

Dated: March 26, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55547; File No. SR-Amex-2006-110]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Relating to Options Based on Commodity Pool ETFs

March 28, 2007.

#### I. Introduction

On November 24, 2006, the American Stock Exchange LLC ("Amex" 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 proposal to amend certain rules to permit the listing and trading of options on securities issued by trust issued receipts ("Commodity TIRs"), partnership units, and other entities (referred herein to as "Commodity Pool ETFs") that hold or invest in commodity futures products. The proposed rule change was published for comment in the **Federal Register** on February 6, 2007.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The purpose of the proposed rule change is to enable the listing and trading on the Exchange of options on interests in Commodity Pool ETFs that trade directly or indirectly commodity futures products. As a result, Commodity Pool ETFs are subject to the Commodity Exchange Act ("CEA") due to their status as a commodity pool,<sup>4</sup> and therefore, regulated by the Commodity Futures Trading Commission ("CFTC").<sup>5</sup> Commodity

Pool ETFs may hold or trade in one or more types of investments that may include any combination of securities, commodity futures contracts, options on commodity futures contracts, swaps, and forward contracts.

Currently, Commentary .06 to Amex Rule 915 provides securities deemed appropriate for options trading shall include shares or other securities ("Exchange-Traded Fund Shares") that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as an NMS security, and that: (i) Represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities; or (ii) represent interest in a trust or other similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust.

The proposal would amend Commentary .06 to Rule 915 to expand the type of options to include the listing and trading of options based on shares of Commodity Pool ETFs (the "Shares") that may hold or invest directly or indirectly in commodity futures products, including but not limited to, commodity futures contracts, options on commodity futures contracts, swaps, and forward contracts. For Commodity Pool ETFs, a comprehensive surveillance sharing agreement will be required between the Exchange and the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in such commodity futures contracts and/or options on commodity futures contracts on the specified commodities or non-U.S. currency, which are utilized by the national securities exchange where the underlying Commodity Pool ETFs are listed and traded.<sup>6</sup> The Exchange has represented that it has an adequate surveillance program in place for options based on Commodity Pool ETFs.

apply, as a commodity pool operator ("CPO") and commodity trading advisor ("CTA") with the CFTC and become a member of the National Futures Association ("NFA").

<sup>6</sup> See proposed Commentary .06(a)(v) to Amex Rule 915.

Under the applicable continued listing criteria in Commentary .07 to Amex Rule 916, the options on the Shares shall not be deemed to meet the Exchange's requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering the Shares whenever the Shares are subject to delisting as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of the index, non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities, or portfolio of securities on which the Shares are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, the options on the Shares shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Shares, if the Shares are halted from trading on their primary market, or if the Shares are delisted, or the value of the index or portfolio on which the Shares are based is no longer calculated or available.

The proposal would amend Amex Rule 3 to require members to establish, maintain, and enforce written policies and procedures to prevent the misuse of material nonpublic information it might have or receive in a related security, option or derivative or in the applicable related commodity, commodity futures or options on commodity futures, or any other related commodity derivatives. The proposal would also amend Amex Rule 957 to ensure that the specialist and Registered Traders handling the Shares provide the Exchange with all necessary information relating to their trading in the applicable, physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity. Lastly, the revision to Rule 957 would prohibit a specialist or Registered Trader engaging in physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity from trading in an account

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

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

<sup>3</sup> See Securities Exchange Act Release No. 55187 (January 29, 2007), 72 FR 5467.

<sup>4</sup> A "commodity pool" is defined in CFTC Regulation 4.10(d)(1) as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests. CFTC regulations further provide that a "commodity interest" means a commodity futures contract and any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act. See CFTC Regulation 4.10(a).

<sup>5</sup> The manager or operator of a "commodity pool" is required to register, unless applicable exclusions

which has not been reported to the Exchange.

### III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>7</sup> and, in particular, the requirements of Section 6 of the Act.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed 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.

#### Surveillance

The Commission notes that the Exchange has represented that it has an adequate surveillance program in place for options based on Commodity Pool ETFs. The Exchange may obtain trading information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG and have entered into numerous comprehensive surveillance sharing agreements with various commodity futures exchanges worldwide. Prior to listing and trading options on Commodity Pool ETFs, the Exchange represented that it will either have the ability to obtain specific trading information via ISG or through a comprehensive surveillance sharing agreement with the exchange or exchanges where the particular commodity futures and/or options on commodity futures are traded. In addition, the Exchange represented that the addition of Commodity Pool ETF options will not have any effect on the rules pertaining to position and exercise limits<sup>10</sup> or margin.<sup>11</sup>

#### Listing and Trading of Options on Commodity Pool ETFs

The Commission notes that, pursuant to the proposed rule change, a Commodity Pool ETF will be subject to the provisions of Amex Rules 915 and 916, as applicable. These provisions include requirements regarding initial and continued listing standards, the

creation/redemption process for ETFs, and trading halts. All Commodity Pool ETFs must be traded through a national securities exchange or through the facilities of a national securities association, and must be “NMS stock” as defined under Rule 600 of Regulation NMS.<sup>12</sup>

The Commission believes that this proposal is necessary to enable the Exchange to list and trade options on an expanding range of Commodity Pool ETFs currently approved for trading and that it is reasonable to expect other types of Commodity Pool ETFs to be introduced for trading in the future. This proposal would help ensure that the Exchange will be able to list options on Commodity Pool ETFs that have been recently launched as well as any other similar Commodity Pool ETFs that may be listed and traded in the future<sup>13</sup> thereby offering investors greater option choices.

### 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-2006-110), is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55550; File No. SR-NASDAQ-2007-010]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto To Amend Rule 4611 Relating to Sponsored Access

March 28, 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 16, 2007, The NASDAQ Stock Market LLC (“Nasdaq” 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 Nasdaq. On February 23, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change but subsequently withdrew it. On February 23, 2007, Nasdaq filed Amendment No. 2 to the proposed rule change. The Exchange has filed the proposal as a “non-controversial” rule change 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 it effective upon filing with the Commission. 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

Nasdaq proposes to amend the Nasdaq Rule 4611 to update and codify the requirements applicable to Nasdaq members that provide sponsored access to other firms and customers to the Nasdaq execution system. The text of the proposed rule change is available at Nasdaq, the Commission’s Public Reference Room, and <http://www.nasdaq.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, Nasdaq 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. Nasdaq 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

Nasdaq proposes to amend the Nasdaq Rule 4611 to update and codify the requirements applicable to Nasdaq members that provide sponsored access to other firms and customers to the Nasdaq execution system. Currently, Nasdaq members provide sponsored access consistent with guidance set forth in NASD Notice to Members 98-66 as updated by the NASD in Notice

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>10</sup> See Amex Rules 904 and 905.

<sup>11</sup> See Amex Rule 462.

<sup>12</sup> 17 CFR 242.600(b)(47).

<sup>13</sup> 17 CFR 240.19b-4(e).

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

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