

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.

index, and will hold securities that, in the aggregate, are intended to approximate the full index in terms of certain key characteristics. In the context of a fixed income index, such characteristics may include liquidity, duration, maturity, and yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code ("IRC").<sup>6</sup>

*Generic Listing Standards for Exchange-Traded Funds.* The Exchange notes that the Commission has previously approved generic listing standards contemplated by Rule 19b-4(e) under the Act for ETFs based on indexes that consist of stocks listed on U.S. and non-U.S. exchanges.<sup>7</sup> This proposal seeks to adopt generic listing standards for fixed income and combination indexes that generally reflect existing generic listing standards for equities, but are tailored for the fixed income markets.

The Exchange notes that the Commission has previously approved the listing and trading of ETFs based on certain fixed income indexes<sup>8</sup> as well as structured notes linked to a basket or index of fixed income securities.<sup>9</sup> In

addition, the Commission has also approved listing standards for other index-based derivatives that permit the listing—pursuant to Rule 19b-4(e)—of such securities where the Commission had previously approved the trading of specified index-based derivatives on the same index, on the condition that all of the standards set forth in the original order are satisfied by the exchange employing generic listing standards.<sup>10</sup>

The Exchange believes that adopting additional generic listing standards for ETFs based on fixed income indexes and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for individualized Commission approval. The proposed rules have the potential to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The Exchange submits that the failure of a particular ETF to comply with the proposed generic listing standards would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular ETF.

#### *Fixed Income and Combination Index ETFs*

*Requirements for Listing and Trading ETFs Based on Fixed Income Indexes.* Exchange-traded funds listed pursuant to the proposed generic listing standards for fixed income indexes would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to ETFs and would be covered under the Exchange's surveillance program for ETFs.<sup>11</sup> The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of ETFs listed pursuant to the proposed new listing standards. In addition, the Exchange also has a general policy prohibiting the distribution of material,

non-public information by its employees.

In order to list an ETF pursuant to the proposed generic listing standards for fixed income indexes, the index underlying the ETF must satisfy all the conditions contained in proposed Commentary .04 to Rule 1000 (for PDRs) or proposed Commentary .03 to Rule 1000A (for IFSSs). As with existing generic listing standards for ETFs based on domestic and international or global indexes, the proposed generic listing standards are intended to ensure that fixed income securities with substantial market distribution and liquidity account for a substantial portion of the weight of an index or portfolio. While the standards in this proposal are loosely based on the standards contained in Commission and Commodity Futures Trading Commission ("CFTC") rules regarding the application of the definition of narrow-based security index to debt security indexes<sup>12</sup> as well as existing fixed income ETFs, they have been adapted as appropriate to apply generally to fixed income indexes for ETFs.

#### *Fixed Income Securities*

As proposed, Commentary .04 to Rule 1000 and Commentary .03 to Rule 1000A define the term "Fixed Income Securities" to include notes, bonds (including convertible bonds), debentures, or evidence of indebtedness that include, but are not limited to, U.S. Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust-preferred securities,<sup>13</sup> supranational debt,<sup>14</sup> and debt of a foreign country or subdivision thereof. This new definition is designed to create a category of ETFs based on

<sup>6</sup> For an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC. Among these is the requirement that, at the close of each quarter of the ETF's taxable year, (i) At least 50% of the market value of the ETF's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies, and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value if the ETF's assets and not greater than 10% of the outstanding voting securities of such issuer; and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the ETF (within the meaning of Section 851(b)(4)(B) of the IRC) and that are engaged in the same or similar trades or businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies).

<sup>7</sup> See Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (for ETFs based on global and international indexes) and 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (for ETFs based on indexes comprised of U.S. stocks).

<sup>8</sup> See Securities Exchange Act Release Nos. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (approving the listing and trading of funds based on U.S. Treasury or corporate bond indexes); 46738 (October 29, 2002), 67 FR 67666 (November 6, 2002) (approving the listing and trading of FITRS) and 52870 (December 1, 2005), 70 FR 73039 (December 8, 2005) (approving the trading on a UTP basis of the iShares Lehman TIPS Bond Fund).

<sup>9</sup> See Securities Exchange Act Release Nos. 41334 (April 27, 1999), 64 FR 23883 (May 4, 1999) (approving the listing and trading of Bond Indexed Term Notes); 46923 (November 27, 2002), 67 FR

72247 (December 4, 2002) (approving the listing and trading of trust units linked to a basket of investment-grade fixed income securities); 48484 (September 11, 2003), 68 FR 54508 (September 17, 2003) (approving the listing and trading of trust certificates linked to a basket of up to five investment-grade fixed income securities plus U.S. Treasury securities); and 50355 (September 13, 2004), 69 FR 56252 (September 20, 2004) (approving generic listing standards for trust certificates linked to portfolios of investment grade securities and U.S. Treasury securities).

<sup>10</sup> See Amex Company Guide Section 107D (Index-Linked Securities); Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005).

<sup>11</sup> See Amex Rules 1000 through 1006 and 1000A through 1005A.

<sup>12</sup> See Securities Exchange Act Release No. 54106 (July 6, 2006), 71 FR 39534 (July 13, 2006) (File No. S7-07-06) (the "Joint Rules").

<sup>13</sup> Trust-preferred securities are undated cumulative securities issued from a special purpose trust in which a bank or bank holding company owns all of the common securities. The trust's sole asset is a subordinated note issued by the bank or bank holding company. Trust preferred securities are treated as debt for tax purposes so that the distributions or dividends paid are a tax-deductible interest expense.

<sup>14</sup> Supranational debt represents the debt of international organizations such as the World Bank, the International Monetary Fund, regional multilateral development banks, and multilateral financial institutions. Examples of regional multilateral development banks include the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, and the Inter-American Development Bank. In addition, examples of multilateral financial institutions include the European Investment Bank and the International Fund for Agricultural Development.

fixed income indexes that may be listed and traded pursuant to Rule 19b-4(e) under the Act.

For purposes of the proposed definition, a convertible bond is deemed to be a Fixed Income Security up until the time that it is converted into its underlying common or preferred stock.<sup>15</sup> Once converted, the equity security may no longer continue as a component of a fixed income index under the proposed rules, and accordingly, would have to be removed from such index for the ETF to remain listed pursuant to proposed Commentary .04 to Rule 1000 or Commentary .03 to Rule 1000A.

The Exchange proposes that, to list an ETF based on a fixed income index pursuant to the generic standards, the index must meet the following criteria:

- The index or portfolio must consist of Fixed Income Securities;

- Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of \$100 million or more;

- No component Fixed Income Security (excluding a Treasury Security) represents more than 30% of the weight of the index, and the five highest weighted component fixed income securities in the index do not in the aggregate account for more than 65% of the weight of the index;

- An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and

- Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either:

- From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act;<sup>16</sup>

- From issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more;

- From issuers that have outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least \$1 billion;

- Exempted securities, as defined in Section 3(a)(12) of the Act;<sup>17</sup> or

- From issuers that are governments of foreign countries or political subdivisions of foreign countries.

The Exchange believes that these proposed component criteria standards are reasonable for fixed income indexes, and, when applied in conjunction with the other listing requirements, would result in ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation.

The Exchange notes that the proposed standards are similar to the standards set forth by the Commission and the CFTC in the Joint Rules as well as existing fixed-income-based ETFs. First, in the proposed standards, component fixed income securities that in the aggregate account for at least 75% of the weight of the index or portfolio would have to have a minimum original principal amount outstanding of at least \$100 million. This is virtually identical to the corresponding standard in Section 107E(a)(x) of the Amex *Company Guide* for trust certificates. Second, in the proposed standards, the most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, consistent with the standard for U.S. equity ETFs set forth in Commentaries .03(a)(A) to Rule 1000 and .02(a)(A) to Rule 1000A. In addition, this standard is identical to the standard set forth by the Commission and the CFTC in the Joint Rules.<sup>18</sup> Third, in the proposed standards, the five most heavily weighted component securities could not exceed 65% of the weight of the index or portfolio, consistent with the standard for U.S. equity ETFs set forth in Commentaries .03(a)(A) to Rule 1000 and .02(a)(A) to Rule 1000A as well as the Joint Rules. Fourth, the minimum number of fixed income securities (except for portfolios consisting entirely of exempted securities, such as Treasury Securities or GSEs) from unaffiliated<sup>19</sup> issuers in the proposed standards is 13, consistent with the standard for U.S. equity ETFs set forth in Commentaries .03(a)(A) to Rule 1000 and .02(a)(A) to Rule 1000A and the Joint Rules. This requirement together with the diversification standards set forth above

would provide assurance that the fixed income securities comprising an index would not be overly dependent on the price behavior of a single component or small group of components.

Finally, the proposed standards would require that at least 90% of the weight of the index or portfolio must be either (i) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act;<sup>20</sup> (ii) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (iii) from issuers that have outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least \$1 billion; (iv) exempted securities, as defined in Section 3(a)(12) of the Act;<sup>21</sup> or (v) from issuers that are governments of foreign countries or political subdivisions of foreign countries. This proposed standard is consistent with a similar standard in the Joint Rules and is designed to ensure that the component fixed income securities have sufficient publicly available information.

The proposed generic listing requirements for fixed income ETFs would not require that component securities in an underlying index have an investment-grade rating.<sup>22</sup> In addition, the proposed requirements would not require a minimum trading volume, due to the lower trading volume that generally occurs in the fixed income markets as compared to the equity markets. However, the Exchange submits that the minimum principal amount outstanding requirement of \$100 million, coupled with the proposed concentration requirements, would severely reduce the likelihood that an ETF listed under the proposal would be readily susceptible to manipulation. In all cases, Multiple or Inverse ETFs, which are considered for listing pursuant to Rule 1000A(b)(2), may not be the subject of these proposed generic listing standards.

#### *Requirements for Listing and Trading ETFs Based on Combination Indexes.*

The Exchange also seeks to list and trade ETFs based on a combination of equity and fixed income securities or a composite index that would consist of an equity index and fixed income index (collectively, "combination indexes"). An ETF listed pursuant to the generic standards for combination indexes would be traded, in all other respects, under the Exchange's existing trading

<sup>15</sup> The Exchange notes that, under the Section 3(a)(11) of the Act, 15 U.S.C. 78c(a)(11), a convertible security is defined as an equity security. However, for the purpose of the proposed generic listing criteria, Amex believes that defining a convertible security (prior to its conversion) as a Fixed Income Security is consistent with the objectives and intention of the generic listing standards for fixed-income-based ETFs as well as the Act.

<sup>16</sup> 15 U.S.C. 78m and 78o(d).

<sup>17</sup> 15 U.S.C. 78c(a)(12).

<sup>18</sup> See note 12 *supra*.

<sup>19</sup> Rule 405 under the Securities Act of 1933, 17 CFR 230.405, defines an affiliate as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person. Control, for this purpose, is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

<sup>20</sup> 15 U.S.C. 78m and 78o(d).

<sup>21</sup> 15 U.S.C. 78c(a)(12).

<sup>22</sup> See Joint Rules, 71 FR at 30538.

rules and procedures that apply to ETFs and would be covered under the Exchange's surveillance program for ETFs.<sup>23</sup>

To list an ETF pursuant to the proposed generic listing standards for combination indexes, an index underlying a PDR or IFS must satisfy all the conditions contained in proposed Commentary .05 to Rule 1000 (for PDRs) or proposed Commentary .04 to Rule 1000A (for IFSs). These generic listing standards are intended to ensure that securities with substantial market distribution and liquidity account for a substantial portion of the weight of both the equity and fixed income portions of an index or portfolio.

Proposed Commentaries .05 to Rule 1000 and .04 to Rule 1000A would provide that the Exchange may approve series of PDRs and IFSs—based on a combination of indexes or a series of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market—for listing and trading pursuant to Rule 19b-4(e) under the Act. The standards that an ETF would have to comply with are as follows: (i) Such portfolio or combination of indexes has been described in exchange rule changes reviewed and approved for the trading of options, PDRs, IFSs, Index-Linked Exchangeable Notes, or Index-Linked Securities by the Commission under Section 19(b)(2) of the Act, and all of the standards set forth in the original order are satisfied by the exchange employing generic listing standards; or (ii) the equity portion and fixed income portion of the component securities separately meet the criteria set forth in Commentary .03 (equities) and proposed Commentary .04 (fixed income) for PDRs and Commentary .02 (equities) and proposed Commentary .03 (fixed income) for IFSs. In all cases, however, Multiple or Inverse ETFs, which are considered for listing pursuant to Rule 1000A(b)(2), may not be the subject of these proposed generic listing standards.

**Index Methodology and Dissemination.** The Exchange proposes to adopt Commentaries .04(b) and .05(a) to Rule 1000 and Commentaries .03(b) and .04(a) to Rule 1000A to establish requirements for index methodology and dissemination in connection with fixed income and combination indexes.

If a broker-dealer is responsible for maintaining (or has a role in maintaining) the underlying index, such broker-dealer 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.

With respect to index dissemination, the Exchange proposes to adopt Commentaries .04(b)(iii) and .05(a)(iii) to Rule 1000 and Commentaries .03(b)(iii) and .04(a)(iii) to Rule 1000A to require that the index value for an ETF listed pursuant to the proposed standards for fixed income be widely disseminated by one or more major market data vendors at least once a day during the time when the ETF shares trade on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. This reflects the nature of the fixed income markets as well as the frequency of intra-day trading information with respect to fixed income indexes. To the extent that an ETF is based on a combination index, the index would have to be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the ETF shares trade on the Exchange to reflect updates for the prices of the equity securities included in the combination index. The fixed income portion of the combination index would have to be updated at least daily.

**Application of General Rules.** Commentaries .06 to Rule 1000 and .05 to Rule 1000A would be added to identify those characteristics of ETFs that would apply to all such series of PDRs or IFSs based on fixed income or combination indexes. This would include the dissemination of the Intraday Indicative Value, an estimate of the value of a share of each ETF, updated at least every 15 seconds. In addition, proposed Commentaries .05 to Rule 1000 and .06 to Rule 1000A would set forth the requirements for PDRs or IFSs relating to initial shares outstanding, minimum price variation, listing fees, surveillance procedures, and the application of PDR or IFS rules, as applicable.

The Exchange states that the Commission has approved generic standards providing for the listing pursuant to Rule 19b-4(e) of other derivative products based on indexes described in rule changes previously approved by the Commission under Section 19(b)(2) of the Act. The Exchange proposes to include in the generic standards for the listing of PDRs

and IFSs based on fixed income and combination indexes, in new Commentary .04 to Rule 1000 and Commentary .03 to Rule 1000A, indexes that have been approved by the Commission in connection with the listing of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes, or Index-Linked Securities. The Exchange believes that the application of that standard to ETFs is appropriate because the underlying index would have been subject to detailed and specific Commission review in the context of the approval of listing of other derivatives.<sup>24</sup>

The Exchange notes that existing Rules 1002 and 1002A provide continued listing standards for all PDRs and IFSs. For example, where the value of the underlying index or portfolio of securities on which the ETF is based is no longer calculated or available, or in the event that the ETF chooses to substitute a new index or portfolio for the existing index or portfolio, the Exchange would commence delisting proceedings if the new index or portfolio does not meet the requirements of and listing standards set forth in Rules 1000 *et seq.* or Rules 1000A *et seq.*, as applicable. If an ETF chose to substitute an index that did not meet any of the generic listing standards for listing of ETFs pursuant to Rule 19b-4(e) under the Act, then for continued listing and trading, approval by the Commission of a separate filing pursuant to Section 19(b)(2) to list and trade that ETF would be required. The Exchange further notes that existing Amex Rules 1002(a)(ii) and 1002A(a)(ii) provide that, before approving an ETF for listing, the Exchange will obtain a representation from the ETF issuer that the net asset value per share will be calculated daily and made available to all market participants at the same time.

The trading halt requirements for existing ETFs will similarly apply to fixed income and combination index ETFs. In particular, Rules 1002(b)(ii) and 1002A(b)(iv) provide that, if the Intraday Indicative Value or the index value applicable to that series of ETFs is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning

<sup>23</sup> See Amex Rules 1000 through 1006 and 1000A through 1005A.

<sup>24</sup> See *supra* notes 7 and 9.

of the trading day following the interruption.<sup>25</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>26</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>27</sup> in particular, in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange believes that the proposed rule change would 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*

The Exchange has neither solicited nor received comments on this proposal.

## 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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

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

The Amex has requested accelerated approval of the proposed rule change. The Commission had determined that a public notice and comment period is appropriate.

<sup>25</sup> If an ETF is traded on the Exchange pursuant to unlisted trading privileges, the Exchange would halt trading if the primary listing market halts trading in such ETF because the Intraday Indicative Value and/or the index value is not being disseminated. See Securities Exchange Act Release No. 55018 (December 28, 2006), 72 FR 1040 (January 9, 2007) (SR Amex-2006-109).

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

<sup>27</sup> 15 U.S.C. 78f(b)(5).

## 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-2006-118 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-118. 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 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-2006-118 and should be submitted on or before February 22, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-1998 Filed 2-6-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55197; File No. SR-BSE-2007-02]

### **Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Boston Options Exchange Fee Schedule**

January 30, 2007.

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> notice is hereby given that on January 22, 2007, the Boston Stock Exchange, Inc. ("BSE" 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 BSE. The BSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 the following changes to the Fee Schedule for the Boston Options Exchange ("BOX"). The first proposed change to the Fee Schedule relates to the Penny Pilot Program.<sup>5</sup> This proposed change will allow BOX to introduce lower fees for those instruments that are included in the Penny Pilot Program, which trade in increments of one cent. The second proposed change is to amend the Fee Schedule to permanently eliminate a fee that is currently waived. Finally, the

<sup>28</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> See Securities Exchange Release No. 54789 (November 20, 2006), 71 FR 68654 (November 27, 2006) (SR-BSE-2006-49).