

Act,<sup>6</sup> in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which Nasdaq operates or controls.

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

Nasdaq does not believe that the proposed rule change will result in any 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*

Written comments were neither solicited nor received.

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

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>8</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2006-059 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-NASDAQ-2006-059. 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 the filing also will be available for inspection and copying at the principal office of Nasdaq. 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-NASDAQ-2006-059 and should be submitted on or before February 14, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 07-284 Filed 1-23-07; 8:45 am]

**BILLING CODE 8011-01-M**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55113; File No. SR-NYSE-2006-101]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendments No. 1 and 2 Thereto Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Indexes Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities**

January 17, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 21, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") 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 Exchange. On January 11, 2007, the Exchange filed Amendment No. 1 to the proposal. On January 16, 2007, the Exchange filed Amendment No. 2 to the proposal. This order provides notice of the proposed rule change as amended and approves the proposed rule change as amended on an accelerated basis.

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

The text of the proposed rule change is available at the Exchange, from the Commission's Public Reference Room, and on NYSE's Web site (<http://www.nyse.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, 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

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

1. Purpose

The Exchange proposes to revise Section 703.16 of the NYSE Listed Company Manual ("Manual") to include generic listing standards for series of Investment Company Units ("ICUs") (which are also referred to herein as "exchange-traded funds" or "ETFs") that are based on international or global indexes, or on indexes described in rules previously approved by the Commission under Section 19(b)(2) of the Exchange Act<sup>3</sup> for the trading of ETFs, options, or other index-based securities. This proposal would enable the Exchange to list and trade ETFs pursuant to Rule 19b-4(e) under the Exchange Act<sup>4</sup> if each of the conditions set forth in Section 703.16 of the Manual 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>5</sup>

*Exchange-Traded Funds*

NYSE Rule 1100 and Section 703.16 of the Manual provide standards for listing ICUs, which are securities issued by a unit investment trust, an open-end management investment company (*i.e.*, an open-end mutual fund), or similar entity 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. Pursuant to Section 703.16 of the Manual, an ICU eligible for listing on the Exchange must be issued in a specified aggregate number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value ("NAV"). When aggregated in the same specified minimum number, the ICU must be redeemable by the

issuer for the securities and/or cash, with a value equal to the next determined NAV. The NAV is calculated once a day after the close of the regular trading day.

To meet the investment objective of providing investment returns that correspond to the price and the dividend and yield performance of the underlying index, an ETF may use a "replication" strategy or a "representative sampling" strategy with respect to the ETF portfolio.<sup>6</sup> An ETF using a replication strategy will invest in each stock of the underlying index in about the same proportion as that stock is represented in the index itself. An ETF using a representative sampling strategy will generally invest in a significant number but not all of the component securities of the underlying index, and will hold stocks that, in the aggregate, are intended to approximate the full index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code ("IRC").<sup>7</sup>

*Generic Listing Standards for Exchange-Traded Funds*

The Commission has previously approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. exchanges.<sup>8</sup> In

<sup>6</sup> In either case, an ETF, by its terms, may be considered invested in the securities of the underlying index to the extent the ETF invests in sponsored American Depositary Receipts ("ADRs"), Global Depositary Receipts ("GDRs"), or European Depositary Receipts ("EDRs") that trade on exchanges with last-sale reporting representing securities in the underlying index.

<sup>7</sup> For an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC. Among these is the requirement that, at the close of each quarter of the ETF's taxable year, (1) at least 50% of the market value of the ETF's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies, and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the ETF's assets and not greater than 10% of the outstanding voting securities of such issuer; and (2) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the ETF (within the meaning of Section 851(b)(4)(B) of the IRC) and that are engaged in the same or similar trades or businesses or related trades or businesses (other than U.S. government securities or the securities of other regulated investment companies).

<sup>8</sup> In 1996, the Commission approved Section 703.16 of the Listed Company Manual, which sets forth the rules related to the listing of ICUs. *See*

general, the proposed criteria for the underlying component securities in the international and global indexes are similar to those for the domestic indexes, but with modifications as appropriate for the issues and risks associated with non-U.S. securities.

In addition, the Commission has previously approved rules governing the listing and trading of ETFs based on international indexes—those based on non-U.S. component stocks—as well as global indexes—those based on non-U.S. and U.S. component stocks.<sup>9</sup>

The Commission also has approved rules of other exchanges that permit the listing pursuant to Rule 19b-4(e) of index-based derivatives where the Commission had previously approved rules contemplating the trading of specified index-based derivatives on the same index, on the condition that all of the standards set forth in those orders, in particular with respect to surveillance sharing agreements, continued to be satisfied.<sup>10</sup>

In approving ETFs for Exchange trading, the Commission thoroughly considered the structure of the ETFs, their usefulness to investors and to the markets, and NYSE rules that govern their trading. The Exchange believes that adopting additional generic listing standards for these securities and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for the public comment period and Commission approval. The proposed rules have the potential to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular index to comply with the proposed generic listing standards under Rule 19b-4(e) would

Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR-NYSE-95-23). In 2000, the Commission approved the Exchange's generic listing standards for the listing and trading, or the trading pursuant to unlisted trading privileges, of ICUs under Section 703.16 of the Manual and Exchange Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR-NYSE-00-46).

<sup>9</sup> *See, e.g.*, Securities Exchange Act Release No. 52178 (July 29, 2005), 70 FR 46244 (August 9, 2005) (SR-NYSE-2005-41) (approving listing of iShares MSCI EAFE Growth Fund and iShares MSCI EAFE Value Fund); Securities Exchange Act Release No. 54458 (September 15, 2006), 71 FR 55248 (September 21, 2006) (SR-NYSE-2006-60) (approving listing of iShares S&P Global Index Funds).

<sup>10</sup> *See, e.g.*, Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR-Amex-2005-001); Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63).

<sup>3</sup> 15 U.S.C. 78s(b)(2).

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

<sup>5</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 exchange begins trading the new derivative securities products. *See* 17 CFR 240.19b-4(e)(2)(ii).

not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular ETF.

*Requirements for Listing and Trading ETFs Based on International and Global Indexes*

Exchange-traded funds listed pursuant to these generic listing standards would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to ETFs and would be covered under the Exchange's surveillance program for ETFs.<sup>11</sup>

To list an ETF pursuant to the proposed generic listing standards for international and global indexes, the index underlying an ETF must satisfy all the conditions contained in proposed Section 703.16(C)(2)(b) of the Manual. As with the existing generic standards for ETFs based on domestic indexes, 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. While the standards in this proposal are based on the standards contained in the current generic listing standards for ETFs based on domestic indexes, they have been adapted as appropriate to apply to international and global indexes.

As proposed, Section 703.16(B) of the Manual would be amended to include definitions of U.S. Component Stock and Non-U.S. 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-U.S. Component Stock" would mean an equity security that is not registered under Section 12(b) or 12(g) of the Exchange Act,<sup>12</sup> 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 a real estate investment trust (REIT) or income trust, but excluding an investment trust, unit trust, mutual fund, or derivative). This definition is designed to create a category of component stocks that are issued by companies that are not based in the United States, are not subject to oversight through Commission registration, and would include sponsored GDRs and EDRs. A "U.S. Component Stock" would mean an equity security that is registered under Section 12(b) or 12(g) of the Exchange

Act or an ADR the underlying equity security of which is registered under Section 12(b) or 12(g) of the Exchange Act. An ADR with an underlying equity security that is registered pursuant to the Exchange Act is considered a U.S. Component Stock because the issuer of that security is subject to Commission jurisdiction and must comply with Commission rules.

The Exchange proposes that, to list an ICU 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 each must have a minimum market value of at least \$100 million (Section 703.16(C)(2)(b)(i));

- Component stocks representing 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 (Section 703.16(C)(2)(b)(ii));

- 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 (Section 703.16(C)(2)(b)(iii));

- The index or portfolio shall include a minimum of 20 component stocks (Section 703.16(C)(2)(b)(iv)); and

- Each U.S. Component Stock must be listed on a national securities exchange and an NMS stock as defined in Rule 600 of Regulation NMS under the Exchange Act, and each Non-U.S. Component Stock must be listed on an exchange that has last-sale reporting (Section 703.16(C)(2)(b)(v)).

The Exchange believes that the proposed standards are reasonable for international and global indexes, and, when applied in conjunction with the other listing requirements, would result in the listing and trading on the Exchange of ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that the proposed standards would result in ETFs that are adequately diversified in weighting for any single security or small group of securities to significantly reduce concerns that trading in an ETF based on an international or global index could become a surrogate for trading in unregistered securities.

The Exchange further notes that, while these standards are similar to those for indexes that include only U.S. Component Stocks, they differ in certain

important respects and are generally more restrictive, reflecting greater concerns over portfolio diversification with respect to ETFs investing in components that are not individually registered with the Commission. First, in the proposed standards, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million, compared to a minimum market value of at least \$75 million for indexes with only U.S. Component Stocks. (Market value is calculated by multiplying the total shares outstanding by the price per share of the component stock.) Second, in the proposed standards, the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, in contrast to a 30% standard for an index or portfolio comprised of only U.S. Component Stocks. Third, in the proposed standards, the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio, compared to a 65% standard for indexes comprised of only U.S. Component Stocks. Fourth, the minimum number of stocks in the proposed standards is 20, in contrast to a minimum of 13 in the standards for an index or portfolio with only U.S. Component Stocks. Finally, the proposed standards require that each Non-U.S. Component Stock included in the index or portfolio be listed and traded on an exchange that has last-sale reporting.

The Exchange also proposes to modify Section 703.16(C)(3) to require that the index value for an ETF listed pursuant to the proposed standards for international and global indexes be widely disseminated by one or more major market data vendors at least every 60 seconds during the time when the ETF shares trade 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. In contrast, the index value for an ETF listed pursuant to the existing standards for domestic indexes must be disseminated at least every 15 seconds during the trading day. This modification reflects limitations, in some instances, on the frequency of intra-day trading information with respect to Non-U.S. 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, Section 703.16(C)(3) would be modified to define the term

<sup>11</sup> See e.g., NYSE Rule 1100.

<sup>12</sup> 15 U.S.C. 78l(b) or (g).

“Intraday Indicative Value” (“IIV”) as the estimate, updated at least every 15 seconds, of the value of a share of each ETF, for ease of reference. The Exchange also proposes to clarify in Section 703.16(C)(3) that the IIV would 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.

The Exchange is also proposing to add a Section 703.16(C)(6) regarding the creation and redemption process for ETFs and compliance with federal securities laws for, in particular, ETFs listed pursuant to the new generic listing standards. This new subsection would apply to ICUs listed pursuant to Section 703.16(C)(2)(b) or (c). It would require that the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940<sup>13</sup> for the ETF being listed pursuant to these new standards must state that the ETF must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.<sup>14</sup>

The Commission has approved generic standards providing for the listing pursuant to Rule 19b-4(e) of other derivative products based on indexes described in rules previously approved by the Commission under Section 19(b)(2) of the Exchange Act. The Exchange proposes to include in the generic standards for the listing of ICUs indexes that have been approved by the Commission in connection with the listing of options, ICUs, Index-Linked Exchangeable Notes, or Index-Linked Securities. The Exchange believes that the application of that standard to ETFs is appropriate because the underlying index would have been subject to detailed and specific Commission review in the context of the approval of listing of those other derivatives.<sup>15</sup>

This new generic standard would be limited to stock indexes and would

require that each component stock be either: (1) a U.S. Component Stock that is listed on a national securities exchange and is an NMS stock as defined in Rule 600 of Regulation NMS; or (2) a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

The Exchange is also proposing to include additional continued listing standards relating to ETFs. The Exchange would commence delisting proceedings if the value of the index or portfolio of securities on which the ETF is based is no longer calculated or disseminated.

The Exchange proposes to modify the Original Unit Listing Standards in Section 703.16(A) of the Manual to formalize in the rules existing best practices for providing equal access to material information about the value of ETFs. Pursuant to proposed Section 703.16(A)(6), prior to approving an ETF for listing, the Exchange would obtain a representation from the ETF issuer that the NAV per share would be calculated daily and made available to all market participants at the same time.

Proposed Rule 1100(f) sets out the trading halt parameters for ETFs. In particular, proposed Rule 1100(f)(1) sets out that, where the Exchange is the listing market for an ICU, if the IIV or the index value applicable to that series of ICUs is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the index value occurs. If the interruption to the dissemination of the IIV or the index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

Proposed Rule 1100(f)(2) provides that, for series of ICUs admitted to dealings by the Exchange on the basis of unlisted trading privileges (“UTP”), during the hours for trading of ICUs on the Exchange, if a temporary interruption occurs in the calculation or wide dissemination of the applicable IIV or value of the underlying index by a major market data vendor and the listing market halts trading in a series of ICUs, the Exchange, upon notification by the listing market of such halt due to such temporary interruption, also shall immediately halt trading in the series of ICUs on the Exchange. If the IIV or the value of the underlying index continues not to be calculated or widely available as of the commencement of trading on the Exchange on the next business day, the Exchange shall not commence trading of the series of ICUs that day. If an interruption in the calculation or

wide dissemination of the IIV or the value of the underlying index continues, the Exchange may resume trading in the series of ICUs only if calculation and wide dissemination of the IIV or the value of the underlying index resumes or trading in such series resumes in the listing market.

The Exchange is proposing other minor and clarifying changes to Section 703.16. Section 703.16(C)(2)(a)(v) has been modified to reflect the adoption of Regulation NMS. Proposed Section 703.16(C)(4)(c) has been added to make sure that an entity that advises index providers or calculators and related entities has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of ICUs listed pursuant to the proposed new listing standards or traded pursuant to UTP. In addition, the Exchange has a general policy prohibiting the dissemination of material, non-public information by its employees.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Exchange Act<sup>16</sup> in general and furthers the objectives of Section 6(b)(5)<sup>17</sup> 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.

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

The Exchange does not believe that the proposed rule change would 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 80a *et seq.*

<sup>14</sup> 15 U.S.C. 77a *et seq.*

<sup>15</sup> For example, rules of the American Stock Exchange LLC (“Amex”) and NYSE Arca, Inc. provide that one element of the standards for listing Index-Linked Securities pursuant to Rule 19b-4(e) is the previous review and approval for trading of options or other derivatives by the Commission under Section 19(b)(2) of the Exchange Act and rules thereunder. *See supra* note 10.

including whether the proposed rule change is consistent with the Exchange 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-NYSE-2006-101 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-NYSE-2006-101. 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 NYSE. 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-NYSE-2006-101 and should be submitted on or before February 14, 2007.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities

exchange.<sup>18</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Exchange Act<sup>19</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, 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.

Currently, the Exchange must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act<sup>20</sup> and Rule 19b-4 thereunder<sup>21</sup> to list and trade any ETF based on an index comprised of foreign securities. The Exchange also must file a proposed rule change to list and trade ETFs based on indexes or portfolios previously approved by the Commission as underlying benchmarks for derivative securities. However, Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Exchange 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 pursuant to Rule 19b-4(e) based on (1) certain indexes with components that include foreign securities or (2) indexes or portfolios previously approved by the Commission as underlying benchmarks for derivative securities fulfill these requirements. Use of Rule 19b-4(e) by NYSE to list and trade such ETFs should promote competition, reduce burdens on issuers and other market participants, and make such ETFs available to investors more quickly.<sup>22</sup>

The Commission previously has approved generic listing standards for another exchange, Amex, that are substantially similar to those proposed

here by NYSE.<sup>23</sup> This proposal does not appear to raise any novel regulatory issues. Therefore, the Commission finds that NYSE's proposal is consistent with the Exchange Act on the same basis that it approved Amex's generic listing standards for ETFs based on international or global indexes or on indexes or portfolios previously approved by the Commission as underlying benchmarks for derivative securities.

Proposed Section 703.16(C)(2)(b) of the Manual establishes standards 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 the ETF are adequately capitalized and sufficiently liquid, and that no one security dominates the index. The Commission believes that, taken together, these standards are reasonably designed to ensure that securities 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 and trading only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation. The Commission further believes that the proposed listing standards are reasonably designed to preclude NYSE from listing and trading ETFs that might be used as surrogate for trading in unregistered securities. The requirement that each component security underlying an ETF be an NMS stock (in the case of a U.S. Component Stock) or listed on an exchange and subject to last-sale reporting (in the case of a Non-U.S. Component Stock) should contribute to the transparency of the market for these ETFs.

The proposed generic listing standards also will permit NYSE to list and trade an ETF if the Commission has previously approved an SRO rule change that contemplates listing and trading a derivative product based on the same underlying index. NYSE would be able to rely on that earlier approval order, provided that (1) the securities comprising the underlying index consist of U.S. Component Stocks or Non-U.S. Component Stocks as set

<sup>18</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>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 15 U.S.C. 78s(b)(1).

<sup>21</sup> 17 CFR 240.19b-4.

<sup>22</sup> The Commission notes, however, that the failure of a particular ETF to meet these generic listing standards would not preclude the Exchange from submitting a separate proposed rule change to list and trade the ETF.

<sup>23</sup> See Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-Amex-2006-78) (approving generic listing standards for series of portfolio depository receipts and index fund shares based on international or global indexes); Securities Exchange Act Release No. 55018 (December 28, 2006), 72 FR 1040 (January 9, 2007) (SR-Amex-2006-109) (making clarifying changes to the generic listing standards set forth in SR-Amex-2006-78).

forth in Section 703.16(B) of the Manual and (2) NYSE complies with the commitments undertaken by the other SRO set forth in the prior order, including any surveillance-sharing arrangements with a foreign market.

The Commission believes that NYSE's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>24</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange's proposal also requires the value of the index or portfolio underlying an ETF based on a global or international index to be disseminated at least once every 60 seconds during Exchange trading hours.<sup>25</sup> In addition, an IIV, 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>26</sup> The IIV 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. In the event that an underlying index or portfolio value is no longer calculated or disseminated, the Exchange has represented that it would commence delisting proceedings for the associated ETF. Furthermore, the issuer of an ETF listed under the proposed rules will be required to represent that it will calculate the NAV and make it available daily to all market participants at the same time.<sup>27</sup>

The Exchange's trading halt rules are reasonably designed to prevent trading in an ETF when transparency cannot be assured. Proposed NYSE Rule 1100(f)(1) provides that, when the Exchange is the listing market, if the IIV 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. In addition, proposed NYSE Rule 1100(f)(2) sets forth trading halt

procedures when the Exchange trades the ETF pursuant to UTP. This proposed rule is substantially similar to that recently adopted by another exchange, NYSEArca.<sup>28</sup>

In approving this proposal, the Commission relied on NYSE's representation that its surveillance procedures are adequate to properly monitor the trading of ICUs listed pursuant to the proposed new listing standards or traded pursuant to unlisted trading privileges. This approval is conditioned on the continuing accuracy of that representation.

#### 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 thereof in the **Federal Register**. The Commission notes that NYSE's proposal is substantially similar to an Amex proposal that has been approved by the Commission.<sup>29</sup> The Commission does not believe that NYSE's proposal raises any novel regulatory issues and, therefore, that good cause exists for approving the filing before the conclusion of a notice-and-comment period. Accelerated approval of the proposal will expedite the listing and trading of additional ETFs by the Exchange, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Exchange Act,<sup>30</sup> to approve the proposed rule change, as amended, on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>31</sup> that the proposed rule change (SR-NYSE-2006-101), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>32</sup>

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55120; File No. SR-NYSE-2006-110]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Relating to Its Linkage Order Fee

January 18, 2007.

On December 6, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to retroactively apply an increase in the fee ("Linkage Order Fee") it charges its member organizations in connection with orders in equities executed in another market pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage ("Linkage Plan"). The proposal was published for comment in the **Federal Register** on December 15, 2006.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Exchange proposes to retroactively apply, as of December 1, 2006, an increase from \$0.00025 to \$0.000275 per share in the Linkage Order Fee it charges its member organizations in connection with orders in equities executed in another market pursuant to the Linkage Plan. This increase in the Linkage Order Fee became effective on Monday, December 4, 2006, pursuant to a previous rule change submitted by the Exchange.<sup>4</sup> The Linkage Order Fee was increased to \$0.000275 to set it at the same level as the regular equity transaction fee, which was increased to that level as of December 1, 2006.<sup>5</sup> The current filing simply applies the revised Linkage Order Fee to transactions that occurred on December 1, 2006, which is the only business day with respect to which the Linkage Order Fee and the regular equity transaction fee were not harmonized by the previous filing. The Exchange wishes to harmonize the Linkage Order Fee payable on

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

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

<sup>3</sup> See Securities Exchange Act Release No. 54912 (December 11, 2006), 71 FR 75601.

<sup>4</sup> See Securities Exchange Act Release No. 54911 (December 11, 2006), 71 FR 75603 (December 15, 2006) (notice of filing and immediate effectiveness of SR-NYSE-2006-108).

<sup>5</sup> See Exchange Act Release No. 54856 (December 1, 2006); 71 FR 71215 (December 8, 2006) (SR-NYSE-2006-106).

<sup>24</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>25</sup> See proposed Section 703.16(C)(3) of the Manual. If an index or portfolio value does not change for some of the time that the ETF trades on the Exchange, the last official calculated value must remain available throughout Exchange trading hours.

<sup>26</sup> See *id.*

<sup>27</sup> See proposed Section 703.16(A)(6) of the Manual.

<sup>28</sup> See Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR-NYSEArca-2006-77).

<sup>29</sup> See *supra* note 23.

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> *Id.*

<sup>32</sup> 17 CFR 200.30-3(a)(12).