

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57066; File No. SR-ISE-2007-65]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Generic Listing Standards for Exchange-Traded Funds Based on Fixed Income Indexes and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

December 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 July 24, 2007, the International Securities Exchange, LLC (“ISE” 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 prepared substantially by the Exchange. On December 28, 2007, the Exchange filed Amendment No. 1.<sup>3</sup> This order provides notice of the proposed rule change, as amended, and approves the amended proposal on an accelerated basis.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rules 2123 and 2131 to include generic listing and/or trading standards for Investment Company Units (“Units”) and Portfolio Depositary Receipts (“PDRs”) that are based on indexes or portfolios consisting of fixed income securities (“Fixed Income Indexes”) or composite indexes consisting of both equity and fixed income securities (collectively, “Combination Indexes”). The text of the proposed rule change is available at the Exchange’s principal office, on the Exchange’s Web site at <http://www.ise.com>, 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 III 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 revise ISE Rules 2123 and 2131 to include generic listing and trading standards for series of Units and PDRs (Units and PDRs, collectively referred to as “ETFs”) that are based on Fixed Income Indexes or on 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 ISE Rules 2123 and 2131, as applicable, is satisfied. 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 paragraph (c)(1) of Rule 19b-4,<sup>5</sup> if the Commission has approved, pursuant to Section 19(b) of the Act,<sup>6</sup> 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.<sup>7</sup> Similar proposals by the American Stock Exchange LLC (“Amex”) and NYSE Arca, Inc. (“NYSE Arca”) have been approved by the Commission.<sup>8</sup>

###### a. ETFs

ISE Rule 2123 provides standards for the initial and continued listing of Units, which are securities issued by a unit investment trust, an open-end management investment company (open-end mutual fund), or a similar entity based on a portfolio of stocks or fixed income securities that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income

securities index. PDRs represent securities based on a unit investment trust that holds the securities that comprise an index or portfolio underlying a series of PDRs. Pursuant to ISE Rules 2123 and 2131, Units and PDRs 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 (“NAV”). When aggregated in the same specified minimum number, Units and PDRs must be redeemable by the issuer for securities and/or cash, with a value equal to the next determined NAV. The NAV 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 price, dividend, and yield 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 would invest in each security found in the underlying index in about the same proportion as that security is represented in the index itself. An ETF using a representative sampling strategy would generally invest in a significant number, but perhaps not all, of the component securities of the underlying index, and would hold the 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>9</sup>

###### b. Generic Listing Standards for Exchange-Traded Funds

The Commission has previously approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. exchanges as well as on indexes consisting of U.S. Components, Non-U.S. Components or both U.S. and Non-U.S. Components.<sup>10</sup>

<sup>9</sup> In order for an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC, including requirements with respect to the nature and the value of the ETF’s assets.

<sup>10</sup> See ISE Rule 2123 and Securities Exchange Act Release No. 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (SR-ISE-2006-48) (approving generic listing standards for ICUs); Securities Exchange Act Release No. 56633 (October 9, 2007), 72 FR 58696 (October 16, 2007) (SR-ISE-

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

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

<sup>3</sup> Amendment No. 1 replaced and superseded the original filing in its entirety.

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

<sup>5</sup> 17 CFR 240.19b-4(c)(1).

<sup>6</sup> 15 U.S.C. 78s(b).

<sup>7</sup> When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the exchange begins trading the new derivative securities product. See 17 CFR 240.19b-4(e)(2)(ii).

<sup>8</sup> See Securities Exchange Act Release No. 55437 (March 9, 2007), 72 FR 12233 (March 15, 2007) (SR-Amex-2006-118); Securities Exchange Act Release No. 55783 (May 17, 2007), 72 FR 29294 (May 24, 2007) (SR-NYSEArca-2007-36).

In addition, the Commission has previously approved the listing and trading of ETFs based on fixed income securities indexes.<sup>11</sup>

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>12</sup>

The Exchange believes that adopting additional generic listing standards for ETFs based on Fixed Income Indexes and Combination Indexes and applying Rule 19b-4(e) thereto 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 timeframe for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular index or portfolio to comply with the proposed generic listing standards under Rule 19b-4(e) 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.

#### c. Fixed Income and Combination Index ETFs

ETFs listed pursuant to the proposed generic standards would be traded in all other respects under the Exchange's existing trading rules and procedures that apply to all securities traded on ISE, including ETFs, and would be covered under the Exchange's surveillance procedures for equities.<sup>13</sup>

2007-60) (approving generic listing standards for ETFs based on international or global indexes or indexes described in rules previously approved by the Commission as underlying benchmarks for derivative securities).

<sup>11</sup> See Securities Exchange Act Release No. 46299 (August 1, 2002), 67 FR 51907 (August 9, 2002) (SR-NYSE-2002-26); Securities Exchange Act Release No. 55780 (May 17, 2007), 72 FR 29022 (May 23, 2007) (SR-NYSE-2007-37).

<sup>12</sup> See NYSE Arca Equities Rule 5.2(j)(6); Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63) (order approving generic listing standards for index-linked securities); Securities Exchange Act Release No. 56117 (July 23, 2007), 72 FR 41369 (July 27, 2007) (SR-ISE-2007-47) (order approving generic listing standards for index-linked securities).

<sup>13</sup> The Exchange notes that its current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and

To list an ETF pursuant to the proposed generic listing standards for ETFs based on Fixed Income Indexes or Combination Indexes, the index underlying the ETF must satisfy all the conditions contained in proposed ISE Rules 2123 (for Units) or ISE Rule 2131 (for PDRs), as applicable. As with the 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 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>14</sup> as well as existing fixed income ETFs, they have been adapted as appropriate to apply generally to Fixed Income Indexes for ETFs.

#### d. Fixed Income Securities

As proposed, ISE Rule 2123(b)(3) and .02 of the Supplementary Material to ISE Rule 2131 define the term "Fixed Income Securities" to include, notes, bonds (including convertible bonds), debentures, or evidences 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>15</sup> supranational debt,<sup>16</sup> and debt of a foreign country or subdivision thereof. This new definition is designed to create a category of ETFs

investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

<sup>14</sup> See Securities Exchange Act Release No. 54106 (July 6, 2006), 71 FR 39534 (July 13, 2006) (File No. S7-07-06) ("Joint Rules").

<sup>15</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>16</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. Examples of multilateral financial institutions include the European Investment Bank and the International Fund for Agricultural Development.

based on 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>17</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 be removed from such index.

The Exchange proposes that, to list a series of Units or PDRs 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 each must have a minimum original principal amount outstanding of \$100 million or more;
- No component Fixed Income Security (excluding Treasury Securities or GSE Securities) represents more than 30% of the weight of the index, and the five most heavily 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>18</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>19</sup> or

<sup>17</sup> The Exchange notes that under 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, ISE 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>18</sup> 15 U.S.C. 78m and 78o(d).

<sup>19</sup> 15 U.S.C. 78c(a)(12).

○ 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.

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 consistent with ISE Rule 2123(d)(1)(ii) and .02(a)(2) of the Supplementary Material to ISE Rule 2131. Second, the proposed standards provide that the most heavily weighted component security cannot exceed 30% of the weight of the index or portfolio, consistent with the standard for U.S. equity ETFs set forth in ISE Rule 2123(c)(2)(i)(C). In addition, this standard is identical to the standard set forth by the Commission and the CFTC in the Joint Rules.<sup>20</sup> Third, in the proposed standards, the five most heavily weighted component securities shall not exceed 65% of the weight of the index or portfolio, which is consistent with the Joint Rules and the standard for U.S. equity ETFs set forth in ISE Rule 2123(c)(2)(i)(C) and .01(a)(1)(iii) of the Supplementary Material to ISE Rule 2131. Fourth, the minimum number of Fixed Income Securities (except for portfolios consisting entirely of exempted securities, such as Treasury Securities or GSE Securities) from unaffiliated<sup>21</sup> issuers in the proposed standards would be 13, consistent with the standard for U.S. equity ETFs set forth in ISE Rule 2123(c)(2)(i)(D), .01(a)(1)(v) of the Supplementary Material to ISE Rule 2131, 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 on which an overlying ETF may be

listed pursuant to this proposal, 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>22</sup> (ii) from issuers that each 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>23</sup> or (v) from issuers that are governments of foreign countries or a political subdivision 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 standards for fixed income ETFs would not require that component securities in an underlying index have an investment-grade rating.<sup>24</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.

The proposed rules would also provide that the Exchange could not approve for listing or trading a series of ETFs based on a Combination Index under the proposed generic listing standards if such series seeks to provide investment results that either exceed the performance of a specified index by a specified multiple ("Multiple ETF") or that correspond to the inverse (opposite) of the performance of a specified index by a specified multiple ("Inverse ETF").

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

The Exchange also seeks to list and trade ETFs based on Combination Indexes. An ETF listed or traded pursuant to the generic listing standards for Combination Indexes would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to all Exchange-traded securities, including ETFs, and would be covered under the Exchange's surveillance program for equities.

To list an ETF pursuant to the proposed generic listing standards for Combination Indexes, an index underlying a Unit or PDR must satisfy all the conditions contained in proposed ISE Rule 2123(e) (for Units) and .03 of Supplementary Material to ISE Rule 2131 (for PDRs). However, for Units traded on the Exchange pursuant to UTP, only the provisions ISE Rule 2110 and paragraphs (c)(3), (c)(5), (f), (h), (i), and (l) of Rule 2123—regarding minimum price variation, disseminated information, written surveillance procedures, trading halts, hours of trading, and disclosures—would apply. For PDRs traded on the Exchange pursuant to UTP, only the provisions set forth in ISE Rules 2131(c) and 2131(e)(2)(ii), as well as paragraphs (c), (e), (f), and (g) of Commentary .02 and Commentary .03 of the Supplementary Material to ISE Rule 2131—regarding disclosures, trading halts, disseminated information, minimum price variation, hours of trading, and written surveillance procedures would apply. Further, Commentary .02(b)(ii) and Commentary .03(a)(ii), which pertain to dissemination of the current index value, would also apply to PDRs traded pursuant to UTP on the Exchange that are based on Fixed Income Indexes and Combination Indexes, respectively. 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 ISE Rule 2123(e) and proposed .03 of the Supplementary Material to ISE Rule 2131 provide that the Exchange may approve a series of Units and PDRs—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 an exchange rule for the trading of options, Units, PDRs, Index-Linked Exchangeable Notes, or Index-Linked Securities that has been approved by the Commission under Section 19(b)(2) of the Act, and all of the standards set forth in the Commission's approval order are satisfied; or (ii) the equity portion and fixed income portion of the component securities separately meet the criteria set forth in 2123(c)(2) (equities) and proposed ISE Rule

<sup>20</sup> See *supra* at note 10.

<sup>21</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>22</sup> 15 U.S.C. 78m and 15 U.S.C. 78o(d).

<sup>23</sup> 15 U.S.C. 78c(a)(12).

<sup>24</sup> *Cf.* Joint Rules, 71 FR at 30538.

2123(d) (fixed income) for Units and .01 (equities) and .02 (fixed income) of the Supplementary Material to ISE Rule 2131 for PDRs. In all cases, however, Multiple or Inverse ETFs may not be listed pursuant to ISE Rules 2123 or 2131.

#### f. Index Methodology and Dissemination

The Exchange proposes to adopt (d)(2) and (e)(1) of ISE Rule 2123 and .02(b) and .03(a) of Supplementary Material to ISE Rule 2131 to establish requirements for index methodology and dissemination in connection with Fixed Income and Combination Indexes.

If a broker-dealer or fund advisor is responsible for maintaining (or has a role in maintaining) the underlying index, such broker-dealer or fund advisor 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 dissemination of the index values, the Exchange proposes to adopt ISE Rules 2123(d)(2)(ii), 2123(e)(1)(ii), as well as .02(b)(ii) and .03a(ii) of Supplementary Material to ISE Rule 2131. For an ETF based on a Fixed Income Index, the underlying index value must 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. For an ETF based on a Combination Index, the underlying index value would have to be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the ETF shares trade on the Exchange to reflect updates for the prices of the equity securities included in the Combination Index; the Non-U.S. Component Stock portion of the Combination Index will be updated at least every 60 seconds,<sup>25</sup> and the fixed income portion of the

Combination Index will be updated at least daily.

#### g. Application of General Rules

Proposed ISE Rule 2123(f) as well as .02(c)–(g) and .03(b) of the proposed Supplementary Material to ISE Rule 2131 would be added to identify those requirements of ETFs that would apply to all such series of Units or PDRs 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, ISE Rule 2123(c)(5), which requires the Exchange to implement written surveillance procedures applicable to a series of Units, would apply to series of Units based on Fixed Income and Combination Indexes. Proposed .02(d)–(g) to the Supplementary Material of ISE Rule 2131, sets forth the requirements for PDRs relating to initial shares outstanding, minimum price variation, trading hours, and surveillance procedures.

Proposed Sections .02(g) and .03(b) of the Supplementary Material to ISE Rule 2131 provide that the written surveillance procedures applicable to a series of PDRs listed and traded under Section .01 would apply to Fixed Income and Combination Indexes. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the ETFs traded and/or listed pursuant to the proposed generic standards. The Exchange stated that it may obtain information via the Intermarket Surveillance Group ("ISG") from exchanges that are members or affiliates of the ISG. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange states that the Commission has approved generic listing standards providing for the listing pursuant to Rule 19b–4(e) of other derivative products based on indexes or portfolios described in rules previously approved by the Commission under Section 19(b)(2) of the Act. The Exchange proposes to include in the generic listing standards for the listing of Fixed Income and Combination Indexes based Units and PDRs, in ISE Rule 2123(e) and .03 of the Supplementary Material to ISE Rule 2131, indexes or portfolios described in rules that have been approved by the Commission in connection with the listing of options, Investment Company Units, Portfolio Depository Receipts, 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 Commission review in the context of the approval of listing of other derivatives.<sup>26</sup>

The Exchange notes that existing ISE Rules 2123 and 2131 provide continued listing standards for all Units and PDRs. 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, the Exchange would commence delisting proceedings. The Exchange notes that ISE Rules 2123(a)(6) and 2131(e)(1)(ii) provide that, prior to approving an ETF for listing, the Exchange will obtain a representation from the ETF issuer that the NAV 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, ISE Rules 2123(e) and 2131(e)(2)(ii) provide that, if the Intraday Indicative Value or the index value applicable to that series of ETFs is not being disseminated as required when the Exchange is the listing market, 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 would halt trading no later than the beginning of the trading day following the interruption.<sup>27</sup>

Additionally, the Exchange proposes to amend ISE Rule 2101 to include securities contemplated by ISE Rule 2131 in the list of Equity Securities that the Exchange will trade via UTP, unless and until the Exchange files with the Commission a rule change under Section 19(b)(2) of the Act and receives Commission approval to amend its rules to become a listing market. Further, the Exchange proposes to expand the definition of "Equity Securities," as set forth in ISE Rule 2100(c)(7), to include PDRs.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section

<sup>26</sup> See *supra* notes 10 and 11.

<sup>27</sup> If an ETF is traded on the Exchange pursuant to unlisted trading privileges ("UTP"), 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 ISE Rules 2123(c)(3) and 2131(e)(2)(ii).

<sup>25</sup> See proposed ISE Rule 2123(e)(1)(ii) and proposed section .03(a)(ii) of the Supplementary Material to ISE Rule 2131.

6(b)(5) of the Act,<sup>28</sup> which requires that the rules of a national securities exchange be 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. In particular, ISE believes that this filing will provide investors with access to a wider range of derivative securities products.

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

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### **III. 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-ISE-2007-65 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-ISE-2007-65. 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 such filing also will be available for inspection and copying at the principal office of ISE. 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-ISE-2007-65 and should be submitted on or before January 28, 2008.

### **IV. Discussion**

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>29</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act<sup>30</sup> 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.

Currently, the Exchange would have to file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act<sup>31</sup> and Rule 19b-4 thereunder<sup>32</sup> to list or trade any ETF based on a Fixed Income Index or on a Combination Index. The Exchange also would have to file a proposed rule change to list or trade an ETF based on

a Fixed Income or Combination Index described in an exchange rule previously approved by the Commission as an underlying benchmark for a derivative security. Rule 19b-4(e), however, provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of ETFs pursuant to Rule 19b-4(e) based on (1) certain indexes with components that include Fixed Income Securities or (2) indexes or portfolios described in exchange rules previously approved by the Commission as underlying benchmarks for derivative securities fulfill these requirements. Use of Rule 19b-4(e) by ISE to list and trade such ETFs should promote competition, reduce burdens on issuers and other market participants, and make such ETFs available to investors more quickly.<sup>33</sup>

The Commission previously has approved generic listing standards of other exchanges that are substantially similar to those proposed here by ISE.<sup>34</sup> This proposal does not appear to raise any novel regulatory issues. Therefore, the Commission finds that ISE's proposal is consistent with the Act on the same basis that it approved those earlier proposals.

The Commission believes that ISE's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>35</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The value of a Fixed Income Index underlying an ETF listed pursuant to this proposal is required to be widely disseminated by one or more major market data vendors at least once a day. Likewise, the value of an underlying Combination Index is required to be widely disseminated by one or more major market data vendors at least once every 15 seconds during

<sup>29</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78s(b)(1).

<sup>32</sup> 17 CFR 240.19b-4.

<sup>33</sup> The Commission notes that failure of a particular ETF to satisfy the Exchange's generic listing standards does not preclude the Exchange from submitting a separate proposal under Rule 19b-4 to list and trade such ETF.

<sup>34</sup> See *supra* at note 8.

<sup>35</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

the time when the corresponding ETF trades on the Exchange, provided that, with respect to the fixed income components of the Combination Index, the impact on the index is required to be updated only once each day.

Furthermore, the Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF appropriately. If a broker-dealer or fund advisor is responsible for maintaining (or has a role in maintaining) the underlying index, such broker-dealer or fund advisor 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. The Commission also notes that current ISE Rules 2123(a)(6) and 2131(e)(1)(ii) provide that, in connection with approving an ETF issuer for listing on the Exchange, the Exchange would obtain a representation from the ETF issuer that the NAV per share will be calculated each business day and made available to all market participants at the same time.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in an ETF when transparency is impaired. Proposed ISE Rule 2123(h) and current ISE Rule 2131(e)(2)(ii) provide that, when the Exchange is the listing market, if the IIV or index value applicable to an ETF is not disseminated as required, the Exchange may halt trading during the day in which the interruption occurs. If the interruption continues, then the Exchange will halt trading no later than the beginning of the next trading day. Also, the Exchange may commence delisting proceedings in the event that the value of the underlying index is no longer calculated or available.

The Commission further believes that the trading rules and procedures to which ETFs will be subject pursuant to this proposal are consistent with the Act. The definition of "Equity Securities" already includes Units and, by this proposed rule change, that definition would be expanded to also include PDRs.<sup>36</sup> As a result, ETFs would be subject to ISE's previously approved rules governing the trading of Equity Securities.

The Exchange will implement written surveillance procedures for ETFs based on Fixed Income Indexes or

Combination Indexes.<sup>37</sup> In approving this proposal, the Commission relied on ISE's representation that its surveillance procedures are adequate to properly monitor the trading of ICUs listed pursuant to this proposal.

#### Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. ISE's proposal is substantially similar to other proposals that have been approved by the Commission.<sup>38</sup> The Commission does not believe that ISE's proposal raises any novel regulatory issues, and accelerated approval of the proposal will expedite the listing and trading of additional ETFs by the Exchange, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>39</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change (SR-ISE-2007-65), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E7-25652 Filed 1-4-08; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57060; File No. SR-Amex-2007-116]

#### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Harmonize the Annual Listing Fees for All Exchange Traded Funds

December 28, 2007.

On October 29, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities

<sup>37</sup> See proposed ISE Rule 2123(m) and proposed sections .02(g) and .03(b) to the Supplementary Material to ISE Rule 2131.

<sup>38</sup> See *supra* at note 8.

<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> *Id.*

<sup>41</sup> 17 CFR 200.30-3(a)(12).

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 proposed rule change to revise the annual listing fees for index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, partnership units, and closed-end funds (collectively, "Exchange Traded Funds" or "ETFs") set forth in Section 141 of the Amex Company Guide. On November 9, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On November 16, 2007, the Exchange filed Amendment No. 2 to the proposal.<sup>4</sup> The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on November 27, 2007.<sup>5</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

Amex proposes to amend Section 141 of the Amex *Company Guide* to adopt a single annual listing fee for all ETFs. Amex's proposal would conform the annual listing fees for index fund shares with those of other ETFs and add an additional demarcation for outstanding shares or units of over 100 million, so that the maximum annual listing fee would increase to \$50,000. Each series of the securities listed as index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, partnership units, or closed-end funds would be separately aggregated. The annual listing fee would then be applied to all of the outstanding securities of a particular issuer for each appropriate product class. Securities listed under Sections 106 and 107 of the Company Guide would be charged listing fees based on the shares outstanding of each individual issue.

After careful review, the Commission finds that Amex's proposal is consistent

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

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

<sup>3</sup> Amendment No. 1 made clarifying changes to the purpose section of the original filing and revised the proposed annual listing fee schedule.

<sup>4</sup> Amendment No. 2 made an additional clarifying change to the proposed annual listing fee schedule. Specifically, all references to a "maximum" or "minimum" identified as a parenthetical in the "Stock Issues" and "Issues Listed Under Section 106 and Section 107; Rule 1000A (Index Fund Shares); Rule 1200 (Trust Issued Receipts); Rule 1200A (Commodity Based Trust Shares); Rule 1200B (Currency Trust Shares); Rule 1400 (Paired Trust Shares); Rule 1500 (Partnership Units); and Closed-End Funds" Annual Fee Tables in the Company Guide were removed.

<sup>5</sup> See Securities Exchange Act Release No. 56809 (November 16, 2007), 72 FR 66203 (November 27, 2007) and 72 FR 70374 (December 11, 2007).

<sup>36</sup> See proposed ISE Rule 2100(c)(7).