

Accordingly, NASD proposes to amend Section 7 of Schedule A to the NASD By-Laws expressly to require that offering documents that are required to be filed with NASD relating to an automatically effective shelf registration statement by a WKSIs (which would currently include all WKSIs not otherwise exempt from Rule 2710 and, if SR-NASD-2004-022 is approved by the Commission, would only include WKSIs that are broker-dealers or affiliates of broker-dealers)<sup>12</sup> must be accompanied by a \$75,500 fee.

NASD has filed the proposed rule change for immediate effectiveness. The implementation date will be February 26, 2007.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with Section 15A(b)(5)<sup>13</sup> of the Act, which requires that NASD rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed rule change, which specifies the filing fee required for shelf offerings by WKSIs where no proposed maximum aggregate offering or other applicable value of all securities registered is required to be stated, is necessary to ensure the appropriate review of offerings by WKSIs under NASD rules.

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

NASD does not believe that the proposed rule change will impose 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 NASD has neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>15</sup> in that it establishes or changes a due, fee, or other charge imposed by NASD. At any time within 60 days of the filing of such

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 ct.<sup>16</sup>

## 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-NASD-2007-006 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-NASD-2007-006. 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 offices of NASD. 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-NASD-2007-006 and

should be submitted on or before March 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55343; File No. SR-NYSE-2007-12]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend Section 703.16 of the NYSE Listed Company Manual To Eliminate Requirement Regarding Index Calculation Methodology

February 23, 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 February 5, 2007 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, II, and III below, which Items have been substantially prepared by the Exchange. On February 15, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Section 703.16 of the NYSE Listed Company Manual ("Manual"), the Exchange's generic listing standard for investment company units ("ICUs"), to eliminate the requirement that the calculation methodology for the index underlying a series of ICUs must be one of those enumerated in Section 703.16(C)(4)(a). The proposed rule text is available at the NYSE, the Commission's Public Reference Room, and <http://www.nyse.com>.

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

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

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

<sup>12</sup> Telephone conversation between Kathryn Moore, Assistant General Counsel, NASD, and Commission staff on February 26, 2007.

<sup>13</sup> 15 U.S.C. 78o-3(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> See 15 U.S.C. 78s(b)(3)(C).

## 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. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The Exchange proposes to amend Section 703.16 of the Manual, which includes the Exchange's generic listing standard for ICUs (which include exchange-traded funds), to eliminate the requirement that the calculation methodology for the index underlying a series of ICUs must be one of those enumerated in section 703.16(C)(4)(a). This Amendment No. 1 replaces the Exchange's initial filing in its entirety.

The Exchange has adopted listing standards applicable to ICUs which are consistent with the listing criteria currently used by other national securities exchanges, and trading standards pursuant to which the Exchange may either list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges ("UTP") basis.<sup>3</sup> An ICU is defined in Section 703.16 of the Manual as a security that represents an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. A registered investment company is registered under the Investment Company Act of 1940.<sup>4</sup>

The "generic" listing criteria of Section 703.16 of the Manual permit listing of ICUs that satisfy such criteria in reliance upon Rule 19b-4(e) under the Act,<sup>5</sup> without a filing pursuant to

Rule 19b-4 under the Act. Section 703.16(C)(4)(a) of the Manual requires, among other criteria, that, if a series of ICUs is listed for trading on the Exchange in reliance upon Rule 19b-4(e), the index underlying the series must follow one of these calculation weighting methodologies: Market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology or a methodology weighting components of the index based on any, some or all of the following: Sales, cash flow, book value and dividends.

The Exchange proposes to delete Section 703.16(C)(4)(a) and thereby eliminate the calculation methodology limitation.<sup>6</sup> In recent years, academics and market professionals have explored and defined a growing list of innovations in index construction. Most recently, the Commission approved amendments to the generic listing criteria to accommodate new index weighting methodologies based on ranking companies by financial data such as sales, cash flow, book value and dividends.<sup>7</sup> The Exchange believes there are multiple ways for indexes to be constructed to serve useful market purposes. Additional methodologies are under active development by academics and market professionals and permitting only certain specified index weighting methods does not take into account the rapid innovation in this area. The Exchange believes that, with respect to ICUs listed pursuant to Rule 19b-4(e), applying the numerical weighting and liquidity criteria and index dissemination requirements in Section 703.16, without imposing constraints on the index methodology, will provide greater flexibility to indexers and ICU issuers to develop indexes that meet the investment objectives of investors. In addition, the proposed rule change would allow ICUs based on a non-traditional weighting methodology to be brought to market more quickly, thereby reducing burdens on ICU issuers and other market participants and promoting competition.

The Exchange notes that the numerical criteria in Section 703.16 already define the concentration limits, diversity requirements and liquidity requirements of the companies in the underlying index. For example, the generic listing standards for domestic indexes require, among other things,

that an index include at least 13 stocks, that the most heavily weighted component stock of an index cannot exceed 30% of the index weight and the five most heavily weighted component stocks of an index cannot exceed 65% of the index weight. The generic listing standards for international or global indexes require, among other things, that the index include at least 20 component stocks, that the most heavily weighted index component stock cannot exceed 25% of the index weight, and the five most heavily weighted component stocks cannot exceed 60% of the index weight. ICUs and their underlying indexes would continue to be subject to all other requirements of Section 703.16 of the Manual. Under these circumstances, the Exchange believes that removal of the index weighting requirements of Section 703.16(C)(4)(a) will not compromise investor protection.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>9</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 remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

<sup>3</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 Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR-NYSE-95-23). In 2000, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Listed Company Manual and Exchange Rule 1100. See Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR-NYSE-2000-46).

<sup>4</sup> 15 U.S.C. 80a.

<sup>5</sup> 17 CFR 240.19b-4(e).

<sup>6</sup> The Exchange also proposes to redesignate current subparagraphs (b) and (c) of Section 703.16(C)(4) as (a) and (b), respectively.

<sup>7</sup> See Securities Exchange Act Release No. 54649 (October 24, 2006); 71 FR 63816 (October 31, 2006) (SR-NYSE-2006-88).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change. The Commission has determined that a 15-day comment period is appropriate in this case.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-12 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-2007-12. 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 will also be available for inspection and copying at the principal office of the 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-2007-12 and should be submitted by March 20, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55345; File No. SR-NYSE-2007-15]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Rule Change Regarding the Amendment of NYSE Rule 300 Relating to Trading Licenses

February 26, 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 February 13, 2007, 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, II, and III below, which Items have been substantially prepared by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE rule 300 relating to trading licenses to charge a premium of \$5,000, for a total annualized rate of \$55,000 for those trading licenses purchased after the annual application period.

The text of the proposed rule change is available on NYSE's Web site at <http://www.nyse.com/regulation/rules/1160561784294.html>, at NYSE's principal office, and at the Commission's Public Reference Room.

#### 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

proposal. 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend NYSE rule 300 relating to trading licenses to charge a premium for those trading license purchased after the annual application period. The premium would be \$5,000 or 10% above the fixed price of \$50,000 per trading license, pro-rated to reflect the amount of time remaining in the year at the time of the commencement of the license. The Exchange believes that there are benefits to itself and to its member organizations in having a more stable trading license population during the course of the calendar year.

The Exchange previously required payment of a premium to encourage participation in a "Dutch" auction, but recently eliminated this requirement in connection with its transition away from the use of an auction to set the price of a trading license.<sup>3</sup> The Exchange believes, however, that the requirement of a 10% premium should be reinstated. The Exchange believes that the 10% premium for licenses purchased after the annual application period provides the Exchange with greater predictability regarding the number of trading licenses outstanding during each calendar year. The Exchange represents that this predictability not only facilitates business planning and administration by member organizations and the Exchange, but also reduces both business and regulatory systems changes required to reflect fluctuations in trading licenses issued. The Exchange believes that the premium encouraged member organizations to properly forecast the number of licenses needed by it in the conduct of its business for the upcoming calendar year, which in turn helped the Exchange determine the resources required to administer and monitor trading licenses for the same period and to efficiently prepare systems changes relating to any significant changes in the trading license population required for both business and regulatory purposes. The Exchange believes that the premium

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 217 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 54998 (December 21, 2006), 71 FR 78496 (December 29, 2006) (SR-NYSE-2006-98).