

be operative upon filing with the Commission.<sup>22</sup>

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.<sup>23</sup>

#### 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-NYSE-2007-29 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-NYSE-2007-29. 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 the filing also will be

available for inspection and copying at the principal office of NYSE. 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-NYSE-2007-29 and should be submitted on or before May 4, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55594; File No. SR-NYSE-2005-48]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendments No. 1, 2, 3, and 4 Thereto to Proposed Rule Change to Amend Rule 619 Pertaining to Subpoenas for the Production of Documents and Appearances of Witnesses

April 6, 2007.

On July 13, 2005, 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> the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend NYSE Rule 619, pertaining to subpoenas for the production of documents and appearance of witnesses. The proposed rule change was published for comment in the **Federal Register** on September 26, 2005,<sup>3</sup> and the Commission received no comments on the proposal. On April 18, 2006, November 2, 2006, December 22, 2006, and February 8, 2007, the NYSE filed Amendments No. 1, 2, 3, and 4, respectively, to revise the rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE.<sup>4</sup> The

<sup>24</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> See Securities Exchange Act Release No. 52468 (Sept. 19, 2005), 70 FR 56201 (Sept. 26, 2005).

<sup>4</sup> Amendment No. 1 clarified that only the arbitrator(s) may issue subpoenas and delineated the manner in which a party may request the issuance of a subpoena. Amendment No. 2 established a time frame for the parties to make and respond to objections to the requested subpoena and clarified that the arbitrator(s) may not rule on

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

NYSE is proposing to revise Rule 619, which pertains to subpoenas for the production of documents and the appearance of witnesses. Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are in brackets.

- \* \* \* \* \*
- (a) to (e) No change.  
(f) Subpoenas.

(1) The arbitrator(s) [and any counsel of record to the proceedings] *may issue subpoenas for the production of documents or the appearance of witnesses* [shall have the power of the subpoena process as provided by law. All parties shall be given a copy of the subpoena upon its issuance. The parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.] *The party who requests a subpoena must make a written request asking the arbitrator(s) to issue a subpoena. The request, along with the requested draft subpoena must be served directly on each other party in a manner that is reasonably expected to cause the request and the requested subpoena to be delivered to all parties on the same day. The requesting party may not serve the request or the requested draft subpoena on a non-party. The request and the requested subpoena must also be filed with the Director of Arbitration, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties. The parties shall produce witnesses and present proof at the hearing whenever possible without using subpoenas.*

(2) *In the event a party receiving such a request objects to the scope or propriety of the subpoena, that party shall, within 10 days of service of the request, file with the Director of Arbitration, with copies to all other parties, written objections, including additional copies for each arbitrator. The party seeking the subpoena may respond thereto within five days of receipt of the objection. The arbitrator(s) appointed shall rule promptly on the*

such a request until this time period has elapsed. Amendment No. 3 made technical changes to the rule and clarified that the arbitrator(s) must receive copies of any objections to the issuance of a subpoena. Amendment No. 4 clarified that a party requesting a subpoena may not serve the request or the draft subpoena on a non-party.

<sup>22</sup> 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).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on April 5, 2007, the date on which the Exchange submitted Amendment No. 1.

issuance and scope of the subpoena after the time period for objections and replies thereto has elapsed.

(3) If the arbitrator(s) issue a subpoena, the party that requested the subpoena must serve the subpoena at the same time and in the same manner on all parties, and, if applicable, on any non-party receiving the subpoena.

(4) Any party that receives documents in response to a subpoena served upon a non-party shall provide notice to all other parties within five days of receipt of the documents. Thereafter, any party may request copies of such documents and, if such a request is made, the documents must be provided within 10 days following receipt of the request. The party requesting the documents shall be responsible for the reasonable costs associated with the production of the copies, unless the panel determines otherwise.

(g) No change.

\* \* \* \* \*

## 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 NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 Proposal

In the initial rule filing, the Exchange proposed to revise NYSE Rule 619 to provide for a 10-day notice period requirement before a party issues a subpoena to a non-party for pre-hearing discovery. Under the proposed rule change only the arbitrator(s) may issue subpoenas for the production of documents and the appearance of witnesses. In addition, the arbitrator(s), and not the courts, would rule on discovery disputes concerning the issuance of subpoenas. The party who requests a subpoena would make a written request asking the arbitrator(s) to issue a subpoena and would send a copy of the request and the requested draft subpoena to the Director of Arbitration, each arbitrator, and all parties to the arbitration in a manner reasonably expected to result in delivery

to everyone on the same day. The requesting party may not serve the request or the requested draft subpoena on any non-party.

If a party has an objection to the propriety or scope of the subpoena, that party would be required to file objections in writing with the Director of Arbitration and send copies to all other parties, including each arbitrator, within 10 days of service of the request and draft subpoena. The party requesting the subpoena could file a reply to the objection within five days of receipt of the objection. The arbitrator(s) would determine the propriety and scope of the requested subpoena after the time period for filing objections or replies had elapsed. If a subpoena is issued by the arbitrator(s), the party that requested the subpoena would be required to serve the subpoena at the same time and in the same manner on all parties, and, if applicable, on any non-party receiving the subpoena.

Additionally, the proposed rule change provides that any party that receives documents in response to a subpoena served upon a non-party must provide notice to all other parties within five days of receipt of the documents. Thereafter, any party may request copies of those documents and, if such a request is made, the documents must be provided within 10 days following receipt of the request. The party requesting the documents is responsible for the reasonable costs associated with the production of the copies, unless the panel determines otherwise.

#### 2. Statutory Basis

NYSE believes that the proposed rule change is consistent with Section 6(b)(5)<sup>5</sup> of the Act in that the rule change promotes just and equitable principles of trade by ensuring that members, member organizations and the public have a fair and impartial forum for the resolution of their disputes.

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

The Exchange does not believe that the proposed rule change will 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

The Commission published the proposed amendments to Rule 619 (SR-NYSE-2005-48) in the **Federal Register**

on September 26, 2005. The Commission received no comments in response to the 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 self-regulatory organization consents, the Commission will:

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

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

## 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-48 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-NYSE-2005-48. 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

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

the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2005-48 and should be submitted on or before May 4, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55600; File No. SR-NYSE-2007-27]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Adopt Generic Listing Standards for Index-Linked Securities

April 9, 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 March 9, 2007, the New York Stock Exchange LLC ("NYSE" 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 Exchange. On April 4, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On April 5, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. 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 adopt generic listing standards for equity index-linked securities ("Equity Index-Linked Securities"), commodity-linked securities ("Commodity-Linked Securities"), and currency-linked

securities ("Currency-Linked Securities" and, together with Equity Index-Linked Securities and Commodity-Linked Securities, "Index-Linked Securities"). The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to add new Section 703.22 to its Listed Company Manual (the "Manual") to provide generic listing standards to permit the listing and trading of Index-Linked Securities pursuant to Rule 19b-4(e)<sup>3</sup> under the Act. The Exchange represents that any securities it lists and/or trades pursuant to proposed Section 703.22 of the Manual will satisfy the standards set forth therein. The Exchange states that within five business days after commencement of trading of an Index-Linked Security pursuant to proposed Section 703.22 of the Manual, the Exchange will file a Form 19b-4(e).<sup>4</sup>

##### Index-Linked Securities

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments, or market indexes of the foregoing (the "Underlying Index" or "Underlying Indexes").<sup>5</sup> Index-Linked Securities are

the non-convertible debt of an issuer that have a term of at least one year, but not greater than thirty years, and are tied to the performance of the Underlying Index. Index-Linked Securities may or may not make interest payments based on dividends or other cash distributions paid on the securities comprising the Underlying Index or Indexes to the holder during their term. Despite the fact that Index-Linked Securities are linked to an Underlying Index, each will trade as a single, exchange-listed security.

The Exchange represents that the proposed generic listing standards will not be applicable to Index-Linked Securities with respect to which the payment at maturity is based on a multiple of the negative performance of an Underlying Index or Indexes. An Index-Linked Security may or may not provide "principal protection," *i.e.*, a minimum guaranteed amount to be repaid.<sup>6</sup> The Exchange believes that the flexibility to list a variety of Index-Linked Securities will offer investors the opportunity to more precisely focus their specific investment strategies.

Index-Linked Securities do not give the holder any right to receive a portfolio component, dividend payments, or any other ownership right or interest in the portfolio or underlying components comprising the Underlying Index. Pursuant to proposed Section 703.22 of the Manual, the current or composite value of the Underlying Index will be widely disseminated at least every 15 seconds during the trading day.

##### Proposed Listing Criteria for Index-Linked Securities

The Exchange will apply the following requirements to all issuers of Index-Linked Securities:

- If the issuer is a NYSE-listed company, the entity must be a company in good standing (*i.e.*, meets NYSE's applicable continued listing criteria); if the issuer is an affiliate of a NYSE-listed company, the NYSE-listed company must be a company in good standing; if not listed, the issuer must meet the size and earnings requirements of Sections 102.01-102.03 or Sections 103.01-103.05 of the Manual. Sovereign issuers

to the appreciation and/or depreciation of the underlying component assets. For example, an Index-Linked Security may be subject to a "cap" on the maximum principal amount to be repaid to holders or a "floor" on the minimum principal amount to be repaid to holders at maturity.

<sup>6</sup> Some Index-Linked Securities may provide for "contingent" protection of the principal amount, whereby the principal protection may disappear if the Underlying Index at any point in time during the life of such security reaches a certain predetermined level.

<sup>6</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> Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change if the Commission has approved the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. See 17 CFR 240.19b-4(e)(1).

<sup>4</sup> See 17 CFR 240.19b-4(e)(2)(ii).

<sup>5</sup> The Exchange states that the holder of an Index-Linked Security may or may not be fully exposed