

the time when the corresponding ETF trades on the Exchange, provided that, with respect to the fixed income components of the Combination Index, the impact on the index is required to be updated only once each day.

Furthermore, the Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF appropriately. If a broker-dealer or fund advisor is responsible for maintaining (or has a role in maintaining) the underlying index, such broker-dealer or fund advisor would be required to erect and maintain a "firewall," in a form satisfactory to the Exchange, to prevent the flow of non-public information regarding the underlying index from the personnel involved in the development and maintenance of such index to others such as sales and trading personnel. The Commission also notes that current ISE Rules 2123(a)(6) and 2131(e)(1)(ii) provide that, in connection with approving an ETF issuer for listing on the Exchange, the Exchange would obtain a representation from the ETF issuer that the NAV per share will be calculated each business day and made available to all market participants at the same time.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in an ETF when transparency is impaired. Proposed ISE Rule 2123(h) and current ISE Rule 2131(e)(2)(ii) provide 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. Also, the Exchange may commence delisting proceedings in the event that the value of the underlying index is no longer calculated or available.

The Commission further believes that the trading rules and procedures to which ETFs will be subject pursuant to this proposal are consistent with the Act. The definition of "Equity Securities" already includes Units and, by this proposed rule change, that definition would be expanded to also include PDRs.<sup>36</sup> As a result, ETFs would be subject to ISE's previously approved rules governing the trading of Equity Securities.

The Exchange will implement written surveillance procedures for ETFs based on Fixed Income Indexes or

Combination Indexes.<sup>37</sup> In approving this proposal, the Commission relied on ISE's representation that its surveillance procedures are adequate to properly monitor the trading of ICUs listed pursuant to this proposal.

#### 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**. ISE's proposal is substantially similar to other proposals that have been approved by the Commission.<sup>38</sup> The Commission does not believe that ISE's proposal raises any novel regulatory issues, and 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 Act,<sup>39</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change (SR-ISE-2007-65), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

Nancy M. Morris,  
Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57060; File No. SR-Amex-2007-116]

#### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Harmonize the Annual Listing Fees for All Exchange Traded Funds

December 28, 2007.

On October 29, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities

<sup>37</sup> See proposed ISE Rule 2123(m) and proposed sections .02(g) and .03(b) to the Supplementary Material to ISE Rule 2131.

<sup>38</sup> See *supra* at note 8.

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

<sup>40</sup> *Id.*

<sup>41</sup> 17 CFR 200.30-3(a)(12).

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 revise the annual listing fees for index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, partnership units, and closed-end funds (collectively, "Exchange Traded Funds" or "ETFs") set forth in Section 141 of the Amex Company Guide. On November 9, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On November 16, 2007, the Exchange filed Amendment No. 2 to the proposal.<sup>4</sup> The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on November 27, 2007.<sup>5</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

Amex proposes to amend Section 141 of the Amex *Company Guide* to adopt a single annual listing fee for all ETFs. Amex's proposal would conform the annual listing fees for index fund shares with those of other ETFs and add an additional demarcation for outstanding shares or units of over 100 million, so that the maximum annual listing fee would increase to \$50,000. Each series of the securities listed as index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, partnership units, or closed-end funds would be separately aggregated. The annual listing fee would then be applied to all of the outstanding securities of a particular issuer for each appropriate product class. Securities listed under Sections 106 and 107 of the Company Guide would be charged listing fees based on the shares outstanding of each individual issue.

After careful review, the Commission finds that Amex's proposal is consistent

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

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

<sup>3</sup> Amendment No. 1 made clarifying changes to the purpose section of the original filing and revised the proposed annual listing fee schedule.

<sup>4</sup> Amendment No. 2 made an additional clarifying change to the proposed annual listing fee schedule. Specifically, all references to a "maximum" or "minimum" identified as a parenthetical in the "Stock Issues" and "Issues Listed Under Section 106 and Section 107; Rule 1000A (Index Fund Shares); Rule 1200 (Trust Issued Receipts); Rule 1200A (Commodity Based Trust Shares); Rule 1200B (Currency Trust Shares); Rule 1400 (Paired Trust Shares); Rule 1500 (Partnership Units); and Closed-End Funds" Annual Fee Tables in the Company Guide were removed.

<sup>5</sup> See Securities Exchange Act Release No. 56809 (November 16, 2007), 72 FR 66203 (November 27, 2007) and 72 FR 70374 (December 11, 2007).

<sup>36</sup> See proposed ISE Rule 2100(c)(7).

with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires, among other things, that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using the Exchange's facilities. The Commission notes that no comments were received on the proposed fee increase, which is based on existing annual fees for other comparable products listed on the Exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Amex-2007-116), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57067; File No. SR-CBOE-2007-87]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Quoting Requirements Applicable to the Hybrid Opening System

December 31, 2007.

On July 25, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 amend its rule pertaining to the Hybrid Opening System ("HOSS") as well as related rules pertaining to the obligations of designated primary market-makers ("DPMs"), electronic

designated primary market-makers ("e-DPMs") and lead market-makers ("LMMs") during opening rotations. On November 19, 2007, CBOE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 26, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

#### I. Description of the Proposal

HOSS is the Exchange's automated system for initiating trading at the beginning of each trading day. The Exchange proposes to amend its HOSS procedures contained in CBOE Rule 6.2B. Previously, for each option class approved for trading, HOSS had been programmed to open an option series only if the DPM or LMM, as applicable, for the particular option class submitted a quote that complies with the legal quote width requirements of paragraph (b)(iv) to CBOE Rule 8.7, *Obligations of Market-Makers*. In 2005, the HOSS procedures were revised; currently, HOSS is programmed to open an option series as long as any market maker,<sup>4</sup> not just the DPM or LMM, has submitted an opening quote that complies with the legal width quote requirements of CBOE Rule 8.7(b)(iv).<sup>5</sup> However, even though the procedures were changed to permit HOSS to automatically open a series without a DPM's or LMM's quote, DPMs (as well as e-DPMs) and LMMs are still obligated under CBOE's rules to submit timely opening quotes.<sup>6</sup>

The proposed rule change modifies the HOSS procedures to allow the parameters to be configured so that an option series will open: (1) If at least one market maker has submitted an opening quote, which is how HOSS

currently operates; or (2) only if a DPM or LMM, as applicable, has submitted an opening quote, which is how HOSS operated previously. Determinations on the particular configuration would be made on a class-by-class basis by the appropriate Exchange Procedure Committee and announced to the membership via Regulatory Circular.<sup>7</sup>

In addition, the proposed rule change amends the opening quote obligations of DPMs, e-DPMs, and LMMs to require them to ensure a timely initiation of an opening trading rotation of each allocated class by entering opening quotes as necessary (*i.e.*, when no other market maker has entered an opening quote). This change would absolve DPMs, e-DPMs, and LMMs of their responsibility (under CBOE's current rules) to enter opening quotes when another market maker has already entered an opening quote in a particular series.<sup>8</sup>

#### II. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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.

The proposed rule change will afford the Exchange more flexibility in the manner in which HOSS conducts opening rotations. The Commission believes that allowing the appropriate Exchange Procedure Committee to determine on a class-by-class basis how

<sup>3</sup> See Securities Exchange Act Release No. 56814 (November 19, 2007), 72 FR 66008 ("Notice").

<sup>4</sup> This could include a quote from a DPM, e-DPM, LMM, Market-Maker or Remote Market-Maker.

<sup>5</sup> See Securities Exchange Act Release No. 52234 (August 10, 2005), 70 FR 48214 (August 16, 2005) (SR-CBOE-2005-40). Other factors must also be satisfied for HOSS to open an options series. For example, the opening price for the series must be within an acceptable range and the opening trade cannot create a market order imbalance. See, e.g., CBOE Rule 6.2B(e)(ii)-(iii).

<sup>6</sup> Currently, DPMs, e-DPMs, and LMMs are required to enter opening quotes in accordance with CBOE Rule 6.2B in 100% of the series of each appointed class; whereas, other Market-Makers and Remote Market-Makers are permitted, but not obligated, to enter opening quotes in accordance with CBOE Rule 6.2B. See current CBOE Rules 6.2B, 8.15A, *Lead Market-Makers in Hybrid Classes* (subparagraph (b)(iv) of this rule has been interpreted by the Exchange to require an LMM to enter opening quotes in 100% of the series of each appointed class), 8.85, *DPM Obligations*, and 8.93, *e-DPM Obligations*.

<sup>7</sup> See Notice, *supra* note 3, 72 FR at 66008 (noting that the Exchange Procedure Committee might consider such things as "trading in the underlying or related products, trading in the option on competing exchanges, how effectively opens have occurred in the past, liquidity and/or other factors.").

<sup>8</sup> Under CBOE's proposed rules, DPMs, e-DPMs, and LMMs would still be *permitted* to enter opening quotes even if another market maker has already entered an opening quote.

<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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