

Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-2007-138 and should be submitted on or before January 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57030; File No. SR-Amex-2007-135]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Section 107D(g) of the Amex Company Guide

December 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 7, 2007, 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 and II below, which items have been substantially prepared by Amex. The Exchange has filed the proposal pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal 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 proposes to amend section 107D(g) of the Amex *Company Guide* (the "*Company Guide*") to create a limited exception to the requirement that 90% of an index's numerical value

underlying an issuance of index-linked securities ("Index Securities") and at least 80% of the total number of component securities will meet the then current criteria for standardized options trading on a national securities exchange. This exception will apply only when (i) no underlying component security represents more than 10% of the dollar weight of the index and (ii) the index has a minimum of 20 components.

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Office of the Secretary, the Amex 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, 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. Amex 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 purpose of this proposal is to provide a limited exception to the requirement set forth in section 107D(g)(v) of the *Company Guide* requiring that 90% of an underlying index's numerical value and at least 80% of the total number of component securities meet the criteria for standardized options trading set forth in Amex Rule 915. In connection with foreign-based indexes, this requirement essentially prohibits the use of the generic listing standard for Index Securities that are linked to, or based on, the performance of a foreign or international index. The Exchange submits that this was not the intention of the generic listing standard, and therefore, proposes a limited exception to the options eligibility requirement for component securities of an underlying index. We believe this proposed rule change will permit a number of foreign or international indexes to be the subject of Index Securities listed and traded on the Exchange.

Section 107D of the *Company Guide* provides generic listing standards to permit the listing and trading of Index

Securities pursuant to Rule 19b-4(e) under the 1934 Act.⁵ As a result, the Exchange may list Index Securities based on an index or indexes (the "Underlying Index") that meet the criteria set forth in paragraph (g) of section 107D of the *Company Guide*. Specifically, an Underlying Index is required to either be (i) an index meeting the specific criteria set forth in Section 107D(g); or (ii) an index previously approved for the trading of options or other derivative securities by the Commission under section 19(b)(2) of the 1934 Act and rules thereunder.

The application of Amex Rule 915 in connection with foreign-based indexes is especially problematic as a result of the requirement in the Rule that requires an underlying security to be duly registered and be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934 (the "1934 Act").⁶ In addition, the issuer of an underlying foreign security is unlikely to be able to comply with all applicable requirements of the 1934 Act as required by Rule 915.

All of the options exchanges apply the same criteria to securities underlying exchange-traded options. These criteria relate primarily to the distribution and trading volume of the securities underlying an option⁷ and, as such, are duplicative of the minimum market capitalization and trading volume requirements for securities underlying Index Securities set forth in section 107D(g)(i) and (ii). The Exchange notes that the requirement of section 107D(g) that a component included in a securities index must have had a trading volume of at least 1,000,000 shares per month over the most recent six month period⁸ is significantly more stringent

⁵ See Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005).

⁶ NMS stock is defined as an "NMS security" other than an option. "NMS security" is defined as any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan other than options. In addition, although foreign securities may meet the minimum market capitalization and trading volume requirements, the other criteria set forth Rule 915 will be difficult for foreign securities to comply with.

⁷ The rules require a minimum of 7,000,000 publicly-held shares, 2,000 holders, a trading volume of 2,400,000 in the preceding 12 months and a market price of at least \$3.00 per share for securities that are "covered securities" as defined in Section 18(b)(1)(A) of the Securities Act of 1933 and a market price of \$7.50 for securities that are not "covered securities."

⁸ Except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume must be at least 500,000 shares per month in each of the last six months.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

than the requirement of the options rules that the security have a trading volume of 2,400,000 shares over a twelve month period. However, while a significant number of securities meet the minimum market capitalization and trading volume requirements for components of securities indexes under section 107D(g), many do not meet the current criteria for standardized options trading. The Exchange believes that the explicit market capitalization and trading volume requirements of section 107D(g) are sufficient to ensure that any security underlying a series of Index Securities will have a liquid trading market. In addition, the proposed enhanced concentration limits and minimum number of components that would need to be met by an issuer in order to avail itself of the proposed exemption would significantly reduce the possibility of manipulation of the index. Based on the foregoing, the Exchange believes that the added protection of requiring that such securities be qualified for options trading is unnecessary.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) Act¹⁰ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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

The proposed rule change does not 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

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

Because the forgoing rule change does not: (1) Significantly affect the

protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹³ However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because waiver will permit the Exchange to implement the proposed rule change as soon as possible thereby permitting potential issuers to avail themselves of the revised listing criteria. In addition, the Commission notes that it has recently approved a proposal by another Exchange, which included identical rule text to that proposed by Amex.¹⁵ For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.¹⁶

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 Act.

IV. Solicitation of Comments

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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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, or such shorter time as designated by the Commission. The Commission has determined to grant the Exchange's request to waive the five-day pre-filing notice requirement.

¹⁴ *Id.*

¹⁵ See Securities Exchange Act Release No. 56879 (December 3, 2007), 72 FR 69271 (December 7, 2007) (NYSEArca-2007-110).

¹⁶ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Please include File Number SR-Amex-2007-135 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-2007-135. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Amex.

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-2007-135 and should be submitted on or before January 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Nancy M. Morris,
Secretary.

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¹⁷ 17 CFR 200.30-3(a)(12).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).