See November 6 Telephone Conference, *supra* note 13.

<sup>17</sup>The BGI Comment Letter questioned which non-U.S. exchanges have systems for “last-sale reporting.” In this regard, the Exchange states, when considering whether an ETF meets its listing standards, that it will use several methods to determine whether a non-U.S. exchange has last-sale reporting. For example, the Exchange states that it will evaluate whether execution prices are available for transactions in securities listed and traded on such exchange. The Exchange further states that last-sale reporting is easily verified through major market data vendors and other entities. In addition, the Exchange states that many index providers have policies to include index components only from foreign exchanges where pricing, transaction reporting, and corporate news are sufficiently transparent and widely disseminated. See November 6 Telephone Conference, *supra* note 13.

The Exchange also proposes to include in the generic listing standards for the listing of ETFs, in new Commentary .03(a)(C) to Rule 1000 and Commentary .02(a)(C) to Rule 1000A, indexes that have been approved by the Commission as underlying benchmarks in connection with the listing of options, PDRs, IFSs, Index-Linked Exchangeable Notes, or Index-Linked Securities.<sup>18</sup>

The Exchange also proposes to modify Commentary .03(b)(iii) to Rule 1000 and Commentary .02(b)(iii) to Rule 1000A to require that the index value for all ETFs listed pursuant to the proposed standards for international and global indexes (or otherwise approved by the Commission) be widely disseminated by one or more major market data vendors at least every 60 seconds during the time when the ETF trades on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. Index values for ETFs listed pursuant to the standards for domestic indexes (or otherwise approved by the Commission) must be disseminated at least every 15 seconds during the trading day. The proposed modification to this requirement for ETFs based on international or global indexes reflects that, in some instances, the frequency of intra-day trading information is limited with respect to Non-US Component Stocks and that, in many cases, trading hours for overseas markets overlap only in part, or not at all, with Exchange trading hours.

In addition, Commentary .03(c) to Rule 1000 and Commentary .02(c) to Rule 1000A are being modified to define the term “Intraday Indicative Value” as the estimate that is updated at least every 15 seconds of the value of a share of each ETF, for ease of reference in these rules. A similar change is also

<sup>18</sup>BGI questions requiring comprehensive surveillance sharing agreements (“CSSAs”) with the home country market for the underlying index components in proposed Commentary .03(a)(C) to Amex Rule 1000 and Commentary .02(a)(C) to Amex Rule 1000A. The standards set out in paragraph (B) of both Commentaries do not require a CSSA with the home country market because they provide for minimum levels of liquidity, concentration and pricing transparency for index components. If an ETF is based on an index whose components do not satisfy these composition criteria, it may be listed pursuant to paragraph (C) of both Commentaries if the Commission has previously approved the index or portfolio in connection with the listing and trading of another derivative product. To the extent that the Commission’s approval of that index or portfolio required CSSAs, that requirement must also be satisfied. See November 6 Telephone Conference, *supra* note 13.

proposed in Rules 1002 and 1002A, which are the continued listing standards for these and other ETFs. The Exchange also proposes to clarify in Commentary .03(c) to Rule 1000 and Commentary .02(c) to Rule 1000A that the Intraday Indicative Value will be updated during the hours the ETF shares trade on the Exchange to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated for all ETFs based on global or international indexes.

The Exchange is also proposing to add a subsection (i) to Commentary .03 to Rule 1000 and a subsection (j) to Commentary .02 to Rule 1000A regarding the creation and redemption process for ETFs and compliance with Federal securities laws for ETFs listed pursuant to the generic listing standards for international and global indexes. These new subsections will apply to PDRs listed pursuant to Commentary .03(a)(B) or (C) and for IFSs listed pursuant to Commentary .02(a)(B) or (C).

For the listing and trading of all ETFs, whether or not by generic listing standards, the Exchange is also proposing to include additional, continued listing standards relating to ETFs that substitute new indexes, either in the instance where the value of the index or portfolio of securities on which the ETF is based is no longer calculated or available, or in the event that the ETF chooses to substitute a new index or portfolio for the existing index or portfolio. In both instances, the Exchange would commence delisting proceedings if the new index or portfolio does not meet the standards set forth in Rules 1000 *et seq.* or Rules 1000A *et seq.*, as applicable.<sup>19</sup> If, for example, an ETF chose to substitute an index that did not meet any of the generic listing standards for listing of

<sup>19</sup>The BGI Comment Letter requested clarification of when an index is “no longer calculated or available” and in such event, why a “substantially similar” substituted index could not satisfy the dissemination requirements of the listing standards. In response, the Exchange notes that many indexes change components periodically based on a specified methodology. Index turnover, consistent with such an index methodology, may not constitute an index substitution triggering possible delisting of the ETF. However, if the index underlying the ETF is substituted with a new index or the specified index methodology is substantially changed from the announced methodology under which the product was listed, the Exchange acknowledges that it must either file a new Form 19b-4(e) or the listing and trading of the derivative product is a proposed rule change pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2). See November 6 Telephone Conference, *supra* note 13.

ETFs pursuant to Rule 19b-4(e),<sup>20</sup> then for continued listing, approval by the Commission of a separate filing pursuant to Section 19(b)(2)<sup>21</sup> to list and trade that ETF would be required.<sup>22</sup>

The Exchange proposes to modify the initial and continued listing standards for all ETFs relating to disseminated information to formalize in the rules existing best practices for providing equal access to material information about the value of ETFs. Pursuant to Rules 1002(a)(ii) and 1002A(a)(ii), prior to approving an ETF for listing, the Exchange will obtain a representation from the ETF issuer that the net asset value (“NAV”) per share will be calculated daily and made available to all market participants at the same time.

In addition, proposed Rules 1002(b)(ii) and 1002A(b)(ii) establish that if the Intraday Indicative Value (as defined in Commentary .03 to Rule 1000 and Commentary .02 to Rule 1000A) or the index value applicable to that series of ETFs is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value 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.

With regard to trading, ETFs listed under the proposed standards will be subject to Amex rules and procedures that govern the trading of ETFs and the trading of equity securities on the Amex, including among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.<sup>23</sup>

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the PDRs and IFSs listed pursuant to the proposed new listing standards. Specifically, the Amex will rely on its existing surveillance procedures governing PDRs and IFSs. In addition, the Exchange has a general policy prohibiting the distribution of material,

non-public information by its employees.

### III. Discussion and Commission Findings

After careful review, including consideration of the BGI Comment Letter, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act, in general, and the rules and regulations thereunder applicable to a national securities exchange.<sup>24</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Exchange Act,<sup>25</sup> 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, and, in general, to protect investors and the public interest.

#### *Generic Listing Standards for Exchange-Traded Funds*

To list ETFs based on international or global indexes, or on indexes or portfolios previously approved by the Commission as an underlying benchmark for a derivative security, the Amex currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder. However, Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a 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 Exchange's proposed rules for the listing and trading of ETFs based on international or global indexes pursuant to Rule 19b-4(e) fulfills these requirements.

The Amex's ability to rely on Rule 19b-4(e) to list ETFs that meet the requirements of Commentary .03 to Amex Rule 1000 or Commentary .02 to Amex Rule 1000A potentially reduces the time frame for bringing these securities to the market, thereby

reducing the burdens on issuers and other market participants and promoting competition and making ETFs based on global or international indexes available to investors more quickly.

The Commission has previously approved generic listing standards pursuant to Rule 19b-4(e)<sup>26</sup> of the Exchange Act for ETFs based on indexes that consist of stocks listed and traded on U.S. exchanges.<sup>27</sup> The Commission has also previously approved the listing and trading by the Exchange of several ETFs based on a variety of international and global market indexes.<sup>28</sup> In approving these securities for Exchange trading, the Commission considered applicable Amex rules that govern their trading. The Commission believes that generic listing standards for these securities should fulfill the intended objective of Rule 19b-4(e) under the Act<sup>29</sup> and allow those ETFs that satisfy the generic listing standards to commence trading without the need for public comment and Commission approval.<sup>30</sup>

#### *ETF Listing and Trading*

The Commission finds that the Amex proposal contains adequate rules and procedures to govern the listing of ETFs based on international or global indexes listed pursuant to Rule 19b-4(e) on the Exchange or trading pursuant to unlisted trading privileges (“UTP”).<sup>31</sup>

As proposed, Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A establish standards

<sup>20</sup> 17 CFR 240.19b-4(e).

<sup>27</sup> See Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A. See also Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000).

<sup>28</sup> See, e.g., Securities Exchange Act Release Nos. 50189 (August 12, 2004), 69 FR 51723 (August 20, 2004) (approving the listing and trading of certain Vanguard International Equity Index Funds); 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (approving the listing and trading of series of the iShares Trust based on certain S&P global indexes). Likewise, the Commission has approved listing standards that permit the listing and trading of index-based derivative securities where the same index had been considered in connection with the Commission's approval of another derivative security. See, e.g., Amex Company Guide Section 107D (Index-Linked Securities), Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005).

<sup>29</sup> 17 CFR 240.19b-4(e).

<sup>30</sup> The Commission notes that the failure of a particular 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), requesting Commission approval to list and trade a particular index-linked product.

<sup>31</sup> An exchange trading ETFs pursuant to UTP must comply with applicable trading rules and surveillance requirements for the derivative product. See Securities Exchange Act Release No. 35637 (April 21, 1995), 60 FR 20891 (April 28, 1995).

<sup>20</sup> 17 CFR 240.19b-4(e).

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> The Exchange notes that this is not a new requirement under the Exchange Act. The Exchange acknowledges that transparency of the index methodology is necessary for effective pricing of the derivative product and investor protection. See November 6 Telephone Conference, *supra* note 13.

<sup>23</sup> See Amex Rules 1000 through 1006 and 1000A through 1005A.

<sup>24</sup> In approving this 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>25</sup> 15 U.S.C. 78f(b)(5).

for the composition of an index or portfolio underlying an ETF. These requirements are designed, among other things, to require that components of an index or portfolio underlying an ETF are adequately capitalized and sufficiently liquid, and that no one stock dominates the index.

Taken together, the Commission finds that these standards are reasonably designed to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and that when applied in conjunction with the other applicable listing requirements, will permit the listing only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation. Similarly, the Commission finds that the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading in unregistered securities. The Commission further believes that the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs.

The proposed generic listing standards will, alternatively, permit listing of an ETF if the Commission has previously approved the underlying index for trading in connection with another derivative product and the underlying index or portfolio constituents are all either U.S. Component Stocks, which must be listed on a national securities exchange and be an NMS stock as defined in Rule 600(b)(47) of Regulation NMS under the Act,<sup>32</sup> or Non-US Component Stocks listed on an exchange that has last-sale reporting.<sup>33</sup> The Commission believes that if it has previously determined that such index and its components were sufficiently transparent, then the Exchange may rely on this finding, provided that the Exchange complies with the rules and conditions set forth by the Commission in its prior approval order, including surveillance sharing arrangements with the foreign market, if any.<sup>34</sup>

Regardless of whether the ETF is listed and/or traded pursuant to these generic listing standards, the Exchange's proposal also requires the value of an index or portfolio underlying an ETF based on a global or international index to be disseminated at least once every

60 seconds.<sup>35</sup> In addition, an Intraday Indicative Value, which represents an estimate of the value of a share of each ETF, must be updated and disseminated at least once every 15 seconds during the time an ETF trades on the Exchange.<sup>36</sup> The Commission believes that by requiring pricing information for both the relevant underlying index<sup>37</sup> and the ETF to be readily available and disseminated, the proposal is designed to ensure a fair and orderly market for ETFs listed and traded pursuant to Amex Rules 1000 and 1000A.

The Exchange proposes continued listing standards for all ETFs, whether listed pursuant to generic listing standards or by Commission approval of the specific product. In the event that an underlying index or portfolio value is no longer calculated on at least a 15 second basis or is substituted with an index that does not meet the applicable requirements, the Exchange will commence delisting proceedings. The Commission believes that this is an important safeguard to help assure that ETFs listed and traded on the Exchange meet applicable listing standards on an ongoing basis and do not, for example, trade without key pricing information available.

The Commission notes that each ETF will be required to represent that it will calculate and make available daily the NAV to all market participants at the same time. Furthermore, proposed Amex Rules 1002(b)(ii) and 1000A(b)(ii) require that, if the Intraday Indicative Value or index value applicable to an ETF is not disseminated as required, the Exchange may halt trading during the day in which the interruption occurs. If the interruption continues, then the Exchange will halt trading no later than the beginning of the next trading day. Similarly, if the Exchange deems further dealings in the product inadvisable, trading will be halted. The Commission believes that the delisting criteria, NAV dissemination requirements, and trading halt rules will help ensure an appropriate level of transparency exists with respect to each foreign ETF to

<sup>35</sup> See proposed Commentary .03(b)(iii) to Amex Rule 1000 and Commentary .02(b)(iii) to Amex Rule 1000A. To the extent an index or portfolio value does not change during some of the time that a foreign ETF trades on the Exchange, the last official calculated value must remain available throughout Exchange trading hours.

<sup>36</sup> See Commentary .03(c) to Amex Rule 1000 and Commentary .02(c) to Amex Rule 1000A. The Intraday Indicative Value will be updated to reflect changes in the exchange rate between the U.S. dollar and the currency in which any index or portfolio component stock is denominated.

<sup>37</sup> The requirement contemplates that one composite index value would be disseminated in accordance with this rule for any ETF based on several indexes.

allow for the maintenance of fair and orderly markets.

#### *Surveillance*

The Commission notes that any foreign ETFs approved for listing and trading would be subject to Amex's existing surveillance program for ETFs, which the Exchange has represented are adequate to properly monitor the trading of ETFs listed pursuant to these proposed generic listing standards.

#### *Acceleration*

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing in the **Federal Register**. The Exchange has requested accelerated approval of the proposal to facilitate the prompt listing and trading of ETFs based on global or international indexes or portfolios meeting the specified criteria and ETFs based on indexes or portfolios underlying derivative securities that were previously approved by the Commission. The Commission notes that the Exchange's listing standards are based, in part, on previously approved ETF listing standards relating to indexes or portfolios made up of U.S. Component Stocks or on Commission orders approving the listing and trading of ETFs based on global or international indexes. The Commission believes that accelerated approval of the proposal should expedite the listing and trading of additional ETFs, subject to consistent and reasonable standards, to the benefit of the investing public. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>38</sup> to approve the proposed rule change on an accelerated basis.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 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-2006-78 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

<sup>38</sup> 15 U.S.C. 78s(b)(2).

<sup>32</sup> 17 CFR 242.600(b)(47).

<sup>33</sup> See proposed Commentary .03(a)(C) to Amex Rule 1000 and Commentary .02(a)(C) to Amex Rule 1000A.

<sup>34</sup> The Commission notes that it has taken this position connection with listing standards for ILSs. See *supra* note 28.

Securities and Exchange Commission,  
100 F Street, NE., Washington, DC  
20549-1090.

All submissions should refer to File Number SR-Amex-2006-78. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2006-78 and should be submitted on or before December 8, 2006.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>39</sup> that the proposed rule change (SR-Amex-2006-78), as modified by Amendments No. 1 and 2, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>40</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-19415 Filed 11-16-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54732; File No. SR-NASDAQ-2006-044]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Modify the Rules of the Nasdaq Global Select Market

November 9, 2006.

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 October 10, 2006, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder<sup>4</sup> which renders the proposal effective upon filing with the Commission. On November 2, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the rules related to closed-end funds listed on the Nasdaq Global Select Market to clarify the treatment of business development companies. The text of the proposed rule change, as amended, is below. Proposed new language is *italicized*.<sup>6</sup>

\* \* \* \* \*

#### 4426. Nasdaq Global Select Market Listing Requirements

- (a) No change.
- (b) Liquidity Requirements
- (1)-(2) No change.
- (3) The publicly held shares must have either:
  - (A)-(B) No change.
  - (C) a market value of at least \$70 million in the case of: (i) An issuer

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

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

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

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

<sup>5</sup> In Amendment No. 1, Nasdaq, among other things, added the requirement of \$80 million market value of listed securities for business development companies exempt from registration pursuant to the Investment Company Act of 1940.

<sup>6</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://www.complinet.com/nasdaq>.

listing in connection with its initial public offering; (ii) an issuer that is affiliated with, or a spin-off from, another company listed on the Global Select Market; and (iii) a closed end management investment company registered under the Investment Company Act of 1940 or exempt from registration as a business development company as defined in Section 2 of the Investment Company Act of 1940.

(c)-(d) No change.

(e) Closed End Management Investment Companies.

(1)-(2) No change.

(3) *A closed end management investment company that is exempt from registration as a business development company as defined in Section 2 of the Investment Company Act of 1940 shall not be required to meet paragraph (c) of this Rule 4426 but must have a market value of listed securities of at least \$80 million.*

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, as amended, 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. Nasdaq 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

Nasdaq recently amended the listing standards for the Nasdaq Global Select Market, in part, to clarify the treatment of closed-end management investment companies.<sup>7</sup> In that filing, Nasdaq inadvertently failed to describe the rules applicable to closed end management investment companies that elect to be treated as business development companies. This filing clarifies that, like other closed-end funds, business development companies do not have to meet the financial requirements of Nasdaq Rule 4426(c). However, such companies must have a market value of

<sup>7</sup> See Securities Exchange Act Release No. 54274 (August 3, 2006), 71 FR 45878 (August 10, 2006) (SR-NASDAQ-2006-020).

<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> 17 CFR 200.30-3(a)(12).