

pursuant to this proposal are consistent with the Act. The Exchange states that the Shares would be subject to Amex's AEMI rules. The Commission also believes that the Exchange's trading halt rules under Amex Rule 1002A(b) are reasonably designed to prevent trading in the Shares when transparency is impaired.

*In support of this proposal, the Exchange has made the following representations:*

1. The Exchange will rely on its existing surveillance procedures governing Index Fund Shares and has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares.

2. Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular of the characteristics and risks associated with an investment in the Shares, the procedures for creating and redeeming the Shares, the timing and frequency of the dissemination of the IIV, the application of Commentary .03 to Amex Rule 1000A-AEMI and Amex Rule 1002A to the Fund Shares, Prospectus and/or Product Description delivery requirements, any exemptive relief under the 1940 Act, the Securities Act of 1933, or the Act granted by the Commission, and the suitability requirements of Amex Rule 411.<sup>25</sup>

3. The Exchange represents that the Trust is required to comply with Rule 10A-3 under the Act<sup>26</sup> for the initial and continued listing of the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission notes that the Shares are similar in structure, operation, and function to the shares of other exchange-traded funds based on an underlying index composed of fixed income securities, the shares of which are currently listed and trading in the marketplace.<sup>28</sup> As mentioned above, the

Commission has previously approved the listing and trading of other derivative securities products based on indices that narrowly missed a quantitative generic listing criterion but satisfied all the others.<sup>29</sup> Given that the Shares comply with all of Amex's initial generic listing standards for Index Fund Shares (except for the one requirement of Commentary .03(a)(5) to Amex Rule 1000A-AEMI) and would be subject to Amex's continued listing requirements for Index Fund Shares under Amex Rule 1002A, the listing and trading of the Shares does not appear to present any novel or significant regulatory issues. Therefore, the Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such products. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>30</sup> to approve the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) under the Act,<sup>31</sup> that the proposed rule change (SR-Amex-2007-115), as modified by Amendment Nos. 1 and 2 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>32</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57354; File No. SR-Amex-2008-10]

### Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 918-ANTE

February 19, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

2003-75) (approving the listing and trading of Index Fund Shares based on indexes of fixed income securities selected to correspond generally to the performance of various U.S. bond indexes).

<sup>25</sup> See *supra* note 21.

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

<sup>29</sup> 15 U.S.C. 78s(b)(1).

<sup>30</sup> 17 CFR 240.19b-4.

notice is hereby given that on February 14, 2008, the American Stock Exchange, LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Amex filed this proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 seeks to conform Amex Rule 918-ANTE to non-ANTE Rule 918 in connection with a recent approval to permit the sending of Principal Acting as Agent Orders ("P/A Orders") through the Options Intermarket Linkage (the "Linkage") prior to the opening of trading.<sup>5</sup>

The text of the proposed rule change is available at the Amex, at the Commission's Public Reference Room, and at <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, 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 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 Commission recently approved the Exchange's proposal to adopt Commentary .06 to Amex Rule 918 to implement Amendment No. 23 to Section 7(a)(i) of the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the

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

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

<sup>5</sup> See Securities Exchange Act Release No. 56850 (November 27, 2007), 72 FR 68225 (December 4, 2007) (SR-Amex-2007-123) ("Original Approval").

<sup>25</sup> See *supra* note 15.

<sup>26</sup> 17 CFR 240.10A-3.

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> See, e.g., Securities Exchange Act Release Nos. 48881 (December 4, 2003), 68 FR 69739 (December 15, 2003) (SR-NYSE-2003-39) (approving the listing and trading of shares of the iShares Lehman U.S. Aggregate Bond Fund and iShares Lehman TIPS Bond Fund); and 48534 (September 24, 2003), 68 FR 56353 (September 30, 2003) (SR-Amex-

“Linkage Plan” or “Plan”).<sup>6</sup>

Amendment No. 23, coupled with the related Exchange rule filing recently approved by the Commission, will permit the use of the Linkage prior to the opening of trading.

The Exchange proposes to conform Amex Rule 918—ANTE to the recently approved Amex Rule 918 permitting the use of the Linkage prior to the opening of trading. The purpose of this proposal is to correct Amex Rule 918—ANTE which the Exchange inadvertently failed to revise in its prior filing to implement Amendment No. 23. In addition, because Amex Rule 918—ANTE (rather than Rule 918) applies to all options trading, the Exchange seeks to eliminate Commentary .06 to Amex Rule 918.

As set forth in the Original Approval, the Linkage Plan, prior to Amendment No. 23, did not contemplate the use of the Linkage before a Plan participant (a “Participant”) opened for trading and disseminated a quotation in an options series. There, accordingly, was no trade-through protection for opening trades. As a result, if there was a better market away at the time a Participant opened its market, the Amex specialist, responsible both for the opening and for protecting customer orders, could not access that market for a customer. The customer, accordingly, could receive a price inferior to the national best bid and offer.

This proposal to conform Amex Rule 918—ANTE to the recently approved Amex Rule 918 will permit the sending of P/A Orders prior to the opening, allowing the Amex specialist to access better markets on behalf of customers prior to the Exchange’s opening in connection with the ANTE system. In implementing this proposed rule change, the Exchange will ensure that customers receive the best price for their orders. Under the Plan, a Participant receiving market has three (3) seconds to respond to a P/A Order, and the Participant receiving market can then reject a response it receives more than three (3) seconds after sending the order. In the unlikely event that the Amex opens its market during this three (3) second period, it is possible that the opening price could differ from the price of an executed P/A Order. In that case, the Amex will ensure that the specialist provides the customer with the most advantageous price. Therefore, the proposal will only benefit customers by providing them with potential price improvement at the opening.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

The proposed rule change will impose no 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*

No written comments were solicited or received with respect to 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>9</sup> and Rule 19b-4(f)(6) under the Act<sup>10</sup> because: (i) It does not significantly affect the protection of investors or the public interest; (ii) it does not impose any significant burden on competition; and (iii) by its terms, it does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. 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.

The Amex has requested that the Commission waive the 30-day operative

delay for the proposal. The Commission grants Amex’s request.<sup>11</sup> The proposed rule change would allow Amex to send P/A Orders through the Linkage prior to the opening of trading, which should facilitate access to superior prices that may be available at other options exchanges at the opening. Therefore, Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it may result in better-priced executions for investors. For this reason, the Commission designates the proposal effective and operative upon filing with the Commission.

## 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-Amex-2008-10 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-Amex-2008-10. 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

<sup>6</sup> *Id.* See also Securities Exchange Act Release No. 56780 (November 13, 2007), 72 FR 65113 (November 19, 2007) (File No. 4-429).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. Section 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2008-10 and should be submitted on or before March 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-3559 Filed 2-25-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57355; File No. SR-CBOE-2007-03]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Amending its Obvious Error Rule for Options on Indices, ETFs, and HOLDRS

February 20, 2008.

#### I. Introduction

On February 21, 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 CBOE Rule 24.16, which is the Exchange's rule applicable to the nullification and adjustment of transactions in index options, options on exchange-traded funds ("ETFs"), and options on Holding Company Depository Receipts ("HOLDRS"), to: (i) Modify the nullification and adjustment provisions for erroneous prints and erroneous quotes in the underlying; (ii) eliminate the nullification and adjustment provision for trades below intrinsic value; and (iii) modify the

nullification provision for "no bid series." On December 20, 2007, the CBOE submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 28, 2007.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposed Rule Change

The Exchange proposes to modify CBOE Rule 24.16 with respect to erroneous prints and erroneous quotes in the underlying. Under the revised rule, the appropriate Exchange committee would identify particular underlying or related instrument(s) that would be used to determine an erroneous print or quote and also would identify the relevant market(s) trading the underlying or related instrument to which the Exchange would look for purposes of applying the obvious error analysis. The underlying or related instrument(s) may include the underlying or related ETF(s), HOLDRS(s), and/or index value(s),<sup>4</sup> and/or related futures product(s).<sup>5</sup> The relevant underlying market(s) may include one or more markets. The underlying or related instrument(s) and relevant market(s) would be designated by the appropriate Exchange committee and announced to the membership via Regulatory Circular. For a particular ETF, HOLDRS, index value, and/or futures product to qualify for consideration as a "related instrument," the revised rule requires that: (i) The option class and related instrument must be derived from or designed to track the same underlying index; or (ii) in the case of S&P 100-related options, the options class and related instrument must be derived from or designed to track the S&P 100 Index or the S&P 500 Index.

In addition, the proposal would eliminate the nullification and adjustment provision for trades below intrinsic value. CBOE Rule 24.16(a)(5) currently states that an obvious pricing error will be deemed to have occurred

when the transaction price of an option series is more than \$0.10 below the intrinsic value of the same option. The purpose of deleting this provision is to account for circumstances under which options are correctly priced \$0.10 or more below the intrinsic value. For example, this situation might occur in options with underlying securities that are hard-to-borrow, extremely volatile issues where one market participant seeks to transfer the risk of selling or buying a security to other market participants by trading options, and options having European-style exercise, thus preventing exercise prior to expiration. According to the Exchange, the elimination of this provision is consistent with the Exchange's current rule for equity options, which does not have an obvious error review for trades below intrinsic value.<sup>6</sup>

Finally, the proposal would modify the nullification provision for no bid series. Currently, the rule provides that electronic transactions in series that are quoted no bid on the Exchange are subject to nullification, provided that at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid at the time of execution. Under the revised rule, additional criteria and clarifying language would be added. Specifically, an electronic transaction in a series quoted no bid on the Exchange would be subject to nullification provided that: (i) The bid in that series immediately preceding the execution was, and for five seconds prior to the execution remained, zero; and (ii) at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid and offered at the same price or lower as that series at the time of execution. The revised no bid provision would provide that, when determining the Exchange's quotes in the relevant series, bids and offers of the parties to the subject trade that are in any of the series in the same options class shall not be considered. The revised rule also would provide that when an option series in a class has a non-standard deliverable (e.g., 150 contract delivery requirement), it will be considered separately for purposes of the no bid provision from series in such class that do not have a non-standard deliverable. The revised rule would clarify that the no bid provision is intended to apply to series quoted no bid on the Exchange (as opposed to series for which the national best bid is quoted no bid).

<sup>3</sup> Securities Exchange Act Release No. 57012 (December 20, 2007), 72 FR 73921.

<sup>4</sup> An "index value" is the value of an index as calculated and reported by the index's reporting authority. Use of an index value would be applicable only for purposes of identifying an erroneous print in the underlying (and not an erroneous quote). See proposed changes to CBOE Rule 24.16(a)(3).

<sup>5</sup> This proposed rule change does not seek to designate any of the individual underlying stocks (or related options or futures on any of the individual underlying stocks) that comprise a particular ETF, HOLDR, or index.

<sup>6</sup> See CBOE Rule 6.25.

<sup>12</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.