

Foreign Funds will operate in a manner substantially similar to the existing Funds and will comply with all of the terms, provisions and conditions of the Prior Order, as amended by the present application. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

#### *Section 22(e) of the Act*

5. Applicants also seek to amend the Prior Order to add relief from section 22(e) of the Act. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. The principal reason for the requested exemption is that settlement of redemptions for the Foreign Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the Foreign Funds. Applicants state that local market delivery cycles for transferring certain foreign securities to investors redeeming Creation Units, together with local market holiday schedules, will under certain circumstances require a delivery process in excess of seven calendar days for the Foreign Funds. Applicants request relief under section 6(c) from section 22(e) in such circumstances to allow the Foreign Funds to pay redemption proceeds up to 12 calendar days after the tender of a Creation Unit for redemption. At all other times and except as disclosed in the relevant prospectus and/or statement of additional information ("SAI"), applicants expect that each Foreign Fund will be able to deliver redemption proceeds within seven days.<sup>2</sup> With respect to Future Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

6. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are

<sup>2</sup> Rule 15c6-1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6-1.

expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant Foreign Fund.

#### **Future Relief**

7. Applicants also seek to amend the Prior Order to modify the terms under which the Trust may offer additional series in the future based on other equity securities indices ("Future Funds"). The Prior Order is currently subject to a condition that does not permit relief for Future Funds unless applicants request and receive with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or the Future Fund could be listed on a national securities exchange ("Exchange") without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

8. The order would amend the Prior Order to delete this condition. Any Future Funds will: (a) Be advised by the Adviser or an entity controlled by or under common control with the Adviser; (b) track underlying equity securities indices that are created, compiled, sponsored or maintained by an entity that is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Adviser, the Distributor, the Trust or any subadviser or promoter of a Future Fund; and (c) comply with the respective terms and conditions of the Prior Order, as amended by the present application.

9. Applicants believe that the modification of the future relief available under the Prior Order would be consistent with sections 6(c) and 17(b) of the Act and that granting the requested relief will facilitate the timely creation of Future Funds and the commencement of secondary market trading of such Future Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Order have been appropriate for the existing Funds and would remain appropriate for Future Funds. Applicants also submit that tying exemptive relief under the Act to the ability of a Future Fund to be listed on an Exchange without the need for a rule 19b-4 filing under the Exchange Act is not necessary to meet the standards under sections 6(c) and 17(b) of the Act.

#### **Applicants' Condition**

Applicants agree that any amended order granting the requested relief will be subject to the same conditions as

those imposed by the Prior Order, except for condition 1 to the Prior Order, which will be deleted.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-55182; File No. SR-Amex-2006-19]**

### **Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto Relating to the Listing and Trading of Options on the Nuveen Municipal Fund Index**

January 26, 2007.

#### **I. Introduction**

On February 17, 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 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade options on the Price-Return Nuveen Municipal Closed-End Fund Index ("NMUNP") ("the Nuveen Municipal Fund Index" or "Index"). On July 12, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. On September 19, 2006, the Exchange filed Amendment No. 2 to the proposed rule change. On November 13, 2006, the Exchange filed Amendment No. 3 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on December 6, 2006.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### **II. Description of the Proposal**

The Exchange seeks to list and trade cash-settled, European-style index options on the Price-Return Nuveen Municipal Fund Index. Options on the Index will be the first index options based on an index of closed-end funds, and are intended for the use of investors desiring to achieve exposure to a broad section of the national tax-free

<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. 54813 (November 22, 2006), 71 FR 70801.

municipal closed-end fund market, as well as a hedging vehicle for those investors holding such closed-end funds.

The Index is a capitalization-weighted index based entirely on the shares of Closed-End Funds listed on either the Amex, New York Stock Exchange, Inc. (the "NYSE") or the Nasdaq Stock Market, Inc. ("Nasdaq") that are exempt from federal income tax through investment in bonds issued by state and local governments and agencies. Each component is a NMS stock as defined in Rule 600 under the Securities Exchange Act of 1934 (the "1934 Act"). Currently, the Index is comprised of the shares of Closed-End Funds that are listed on the Amex or NYSE.

#### A. Index Design and Composition

The Nuveen Municipal Fund Index is designed to be a broad representation of the U.S. municipal fund market. This Index is capitalization-weighted and includes only those Closed-End Funds domiciled in the U.S. and its territories and that are traded on the Amex, NYSE, or Nasdaq. The component Closed-End Funds are weighted by their market capitalization, which is calculated by multiplying the primary market price by the outstanding shares.

Each of the component Closed-End Funds are required to have a minimum market capitalization of at least \$100 million and an average monthly trading volume over the prior six (6) months of at least 500,000 shares. In addition, for newly listed Closed-End Funds to be an index component, at least one (1) dividend payment with an ex-date prior to inclusion in the Index is required.

The Index is calculated based on a market capitalization weighting methodology. In a market capitalization index, components are weighted based on total market value of the outstanding shares, *i.e.*, share price times the number of shares outstanding. The Exchange states that this type of index typically fluctuates in line with the price moves of the components. After the initial weighting of the Index, the weights are updated in conjunction with scheduled quarterly adjustments.

As of January 31, 2006, the Closed-End Funds comprising the Nuveen Municipal Fund Index had an average market capitalization of \$414 million, ranging from a high of \$1.9 billion (Nuveen Municipal Value Fund Inc. (NUV)) to a low of \$101 million (MBIA Capital/Claymore Managed Duration Investment Grade Municipal Fund (MZF)). The number of available shares outstanding ranged from a high of 194.9 million (NUV) to a low of 7.9 million (MZF), and averaged 31.9 million

shares. The six-month average daily trading volume for Index components was 45,000 shares per day, ranging from a high of 159,100 shares per day (NUV) to a low of 13,100 shares per day (Morgan Stanley Quality Municipal Securities (IQM)).

#### B. Index Calculation and Maintenance

The value of the Index will be calculated by the Amex on behalf of Nuveen and will be disseminated at 15-second intervals during regular Amex trading hours to market information vendors via the Consolidated Tape Association ("CTA") or by other major market data vendors (from another Amex market data feed). The Amex is responsible for making all necessary adjustments to the Index to reflect component deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. In the event of component or share weight changes to the Index portfolio, the payment of dividends other than ordinary cash dividends, spin-offs, rights offerings, recapitalization, or other corporate actions affecting a component of the Index, the index divisor may be adjusted to ensure that such corporate actions do not affect the Index level.

The Exchange states that the methodology used to calculate the value of the Nuveen Municipal Fund Index is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes. The level of the Index reflects the total market value of the component Closed-End Funds relative to a particular base period and is computed by dividing the total market value of the Closed-End Funds in the Index by the index divisor. The divisor is adjusted periodically to maintain consistent measurement of the Index.

The Index is reviewed each December, March, June, and September to ensure that at least 90% of the Index weight is accounted for by components that continue to represent the universe of Closed-End Funds that meet the Index methodology maintenance requirements. To remain in the Index, components must maintain a market capitalization of at least \$75 million and have a six (6) month average monthly trading volume over 250,000 shares. Changes to Index components and/or the component share weights typically take effect after the close of trading on the third Friday of each calendar quarter month in connection with quarterly

rebalancing. The Amex and Nuveen,<sup>4</sup> by mutual agreement, may change the number of issues comprising the Index by adding or deleting one or more components contained in the Index with one or more substitute Closed-End Funds.

#### C. Continued Listing Standards

The Exchange will apply the following maintenance standards for continued listing: (i) The number of securities in the Index may not drop by one-third or more from the number of components in the Index at the time of initial listing;<sup>5</sup> (ii) no more than 10% or more of the weight of the Index is represented by component securities having a market value of less than \$75 million; (iii) no more than 10% of the weight of the Index is represented by component securities trading less than 15,000 shares per day; (iv) the largest component security in the Index accounts for no more than 15% of the weight of the Index, or the largest five components in the aggregate account for more than 50% of the weight of the Index on the first day of January and July each year; or (v) the component securities will be listed and traded on the Amex, the NYSE, or NASDAQ.<sup>6</sup>

If the Index ceases to be maintained or calculated, or its values are not disseminated at least every 15 seconds by the Amex over the CTA (or another major market data vendor) or the above Index maintenance standards are not satisfied, the Exchange would not list

<sup>4</sup> The Commission notes that Nuveen, because it selects the components for the Index, has represented to Amex that it prohibits individuals at Nuveen who will be privy to information about future changes to the Nuveen Municipal Fund Index rules or constituent stocks from trading on that information, for their own benefit or for the benefit of Nuveen's clients. Additionally, Nuveen has represented that it has firewalls around the personnel who have access to information concerning changes and adjustments to the Index. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission on November 17, 2006.

<sup>5</sup> The Exchange states that the Index currently has 86 components, and therefore, may not be comprised of less than 57 components. This representation replaces any prior representation to the effect that the Index could be comprised of no less than 10 components. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission on November 17, 2006.

<sup>6</sup> These maintenance standards are adapted from Commentary .03 of Amex Rule 901C to address the unique characteristics of the closed-end fund Index components, which may not always satisfy Commentary .03(4) of Amex Rule 901C. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission on November 23, 2006.

any additional series for trading and would limit all transactions in options on the Index to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

#### D. Contract Specifications

Options on the Nuveen Municipal Fund Index will expire on the Saturday following the third Friday of the expiration month. Trading in options on the Index will normally cease at 4:15 p.m. Eastern time ("ET") on the Thursday preceding an expiration Saturday. The exercise settlement value at expiration of each Nuveen Municipal Fund Index option will be calculated by the Amex on behalf of Nuveen, based on the opening prices of the Index's component Closed-End Funds on the last business day prior to expiration ("Settlement Day").<sup>7</sup> The Settlement Day is normally the Friday preceding "Expiration Saturday." If a component Closed-End Fund in the Index does not trade on Settlement Day, the last reported sales price in the primary market from the previous trading day would be used to calculate the settlement value. Settlement values for the Index will be disseminated by the Amex over the CTA.

#### E. Trading Rules

The Nuveen Municipal Fund Index is a broad stock index group as defined in Amex Rule 900C(b)(1). Options on the Index would be European-style and a.m. cash-settled. The Exchange's standard trading hours for broad-based index options (9:30 a.m. to 4:15 p.m. ET), as set forth in Commentary .02 to Amex Rule 1, will apply to options on the Nuveen Municipal Fund Index. Exchange rules that apply to the trading of options on broad-based indexes will also apply to options on the Index.<sup>8</sup> The trading of these options will also be subject to, among others, Exchange rules governing margin requirements and trading halt procedures for index options.

For options on the Nuveen Municipal Fund Index, the Exchange proposes to establish an aggregate position limit of 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in the nearest expiration month series.<sup>9</sup> Commentary .01(c) to Rule 904C provides that position limits for hedged index options may not exceed twice the established position limits for broad

stock index groups. The Exchange proposes that a hedge exemption of 37,500 be available for the Index. Furthermore, proprietary accounts of member organizations could receive an exemption of up to three times the established position limit for the purpose of facilitating public customer orders, to the extent they comply with the procedures and criteria listed in Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE.

The Exchange proposes to apply broad-based index margin requirements for the purchase and sale of options on the Nuveen Municipal Fund Index. Accordingly, purchases of put or call options with nine months or less until expiration would have to be paid for in full. Writers of uncovered put or call options would have to deposit/maintain 100% of the option proceeds, plus 15% of the aggregate contract value (current index level x \$100), less any out-of-the-money amount, subject to a minimum of the option proceeds plus 10% of the aggregate contract value for call options and a minimum of the option proceeds plus 10% of the aggregate exercise price amount for put options.

The Exchange proposes to set a strike price interval of at least 2½ points, at a minimum, for a near-the-money series in a near-term expiration month when the level of the Index is below 200, a 5-point strike price interval, at a minimum, for any options series with an expiration up to one year, and at least a 10-point strike price interval for any longer-term option. The minimum tick size for series trading below \$3 would be \$0.05, and for series trading at or above \$3 would be \$0.10.

The Exchange proposes to list options on the Index in the three consecutive near-term expiration months, plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.<sup>10</sup> In addition, long-term option series having up to 60 months to expiration will be traded.<sup>11</sup> The trading of long-term options on the Index will be subject to the same rules that govern all the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

#### F. Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options on the Nuveen Municipal Fund Index and intends to apply those same procedures that it applies to the

Exchange's other index options. In addition, the Exchange is a member of the Intermarket Surveillance Group ("ISG"). The ISG members work together to coordinate surveillance and share information regarding the stock and options markets.

The Exchange also represents that it has the necessary systems capacity to support the new options series that would result from the introduction of options on the Nuveen Municipal Fund Index, including long-term options.

### III. Discussion and Commission's Findings

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.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>13</sup> and will promote just and equitable principles of trade, and facilitate transactions in securities, and, in general, protect investors and the public interest.

The Commission notes that the Nuveen Municipal Fund Index (i) is designed broadly to represent the U.S. national tax-free municipal closed-end fund market with a current composition of eighty-six (86) closed-end funds that are listed on U.S. securities exchanges and (ii) shall be comprised of no fewer than fifty-seven (57) component closed-end funds at any time.

Currently, the Index is broad-based and well-diversified. In the event, however, that the Index's characteristics change materially from the characteristics described herein and on which the Commission is basing its findings, the Exchange would not rely on this approval order to list and trade these options. Under such circumstances, the Exchange would not list any additional series for trading and would limit all transactions in options on the Index to closing transaction.

The Commission notes that while the Index will be monitored and maintained by Nuveen, the value of the Index will be calculated and disseminated by the Exchange in 15-second intervals throughout the trading day. The Exchange will limit transactions to closing transactions if the Index value is not calculated and disseminated by a major market data vendor or the CTA at least every 15-seconds during the time the options trade on the Exchange.

<sup>7</sup> The aggregate exercise value of the option contract is calculated by multiplying the Index value by the Index multiplier, which is 100.

<sup>8</sup> See Amex Rules 900C through 980C.

<sup>9</sup> The same limits that apply to position limits would apply to exercise limits for these products.

<sup>10</sup> See Amex Rule 903C(a).

<sup>11</sup> See Amex Rule 903C(a)(iii).

<sup>12</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

The Commission notes that Nuveen, because it selects the components for the Index, has represented to Amex that it prohibits individuals at Nuveen who will be privy to information about future changes to the Nuveen Municipal Fund Index rules or constituent stocks from trading on that information, for their own benefit or for the benefit of Nuveen's clients. Additionally, Nuveen has represented that it has firewalls around the personnel who have access to information concerning changes and adjustments to the Index. Additionally, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing index options, which it states are adequate to deter as well as detect any potential manipulation.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Amex-2006-19), as modified by Amendment Nos. 1, 2 and 3, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55213; File No. SR-Amex-2006-118]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Generic Listing Standards for Series of Portfolio Depositary Receipts and Index Fund Shares Based on Fixed Income Indexes

January 31, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 22, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Exchange. On January 26, 2007, the

Exchange filed Amendment No. 1.<sup>3</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

The Exchange proposes to revise Amex Rules 1000 and 1000A to include generic listing standards for series of portfolio depositary receipts ("PDRs") and index fund shares ("IFSs") (together referred to as "exchange-traded funds" or "ETFs") that are based on fixed income indexes or indexes consisting of both equity and fixed income securities ("combination indexes").

The text of the proposed rule change is available at the Amex, at the Commission's Public Reference Room, and on the Exchange's Web site at [www.amex.com](http://www.amex.com).

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

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange proposes to add Commentaries .04, .05, and .06 to Amex Rule 1000 and Commentaries .03, .04, and .05 to Amex Rule 1000A to include generic listing standards for series of PDRs and IFSs that are based on fixed income indexes or combination indexes. These generic listing standards would be applicable to fixed income indexes and combination indexes that the Commission has yet to review as well as those fixed income indexes described in exchange rule changes that have previously been approved by the Commission under Section 19(b)(2) of the Act for the trading of ETFs, options, or other index-based securities. The

Exchange also proposes to amend Amex Rules 1000(b)(1) and 1000A(b)(1) to revise the definitions of PDR and IFS to include ETFs based on fixed income indexes and combination indexes. This proposal would enable the Exchange to list and trade ETFs pursuant to Rule 19b-4(e) under the Act<sup>4</sup> if each of the conditions set forth in either Commentaries .04 and .05 to Rule 1000 or Commentaries .03 and .04 to Rule 1000A, as applicable, are satisfied.

##### Background

*Exchange-Traded Funds.* Amex Rules 1000 *et seq.* allow for the listing and trading on the Exchange of PDRs. A PDR represents an interest in a unit investment trust registered under the Investment Company Act of 1940 (the "1940 Act")<sup>5</sup> that operates on an open-end basis and which holds the securities that comprise an index or portfolio. Amex Rules 1000A *et seq.* provide standards for listing IFSs, which are securities issued by an open-end management investment company (*i.e.*, an open-end mutual fund) based on a portfolio of securities that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic stock index or fixed income index. Pursuant to Rules 1000 *et seq.* and 1000A *et seq.*, PDRs or IFSs must be issued in a specified aggregate minimum 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. When aggregated in the same specified minimum number, PDRs or IFSs must be redeemed by the issuer for the securities and/or cash, with a value equal to the next determined net asset value. Consistent with Amex Rules 1002 and 1002A, the net asset value 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 performance of the underlying index, an ETF may use a "replication" strategy or a "representative sampling" strategy with respect to the ETF portfolio. An ETF using a replication strategy will invest in each component security of the underlying index in about the same proportion as that security is represented in the index itself. An ETF using a representative sampling strategy will generally invest in a significant number, but perhaps not all, of the component securities of the underlying

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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.

<sup>3</sup> In Amendment No. 1, the Exchange modified the proposed rule text and corresponding description of its proposal. Amendment No. 1 replaced and superseded the original filing in its entirety.

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

<sup>5</sup> 15 U.S.C. 80a.