

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

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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>9</sup> since it establishes or changes a due, fee or other charge imposed by the Exchange. 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 the furtherance of the purposes of the Act.<sup>10</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-Amex-2008-12 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-2008-12. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-Amex-2008-12 and should be submitted on or before March 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E8-4312 Filed 3-5-08; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57400; File No. SR-Amex-2007-109]

**Self-Regulatory Organizations; American Stock Exchange, LLC; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to the Trading of Exchange Traded Notes (ETNs)**

February 29, 2008.

**I. Introduction**

On October 9, 2007, the American Stock Exchange, LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Section 107 of the Amex *Company Guide* ("Company Guide") to permit certain index-linked securities,

commodity-linked securities, and currency-linked securities to trade under the rules applicable to exchange-traded funds ("ETFs"). On January 11, 2008, the Amex submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on January 30, 2008.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

**II. Description of the Proposed Rule Change**

The Exchange proposes to amend Sections 107D, 107E and 107F of the Company Guide to permit certain index-linked securities ("Index-Linked Securities"), commodity-linked securities ("Commodity-Linked Securities"), and currency-linked securities ("Currency-Linked Securities") (collectively, "Exchange-Traded Notes" or "ETNs") that offer a weekly redemption feature to be traded subject to the AEMI trading rules specific to ETFs.

*Background*

Securities listed pursuant to Section 107 of the *Company Guide* ("Section 107 Securities") are debt securities of an issuer that typically provide for a cash payment at maturity, or if available, upon earlier redemption (such as a weekly redemption feature) at the holder's option, based on the performance of an underlying index or asset. Permitted underlying assets for Index-Linked Securities include domestic and international equity indexes. Commodity-Linked Securities may be based on a commodity index, basket of commodities, or single commodity while Currency-Linked Securities may similarly be linked to a currency index, basket of currencies, or single currency.

Section 107 Securities typically have a term of at least one year but not greater than 30 years. The issuer may or may not provide for periodic interest payments to holders. The holder of a Section 107 Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying asset.

A number of Section 107 Securities based on securities indexes that are listed and traded on the Exchange provide for a payment amount in a multiple of the positive index return or performance, subject to a maximum gain or cap. The Exchange's generic listing standards for Section 107 Securities

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 27, 2008, the date on which Amex filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

<sup>11</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> Securities Exchange Act Release No. 57187 (January 23, 2008), 73 FR 5604.

allow for the multiple performance on the upside but prohibit payment at maturity based on a multiple of the negative performance of an underlying asset. Section 107 Securities may or may not provide for a minimum guaranteed amount to be repaid, *i.e.*, “principal protection.”

Section 107 Securities do not give the holder a right to receive the underlying asset or any other ownership right or interest in the underlying portfolio. The current value of the underlying asset is required to be widely disseminated at least every 15 seconds during the trading day. Section 107 Securities are “hybrid” securities whose rates of return are largely the result of the performance of an underlying asset. In addition, prior to the listing and trading of Section 107 Securities, the Exchange typically highlights and discloses the special risks and characteristics of such security in an Information Circular.

#### Current Rules

Sections 107D,<sup>4</sup> 107E,<sup>5</sup> and 107F<sup>6</sup> of the Company Guide treat Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities as equity instruments subject to the Exchange’s AEMI trading rules for equities. The only exception to this requirement is when a Section 107 Security is listed as a bond or debt (*i.e.*, in \$1,000 denominations). In such a case, the Section 107 Security is subject to Exchange rules applicable to bond or debt securities.<sup>7</sup>

Because the current Rules deem ETNs and other Section 107 Securities as “equity instruments,” the full range of AEMI trading rules specific to equities apply to all Section 107 Securities regardless of the particular structure of the Section 107 Security.

#### Proposal

With respect to an ETN that is continuously-offered with a weekly redemption option (such as BWV), the Exchange proposes that the AEMI trading rules applicable to ETFs (rather than equities) should equally apply to such ETN. In order to qualify, the ETN would be required to offer a weekly redemption option to holders (“Eligible ETNs”). The following rules specifically applicable to ETF trading would apply to the trading of Eligible ETNs:

- Rule 108—AEMI(c). The execution of Eligible ETN orders at the opening would be effected in the same manner as ETFs so that orders in Eligible ETNs would be executed before any broker-dealer bids or offers.

- Rule 110—AEMI(p). A Registered Trader in ETFs (including Eligible ETNs) would only actively quote ETFs traded on the same or contiguous panels for a maximum of three contiguous panels. A Registered Trader would also not actively quote more than a maximum of 15 ETFs (including Eligible ETNs). A Senior Floor Official of the Exchange may modify this restriction if a Registered Trader is able to appropriately fulfill his obligations to the market due to the level of activity in the ETFs and their proximity.

- Rule 128A—AEMI(d)(iv). Any quotation in an ETF entered into the AEMI platform by the specialist or Registered Trader while Auto-Ex is enabled that would cause the Amex Published Quote (APQ) to be locked or crossed would be automatically executed. In the case of a non-ETF Amex-listed security or a non-Nasdaq UTP equity security, quotations that are entered into the AEMI platform by the specialist while Auto-Ex is enabled that would cause the APQ to cross would be rejected. Therefore, Eligible ETNs would be automatically executed, rather than rejected, when a specialist or Registered Trader quotation causes the APQ to be locked/crossed when Auto-Ex is enabled.

- Rule 128A—AEMI(f)(iv). AEMI does not automatically execute non-ETF orders when the automatic execution of an order exceeds the price change parameters of the “1%, 2, 1, ½ point” rule. This rule does not apply to ETFs and would accordingly not apply to the trading of Eligible ETNs.

- Rule 131—AEMI(o). AEMI rejects “too marketable” non-ETF stop and stop limit orders. “Too marketable” is defined as a buy stop order received during the regular trading session with a stop price equal to the bid or lower, or a sell stop order received during the regular trading session with a stop price equal to the offer or higher. ETF stop orders that are “too marketable” are executed by AEMI under this Rule, and accordingly, Eligible ETN stop orders would similarly be executed.

- Rule 131—AEMI(r). AEMI does not accept electronic cross orders for non-ETFs and non-Nasdaq UTP securities. As a result, electronic cross orders are acceptable only for ETFs. As proposed, electronic cross orders for Eligible ETNs would be acceptable in AEMI.

- Rule 154—AEMI(c)(i). The Stop Order Rule requires floor official

approval prior to the specialist electing a stop order by selling to the bid/buying on the offer. Prior floor official approval is not required for ETFs and would similarly not apply to Eligible ETNs.

- Rule 154—AEMI(c)(ii). Stop and stop limit orders in ETFs are elected by a quotation, although such orders in non-ETFs are not. Accordingly, stop and stop limit orders in Eligible ETNs would similarly be elected by quotation, pursuant to this rule.

- Rule 154—AEMI(e). Maximum price variation requirements are set forth in Rule 154—AEMI(e) (also known as the “1%–2, 1, .5 Point Rule”). This Rule specifically provides that it does not apply to the trading of ETFs. Accordingly, Rule 154—AEMI(e) would similarly not apply to Eligible ETNs.

- Commentary .03 to Rule 170—AEMI. A specialist quotation, made for his own account, should be such that a transaction effected at his quoted price or within the quoted spread, whether having the effect of reducing or increasing the specialist’s position, would bear a proper relation, in the case of ETFs or other derivatively-based securities, to the value of underlying or related securities. Eligible ETNs would similarly be subject to this requirement.

- Commentary .11 to Rule 170—AEMI. Commentary .11 to Rule 170—AEMI specifically exempts ETFs from the stabilization requirements. Accordingly, Eligible ETNs would similarly be exempt.

- Rule 206—AEMI. This Rule prohibits a specialist from crossing the market for the purpose of electing odd-lots and requires floor official approval in various circumstances for non-ETFs. The exemption for ETFs would similarly apply to Eligible ETNs.

Eligible ETNs would also be subject to the same parity allocation as currently exists for ETFs and other equity-traded products that are not listed stocks, UTP stocks, or closed-end funds.

### III. Discussion

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

<sup>4</sup> See Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR-Amex-2005-001).

<sup>5</sup> See Securities Exchange Act Release No. 55794 (May 22, 2007), 72 FR 29558 (May 29, 2007) (SR-Amex-2007-45).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

Act,<sup>10</sup> in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction 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 Commission believes that the market price of Eligible ETNs should exhibit a strong correlation to the performance of the relevant underlying asset, since holders of such securities will be unlikely to sell them for less than their redemption value if they have a weekly right to be redeemed for their full value. This weekly redemption feature is similar to the daily redemption feature available in ETFs. In addition, Eligible ETNs are typically continuously offered, on a daily basis, so that the issuer would have the ability to issue new securities from time to time at market prices. This process is similar to the manner in which ETFs are continuously offered via the creation/redemption process in Creation Unit aggregations (*i.e.*, 50,000 shares).

Accordingly, the Commission believes the proposed rule change is consistent with the Act in permitting Eligible ETNs to trade subject to the Exchange's AEMI trading rules for ETFs.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-Amex-2007-109), as modified, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E8-4315 Filed 3-5-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57406; File No. SR-DTC-2007-06]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Modify the Hearing Procedures Afforded to Interested Persons for Membership and Harmonize Them With Similar Rules of Its Affiliates

February 29, 2008.

#### I. Introduction

On April 30, 2007, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2007-06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on December 6, 2007.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

#### II. Description

The proposed rule change (1) modifies DTC's rules regarding hearing procedures afforded to Interested Persons<sup>3</sup> and (2) where practicable or beneficial, harmonizes such rules with similar rules of DTC's affiliates, the Fixed Income Clearing Corporation ("FICC") and the National Securities Clearing Corporation ("NSCC").<sup>4</sup>

##### A. Minor Rule Violation Plan

In 1984, the Commission adopted amendments to Rule 19d-1(c) under the Act<sup>5</sup> that allow self-regulatory organizations with Commission approval to adopt plans for the disposition of minor violations of rules.<sup>6</sup>

Currently under DTC's rules, an Interested Person subject to disciplinary action has a right to a hearing before a panel selected by the Chairman of the Board from a pool of persons that are

employed by or are partners of DTC's participants. Because some rule violations are not sufficiently serious to merit Board review, DTC is adopting a Minor Rule Violation Plan within the meaning of Rule 19d-1(c)(2) under the Act for those rule violations DTC deems minor. Consistent with Rule 19d-1(c)(2) under the Act, DTC is designating as minor rule violations those rule violations for which a fine may be assessed in an amount not to exceed \$5,000. If an Interested Person disputes a fine imposed by DTC by filing a written request for hearing and a written statement setting forth, among other things, the action or proposed action with respect to which the hearing is being requested and the basis for objection to such action, DTC management would have the authority to waive the fine. DTC management would notify the Board of Directors or a Committee authorized by the Board of Directors of its determination to waive the fine and would provide the reasons for the waiver. The Board or Committee could in its discretion decide to reinstate any fine waived by DTC management. If DTC management were not to waive the fine, the Interested Person could appeal the decision to a panel comprised of DTC officers ("Minor Rule Violation Panel").

##### B. Hearings for All Other Violations and Minor Rule Violation Appeals

For matters involving (1) an alleged violation of a DTC rule for which a fine in an amount of over \$5,000 is assessed, (2) applicants for membership, (3) other disciplinary actions to which the Minor Rule Violation Plan would not apply, or (4) for appeals from a Minor Rule Violation Panel decision adverse to an Interested Person, the Interested Person is entitled to a hearing before a panel selected by the Chairman of the Board from a pool of persons that are employed by or are partners of participants. Members of the pool are appointed by the Board or by the Chairman. Decisions of the panel are final; however, the full Board of Directors retains the right to modify any sanction or reverse any decision of the panel that is adverse to the Interested Person.

Currently with respect to hearings, an Interested Person is afforded the opportunity to be heard and may be represented by counsel if desired. A record is kept of the hearing, and at the discretion of the panel, the associated cost may be charged in whole or part to the Interested Person in the event that the decision is adverse to the Interested Person. The Interested Person is advised of the panel's decision within ten

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>2</sup> Securities Exchange Act Release No. 56863 (Nov. 29, 2007), 72 FR 68920.

<sup>3</sup> An Interested Person is defined by DTC's Rules as a Participant, Pledgee, or applicant to become a Participant or Pledgee, or issuer of a Security. Rule 22, Section 1.

<sup>4</sup> FICC and NSCC have filed similar proposed rule changes. Securities Exchange Act Release No. 56864 (Nov. 29, 2007), 72 FR 68922; Securities Exchange Act Release No. 57405 (Feb. 29, 2008) [SR-FICC-2007-06]. Securities Exchange Act Release No. 56865 (Nov. 29, 2007), 72 FR 68930; Securities Exchange Act Release No. 57404 (Feb. 29, 2008) [SR-NSCC-2007-06].

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

<sup>6</sup> Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) [File No. S7-983A].