

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54649; File No. SR-NYSE-2006-88)

October 24, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to NYSE Listed Company Manual Section 703.16 (Investment Company Units)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 20, 2006, the New York Stock Exchange LLC (“Exchange” or “NYSE”) 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 prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change 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 NYSE Section 703.16(B)(4)(a) of the NYSE Listed Company Manual (“Manual”). The text of the proposed rule change is available on NYSE’s Web site at (<http://www.nyse.com>), at the principal office of NYSE, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 has adopted listing standards applicable to Investment Company Units (“ICUs” or “Investment Company Units”) that are consistent with the listing criteria currently used by other national securities exchanges and trading standards pursuant to which the Exchange may either list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges (“UTP”) basis.³ An ICU is defined in Section 703.16 of the Manual as a security that represents an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. A registered investment company is registered under the Investment Company Act of 1940.⁴

The “generic” listing criteria of Section 703.16 of the Manual permit listing of ICU’s that satisfy such criteria in reliance upon Rule 19b-4(e) under the Act,⁵ without a filing pursuant to Rule 19b-4 under the Act. Section 703.16(B)(4)(a) of the Manual requires, among other criteria that, if a series of ICUs is listed for trading on the Exchange in reliance upon Rule 19b-4(e) under the Act, the index underlying the series must be calculated based on either the market

³ In 1996, the Commission approved Section 703.16 of the Manual, which sets forth the rules related to the listing of ICUs. See Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR-NYSE-95-23). In 2000, the Commission also approved the Exchange’s generic listing standards for listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Manual and Exchange Rule 1100. See Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR-NYSE-00-46).

⁴ 15 U.S.C. 80a.

⁵ 17 CFR 240.19b-4(e).

capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology.

According to the Exchange, the proposed rule change will specify one additional methodology. The Exchange proposes to amend Section 703.16(B)(4)(a) of the Manual to permit a series of ICUs to be listed under the generic listing standards pursuant to Rule 19b-4(e) under the Act,⁶ if the underlying index for such series is weighted based on any, some or all of the following: sales, cash flow, book value and dividends (“fundamentals weighted indexes”).⁷

“Sales” refers to the total of reported operating revenues less various adjustments to gross sales, such as returns, discounts, allowances, excise taxes, insurance charges, sales taxes and value added taxes. In calculating the sales value, an index provider may opt to average the company's applicable figures for several prior years (e.g., five prior years as reflected in the company's Annual Report on Form 10-K).

“Cash Flow” refers to operating income plus depreciation. For example, a manufacturer typically reports its operating income as its net sales plus other operating income minus cost of goods sold and selling, general and administrative expenses. Depreciation expense for a manufacturer typically includes the depreciation that is directly related to or associated with tangible fixed assets and includes amortization of fixed assets that are part of plant, property and equipment such as leased assets, leasehold improvements and internal use software. For example, for a manufacturer, depreciation expense excludes amortization of intangible assets. For banks, financial companies and REITs, operating income refers to their total operating revenue minus total operating expenses. For REITs, depreciation expense includes depreciation relating to real

⁶ Id.

⁷ In each instance, the index methodology will set forth the means for calculating sales, cash flow, book value and dividends.

estate property and includes corporate fixed asset depreciation if not separated from property depreciation. In calculating cash flow, an index provider may opt to average the company's applicable figures for several prior years (e.g., five prior years as reflected in the company's Annual Report on Form 10-K).

“Book Value” refers to a company's book value at the index review date. In accordance with accounting principles, book value generally means total common equity, which is derived from adding share capital and additional paid-in capital to retained earnings. In calculating book value, an index provider may opt to average the company's applicable figures for several prior years (e.g., five prior years as reflected in the company's Annual Report on Form 10-K).

“Dividends” refers to total dividend distributions, including both special and regular dividends paid in cash. Generally, the total dividend amount that is declared to all classes of common shareholders includes regular cash, as well as special cash dividends, and excludes returns of capital and in-specie dividends. In calculating dividends, an index provider may opt to average the company's applicable figures for several prior years (e.g., five prior years as reflected in the company's Annual Report on Form 10-K).

The Exchange believes that the fundamentals weighting methodology is a transparent methodology that is appropriately included in the ICU generic listing criteria (which encompass exchange-traded funds) as an alternative to traditional weighting techniques. According to the Exchange, fundamental indexing provides an investor with additional choices in selecting exchange-traded funds whose underlying index emphasizes financial factors that the investor may believe are important. The NYSE notes that products based on indexes using this

methodology are already subject to the other requirements of the generic listing standards pursuant to Rule 19b-4(e) under the Act.⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ 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, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes the proposed rule change should facilitate listing and trading of ICUs that rely on an index using a fundamentals weighting methodology and should thereby remove the burdens on issuers and other market participants.

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

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

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

Written comments on the proposed rule change were neither solicited nor received.

⁸ 17 CFR 240.19b-4(e).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2006-88 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2006-88 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, 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.¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, 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, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change amends the Exchange's existing generic listing standards pursuant to Rule 19b-4(e) under the Act¹³ for ICUs to provide that an eligible index may be calculated following the "fundamentals weighted" or "fundamental index" methodology. This

¹¹ 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).

¹² 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 240.19b-4(e).

index calculation methodology weights components based on one or more of the following: sales, cash flow, book value, and dividends.¹⁴

Including this index calculation methodology in the Exchange's generic listing standards will provide investors with more investment choices by offering an alternative to the other index methodologies, such as capitalization-weighted indexes. The Commission notes that the indexes that would be based on the fundamentals weighting methodology will already be subject to the requirements of the generic listing standards pursuant to Rule 19b-4(e) under the Act,¹⁵ including trading volume and liquidity requirements. In addition, by amending its generic listing standards pursuant to Rule 19b-4(e) under the Act,¹⁶ the Exchange should reduce the time frame for listing or trading ICUs that rely on an index utilizing a fundamentals weighting methodology. The proposed rule change should therefore facilitate the listing or trading of such securities and thereby reduce the burdens on issuers and other market participants.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing in the Federal Register. The Commission believes the proposed rule change should provide investors with an alternative to the current index calculation methodologies. The proposed rule change is substantially identical to that approved for another exchange.¹⁷ The Commission does not believe that the proposed rule change raises

¹⁴ According to the Exchange, in each instance, the index methodology will set forth the means of calculating sales, cash flow, book value, and dividends and thus will be transparent.

¹⁵ 17 CFR 240.19b-4(e).

¹⁶ Id.

¹⁷ See Securities Exchange Act Release No. 54459 (September 15, 2006), 71 FR 55533 (September 22, 2006) (SR-NASDAQ-2006-035). See also Securities Exchange Act

any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹⁸ to approve the proposed rule change on an accelerated basis.¹⁹

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-NYSE-2006-88) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Nancy M. Morris
Secretary

Release No. 54490 (September 22, 2006), 71 FR 58034 (October 2, 2006) (SR-NYSEArca-2006-61).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ The Commission's approval order is not retroactive in effect.

²⁰ Id.

²¹ 17 CFR 200.30-3(a)(12).