

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57539; File No. SR-Amex-2008-17]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Adopt Listing Rules for Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities

March 20, 2008.

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 29, 2008, 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 substantially prepared by the Exchange. On March 20, 2008, the Exchange filed Amendment No. 1 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 Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities (collectively, the “New Linked Securities”) and a technical change to section 107D of the *Amex Company Guide*. The text of the proposed rule change is available at Amex, the Commission’s Public Reference Room, and <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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to add new sections 107G, 107H, and 107I of the *Amex Company Guide* to provide generic listing standards for the New Linked Securities. The purpose of the proposed rule change is to enable the listing and trading of the New Linked Securities pursuant to Rule 19b-4(e)<sup>3</sup> under the Act, without individual Commission approval of each such product pursuant to section 19(b)(2) of the Act.<sup>4</sup> The Exchange represents that within five business days after commencement of trading of a series of New Linked Securities under proposed sections 107G, 107H, and 107I of the *Amex Company Guide*, as applicable, the Exchange will file a Form 19b-4(e).<sup>5</sup>

##### General Issuer and Issue Eligibility

As with Index-Linked Securities under current Section 107D,<sup>6</sup> Commodity-Linked Securities under section 107E,<sup>7</sup> and Currency-Linked Securities under section 107F of the *Amex Company Guide*,<sup>8</sup> the New

<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, pursuant to Section (c)(1) of Rule 19b-4 (17 CFR 240.19b-4(c)(1)), if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), 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).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> 17 CFR 240.19b-4(e)(2)(ii); 17 CFR 249.820.

<sup>6</sup> Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. As part of this proposed rule change, the Exchange seeks to make a technical change to Section 107D of the *Amex Company Guide* to define such underlying index or indexes as the “Equity Reference Asset.” Such securities may or may not provide for the repayment of the original principal investment amount. See Section 107D and Section 107D(d) of the *Amex Company Guide*.

<sup>7</sup> Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more commodities, commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in Amex Rule 1200A), or a basket or index of any of the foregoing (the “Commodity Reference Asset”). Such securities may or may not provide for the repayment of the original principal investment amount. See Section 107E of the *Amex Company Guide*.

<sup>8</sup> Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in Amex Rule 1200B), or a basket or index of any of the foregoing (the “Currency Reference

Linked Securities do not give the holder any right to receive a portfolio component or any other ownership right or interest in the portfolio or underlying components comprising the applicable Reference Asset (as defined herein) and may or may not provide for the repayment of the original principal investment amount. Likewise, the general standards set forth in section 107D(a)–(f), section 107E(a)–(f), and section 107F(a)–(f) of the *Amex Company Guide* will similarly apply to the New Linked Securities.<sup>9</sup> Specifically, the Exchange will apply the following requirements to all issuers of New Linked Securities:

- The issuer will be expected to have a minimum tangible net worth of \$250,000,000 and to otherwise exceed certain earnings requirements. In the alternative, the issuer will be expected: (1) To have a minimum tangible net worth of \$150,000,000; and (2) not to have issued index-linked note offerings (including the New Linked Securities), the original issue price of which, combined with all the issuer’s other index-linked note offerings listed on a national securities exchange, exceeds 25% of the issuer’s tangible net worth at the time of issuance.

- The issuer must be in compliance with Rule 10A-3 under the Act.<sup>10</sup> In addition, the Exchange will apply the following requirements to each issue of New Linked Securities:

- The issue must have a minimum public distribution of at least 1,000,000 trading units with a minimum of 400 public shareholders. This minimum public distribution and minimum public shareholders requirements will not be applicable to an issue traded in thousand dollar denominations or if the securities are redeemable at the option of the holders thereof on at least a weekly basis.

- The issue must have a principal amount/aggregate market value of not less than \$4 million.

- The issue must have a term of at least one year, but not greater than 30 years.

- The issue must be the nonconvertible debt of the issuer.

- The payment at maturity may or may not provide for a multiple of the

Asset”). Such securities may or may not provide for the repayment of the original principal investment amount. See Section 107F of the *Amex Company Guide*.

<sup>9</sup> See Section 107A of the *Amex Company Guide* (setting forth the “General Criteria” relating to minimum issuer eligibility requirements based on assets, earnings, and stockholders’ equity, and minimum issue requirements based on public distribution, public shareholders, and principal amount/aggregate market value).

<sup>10</sup> See 17 CFR 240.10A-3.

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

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

direct or inverse performance of the underlying Reference Asset; however, in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds twice the performance of the underlying Reference Asset.

#### Fixed Income-Linked Securities

Fixed Income-Linked Securities will be subject to the criteria proposed in new Section 107G of the Amex *Company Guide* for initial and continued listing. Fixed Income-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more indexes or portfolios of debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof, or a basket or index of any of the foregoing (collectively, "Fixed Income Reference Asset").

For the initial listing of Fixed Income-Linked Securities, the Fixed Income Reference Asset must either: (1) Have been approved for the trading of options or other derivatives by the Commission under section 19(b)(2) of the Act and the rules thereunder, and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements, continue to be satisfied; or (2) meet the following requirements:<sup>11</sup>

- Components of the Fixed Income Reference Asset that, in the aggregate, account for at least 75% of the weight of the Fixed Income Reference Asset must each have a minimum original principal amount outstanding of \$100 million or more;
- A component of the Fixed Income Reference Asset may be a convertible security; however, once the convertible security component converts to the underlying equity security, the component is removed from the Fixed Income Reference Asset;
- No component of the Fixed Income Reference Asset (excluding Treasury

<sup>11</sup> The Exchange notes that the quantitative criteria for Fixed Income Reference Assets are substantially similar to those set forth under Commentary .02 to Amex Rule 1000-AEMI and Commentary .03 to Amex Rule 1000A-AEMI, relating to Portfolio Depository Receipts and Index Fund Shares, respectively, based on a fixed income index or portfolio. See Securities Exchange Act Release No. 55437 (March 9, 2007), 72 FR 12233 (March 15, 2007) (SR-Amex-2006-118) (approving the adoption of "fixed income" and "combination" generic listing standards for exchange-traded funds).

Securities and GSE Securities) may represent more than 30% of the weight of the Fixed Income Reference Asset, and the five highest weighted components in the Fixed Income Reference Asset may not, in the aggregate, account for more than 65% of the weight of the Fixed Income Reference Asset;

- An underlying Fixed Income Reference Asset (excluding one consisting entirely of exempted securities)<sup>12</sup> must include a minimum of 13 non-affiliated issuers;
- Component securities that, in the aggregate, account for at least 90% of the weight of the Fixed Income Reference Asset must be one of the following: (1) From issuers that are required to file reports pursuant to sections 13 and 15(d) of the Act;<sup>13</sup> (2) from issuers that have a worldwide market value of their outstanding common equity held by non-affiliates of \$700 million or more; (3) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (4) exempted securities as defined in Section 3(a)(12) of the Act;<sup>14</sup> or (5) from issuers that are a government of a foreign country or a political subdivision of a foreign country; and
- The Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per trading day.

The Exchange will commence delisting or removal proceedings:<sup>15</sup>

- If any of the initial listing criteria for Fixed Income-Linked Securities are not continuously maintained;
- If the aggregate market value or the principal amount of the Fixed Income Index-Linked Securities publicly held is less than \$400,000;
- The value of the Fixed Income Reference Asset is no longer calculated or available, and a new Fixed Income Reference is substituted, unless the new Fixed Income Reference Asset meets the

<sup>12</sup> "Exempted securities" is defined in Section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)). The Exchange notes that, for purposes of a Fixed Income Reference Asset, an "exempted security" may include Treasury Securities, municipal securities and/or GSE Securities.

<sup>13</sup> See 15 U.S.C. 78m; 15 U.S.C. 78o(d).

<sup>14</sup> See 15 U.S.C. 78c(a)(12).

<sup>15</sup> The Exchange notes that the proposed continued listing standards for each of Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities are substantially similar to those standards under Sections 107D, 107E, and 107F currently applicable to Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities, respectively. See Sections 107D, 107E, and 107F of the Amex *Company Guide*.

requirements of proposed section 107G of the *Company Guide*; or

- If such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

#### Futures-Linked Securities

Futures-Linked Securities will be subject to the criteria in proposed Section 107H of the Amex *Company Guide* for initial and continued listing. Futures-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more indexes or portfolios of: (1) Futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (2) interest rate futures or options or derivatives on the foregoing (collectively, "Futures Reference Asset").

The issue must meet one of the initial listing standards set forth below:

- The Futures Reference Asset must have been reviewed and approved for the trading of Futures Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- The pricing information for components of a Futures Reference Asset must be derived from a market which is an Intermarket Surveillance Group ("ISG") member or affiliate member or with which the Exchange has a comprehensive surveillance sharing agreement. A Futures Reference Asset may include components representing not more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that do not meet the specified requirements; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset.

In addition, the issue must meet both of the following initial listing criteria: (1) The value of the Futures Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during trading on the Exchange; and (2) in the case of Futures-Linked Securities that are periodically redeemable, the indicative value of the subject Futures-Linked Securities must be calculated and widely disseminated by one or more major market data

vendors on at least a 15-second basis during trading on the Exchange.

The Exchange will commence delisting or removal proceedings:

- If any of the initial listing criteria for Futures-Linked Securities are not continuously maintained;
- If the aggregate market value or the principal amount of the Futures-Linked Securities publicly held is less than \$400,000;
- The value of the Futures Reference Asset is no longer calculated or available, and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of proposed section 107H of the Amex *Company Guide*; or
- If such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

#### Combination-Linked Securities

Combination-Linked Securities will be subject to the criteria in proposed section 107I of the Amex *Company Guide* for initial and continued listing. Combination-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, or Futures Reference Assets (collectively, "Combination Reference Asset," and together with Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, and Futures Reference Assets, collectively, "Reference Assets"). In addition, a Combination Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, London Interbank Offered Rate ("LIBOR"), Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates. The Exchange states that, for purposes of a notional investment as a component of a Multifactor Reference Asset, a long LIBOR weighting would represent a leverage charge offsetting long positions in the underlying Reference Assets.

For the initial listing of a series of Combination-Linked Securities, each component of the Combination Reference Asset must: (1) Have been reviewed and approved for the trading of options or other derivatives by the Commission under section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing

agreements, continued to be satisfied; or (2) meet the following requirements:

- Each Reference Asset included in the Combination Reference Asset must meet the applicable initial and continued listing criteria set forth in sections 107D, 107E, 107F, 107G and/or 107H of the Amex *Company Guide*;
- The value of the Combination Reference Asset must be calculated and widely disseminated to the public on at least a 15-second basis during the time the Combination-Linked Securities trade on the Exchange; and
- In the case of Combination-Linked Securities that are periodically redeemable, the indicative value of the Combination-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Combination-Linked Securities trade on the Exchange.

The Exchange will commence delisting or removal proceedings:

- If any of the initial listing criteria for Combination-Linked Securities are not continuously maintained;
- If the aggregate market value or the principal amount of the Combination-Linked Securities publicly held is less than \$400,000;
- The value of the Combination Reference Asset is no longer calculated or available, and a new Combination Reference is substituted, unless the new Combination Reference Asset meets the requirements of section 107I of the Amex *Company Guide*; or
- If such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

#### Applicable Exchange Rules

The New Linked Securities traded on the Exchange's equity trading floor will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules and the Exchange's regular trading hours (9:30 a.m. to 4 p.m. Eastern Time) will apply to transactions in the New Linked Securities. New Linked Securities listed and traded as bond or debt securities will be subject to the rules applicable to bond or debt securities, however, those New Linked Securities redeemable at the option of the holders thereof on at least a weekly basis will be subject to the trading rules applicable to exchange-traded funds.<sup>16</sup>

#### Information Circular

Upon evaluating the nature and complexity of each New Linked

Security, the Exchange represents that it will prepare and distribute, if appropriate, an Information Circular to member organizations describing the products. Accordingly, the particular structure and corresponding risks of a New Linked Security will be highlighted and disclosed. The Information Circular will disclose whether the New Linked Security will trade as equity or debt, subject to appropriate trading rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening, and margin.

The Information Circular will also detail the Exchange's suitability rule that requires a member organization recommending a transaction in these Securities: (1) To determine that such transaction is suitable for the customer (Amex Rule 411); and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such transaction. In addition, the Information Circular will reference the requirement that Amex member organizations must deliver a prospectus to investors purchasing newly issued New Linked Securities prior to or concurrently with the confirmation of a transaction.

#### Surveillance

The Exchange states that it will closely monitor activity in the New Linked Securities to identify and deter any potential improper trading activity. Additionally, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the New Linked Securities. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, options, and exchange-traded funds.<sup>17</sup> The Exchange has developed procedures to closely monitor activity in the New Linked Securities and the underlying indexes and/or portfolios to identify and deter potential improper trading activity. To the extent applicable, the Exchange will be able to obtain trading and beneficial holder information from the primary trading markets for the portfolio components in relation to the New Linked Securities, either pursuant to bilateral information sharing agreements with those markets or because those markets are SRO members or affiliate members of ISG.

<sup>16</sup> See proposed Sections 107G(k), 107H(k), and 107I(k) of the Amex *Company Guide*.

<sup>17</sup> See proposed Sections 107G(j), 107H(j), and 107I(j) of the Amex *Company Guide*.

## Firewall Procedures

If an underlying index is maintained by a broker-dealer, the broker-dealer is required to erect a "firewall" around the personnel responsible for the maintenance of such underlying index or who have access to information concerning changes and adjustments to the underlying index, and the underlying index must be calculated by a third party who is not a broker-dealer. Any advisory committee, supervisory board, or similar entity that advises an index license provider or that makes decisions regarding the underlying index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable underlying index or portfolio.<sup>18</sup> The Exchange further proposes to apply Amex Rules 1203A and 1203B<sup>19</sup> and 1204A and 1204B<sup>20</sup> to Futures-Linked Securities and Combination-Linked Securities, to the extent such Combination-Linked Securities are comprised in part of Futures, Commodity, or Currency Reference Assets.

## Trading Halts

If the indicative value or the Reference Asset value applicable to a series of New Linked Securities is not being disseminated as required, the

<sup>18</sup> See proposed Sections 107G(i), 107H(i), and 107I(i) of the *Amex Company Guide*.

<sup>19</sup> Amex Rules 1203A and 1203B restrict the ability of the specialist firm for any issue of Commodity-Based Trust Shares and Currency Trust Shares or its affiliates to make markets in and trade the Commodity Reference Asset and/or Currency Reference Asset components, the commodities or currencies underlying the Commodity Reference Asset or Currency Reference Asset components, or options, futures, or options on futures on the Commodity Reference Asset or Currency Reference Asset, or any other derivatives based on the Commodity Reference Asset or Currency Reference Asset, any Commodity Reference Asset or Currency Reference Asset component, or any physical commodity or commodities underlying a Commodity Reference Asset component or any currency or currencies underlying a Currency Reference Asset component. See Amex Rules 1203A and 1203B. The Exchange maintains that these rules would similarly apply to the trading of the New Linked Securities to the extent such New Linked Securities are comprised in part of a Futures, Commodity, or Currency Reference Asset.

<sup>20</sup> Amex Rules 1204A and 1204B provide that specialists handling Commodity-Based Trust Shares and Currency Trust Shares provide the Exchange with all necessary information relating to their trading in underlying physical assets, commodities or currencies, related futures or options on futures, or any other related derivatives. See Amex Rules 1204A and 1204B. The Exchange maintains that these rules would similarly apply to the trading of New Linked Securities to the extent such New Linked Securities are comprised in part of a Futures, Commodity, or Currency Reference Asset.

Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>21</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>23</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. The Exchange believes the adoption of generic listing standards for Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities would benefit the marketplace and investors by reducing the administrative burdens associated with the listing of such securities based on identifiable reference assets.

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

The Exchange believes 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

The Exchange states that 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

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 Amex consents, the Commission will:

<sup>21</sup> See proposed Sections 107G(h)(3), 107H(h)(3), and 107I(h)(3) of the *Amex Company Guide*.

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

A. By order approve such 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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2008-17 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-2008-17. 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 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-2008-17 and should be submitted on or before April 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-6249 Filed 3-26-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57540; File No. SR-Amex-2008-23]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding Designated Amex Remote Traders to Amex's Revenue Sharing Program

March 20, 2008.

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 13, 2008, the American Stock Exchange LLC ("Exchange" or "Amex") 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. 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 add Designated Amex Remote Traders ("DARTs") to Amex's existing revenue sharing program for ETF specialists and registered traders and to make related changes to its Exchange Traded Funds and Trust Issued Receipts Fee Schedule. The text of the proposed rule change is available on the Exchange's Web site at: <http://www.amex.com>, at the Exchange's principal office, 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, 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

On June 28, 2007, the Exchange: (i) Amended its Exchange Traded Funds and Trust Issued Receipts Fee Schedule to eliminate charges for ETF transactions by ETF specialists and registered traders (collectively, "ETF market makers"); and (ii) implemented a revenue sharing program whereby the Exchange would make certain payments, on a per-share executed basis out of general Exchange revenues, to ETF market makers which either buy or sell ETFs on the Exchange and provide liquidity in such transactions (e.g., the specialist's quote is traded against or the specialist offsets an order imbalance as part of an opening or closing transaction).<sup>3</sup> The Exchange enacted the revenue sharing program to provide incentives to the ETF market makers to quote aggressively in Amex-traded ETFs.

On January 31, 2008, the Commission approved the Exchange's DARTs program, which established DARTs as a third category of ETF market maker. Like ETF specialists and registered traders, DARTs provide liquidity to the Exchange in the ETFs in which they are assigned.<sup>4</sup>

Because DARTs operate similarly to ETF specialists and registered traders—in that they will also exclusively be quoting in their assigned ETFs—the Exchange proposes to fold DARTs into the existing revenue sharing program described above to provide DARTs similar incentives to provide liquidity on the Exchange. Amex proposes that a DART will receive a revenue sharing payment of \$0.0015 per share (or 15 cents per 100 shares) whenever the DART either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction, which places the DART rate between the specialist rate of \$0.0020 per share and the registered trader rate of \$0.0010 per share.<sup>5</sup>

<sup>3</sup> See Securities Exchange Act Release No. 55983 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR-Amex-2007-68) ("RSP Filing").

<sup>4</sup> See Securities Exchange Act Release No. 57241 (January 31, 2008), 73 FR 7335 (February 7, 2008) (SR-Amex-2007-138).

<sup>5</sup> Revenue sharing payments for DARTs are set at a higher rate than for registered traders to compensate for the fact that DARTs, unlike registered traders, will not participate in any post-

Further, like specialists and registered traders, a DART:

- Will not be assessed any transaction fees for "taking" liquidity;<sup>6</sup>
- Will not receive revenue sharing payments when another ETF market maker is a contra-party to the same transaction (i.e., a specialist buying shares from a DART);
- Will receive revenue sharing payments on transactions in securities trading at less than \$1.00, but only on the portion of a transaction for which the Exchange collects revenue;
- Will receive revenue sharing payments based only on the first 43,478 shares it executes in any particular transaction, given that customer transaction charges are capped at \$100 per transaction (which means the transaction charge of \$0.0023 per share is assessed on only the first 43,478 shares executed by a customer).

The revisions to the ETF Fee Schedule and the addition of DARTs to the revenue sharing program for ETF specialists and registered traders were implemented March 17, 2008, the date that DARTs were scheduled to commence trading on the Exchange.

##### 2. Statutory Basis

The Exchange believes that 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)(4) of the Act<sup>8</sup> in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange is proposing to adopt for the DARTs, a new class of quoting participants in the Amex ETF marketplace, a fee structure and revenue sharing program similar to the one already in place for ETF specialists and registered traders, which are similarly-situated quoting participants.

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

The Exchange believes that the proposed rule change does not impose

trade allocations in connection with auction trades under Rule 128B—AEMI(b). See e-mail from Daniel Mollin, Associate General Counsel, Amex, to Nathan Saunders, Special Counsel, Division of Trading and Markets, Commission, dated March 19, 2008.

<sup>6</sup> In the proposed rule change, the Exchange amended its Exchange Traded Funds and Trust Issued Receipts Fee Schedule to exclude DARTs from the customer transaction charges for transactions in ETFs. Specialists and registered traders were previously excluded from this fee pursuant to the terms of the revenue sharing program. See RSP Filing, *supra* note 3.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<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.