

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57219; File No. SR-NYSEArca-2008-13)

January 29, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Listing Standards for Index-Linked Exchangeable Notes in NYSE Arca Equities Rule 5.2(j)(4)

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 January 22, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), 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 Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 amend its rules governing NYSE Arca, LLC (also referred to as the “NYSE Arca Marketplace”), which is the equities trading facility of NYSE Arca Equities. More specifically, the Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(4), the Exchange’s initial listing standards for “Index-Linked Exchangeable Notes.” The text of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Arca Equities Rule 5.2(j)(4), the Exchange’s initial listing standards for “Index-Linked Exchangeable Notes,” to provide for greater flexibility in the listing criteria for such securities, as set forth below. The proposed substantive rule changes herein are based upon the rules of the American Stock Exchange LLC (“Amex”).⁵ The Commission has approved similar proposed rule changes by the Exchange recently.⁶

⁵ See Securities Exchange Act Release Nos. 55733 (May 10, 2007), 72 FR 27602 (May 16, 2007) (SR-Amex-2007-34) (the “May 2007 Amex Order”); and 56629 (October 9, 2007), 72 FR 58689 (October 16, 2007) (SR-Amex-2007-87) (the “October 2007 Amex Order”). These two orders approved changes to Section 107A of the Amex Company Guide.

⁶ See Securities Exchange Act Release Nos. 56924 (December 7, 2007), 72 FR 70918 (December 13, 2007) (SR-NYSEArca-2007-98) (amending NYSE Arca Equities Rule 5.2(j)(2) (“Equity-Linked Notes”)); 56906 (December 5, 2007), 72 FR 70636 (December 12, 2007) (SR-NYSEArca-2007-103) (amending NYSE Arca Equities Rule 5.2(j)(1) (“Other Securities”)); and 56593 (October 1, 2007), 72 FR 57362 (October 9, 2007) (SR-NYSEArca-2007-96) (amending NYSE Arca Equities Rule 5.2(j)(6) (“Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities”)).

Currently, NYSE Arca Equities Rule 5.2(j)(4)(a) provides that an issue of Index-Linked Exchangeable Notes must have a minimum public distribution of 150,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations, then no minimum number of holders. The Exchange proposes to expand the exception to provide that, if the notes are traded in thousand dollar denominations, then there is also no minimum public distribution requirement.⁷ The Exchange notes that, without the exception to the 150,000 publicly distributed notes requirement, the Exchange would be unable to list issues in thousand dollar denominations having a market value of less than \$150 million. The Exchange believes that the proposed exception is a reasonable accommodation for those issuances in \$1,000 denominations.

The Exchange proposes to further amend NYSE Arca Equities Rule 5.2(j)(4)(a) to provide that there are no minimum public distribution and holders requirements if the notes are redeemable at the option of the holders thereof on at least a weekly basis (regardless of whether the notes are traded in thousand dollar denominations).⁸ The Exchange believes that a weekly redemption right will ensure a strong correlation between the market price of the notes and the performance of the underlying index, as holders will be unlikely to sell their notes for less than their redemption value if they have a weekly right to redeem such notes for their full value. In addition, in the case of certain notes with a weekly redemption feature, the issuer may have the ability to issue new notes from time to time at market prices prevailing at the time of sale, at prices related to market prices, or at negotiated prices. This provides a ready supply of new notes, thereby lessening the possibility that the market price of such notes will be affected by a scarcity of available notes for sale. The Exchange believes that the weekly redemption right also

⁷ See the May 2007 Amex Order, supra at note 5.

assists in maintaining a strong correlation between the market price and the indicative value of the notes, as investors will be unlikely to pay more than the indicative value in the open market if they can acquire notes from the issuer at that price.

The Exchange believes that the ability to list Index-Linked Exchangeable Notes with these characteristics without any minimum public distribution or holders requirements is important to the successful listing of such notes. Issuers issuing these types of notes generally do not intend to do so by way of an underwritten offering. Rather, the distribution arrangement is analogous to that of an exchange-traded fund issuance, in that the issue is launched without any significant distribution event and the float increases over time as investors purchase additional securities from the issuer at the then indicative value. Investors will generally seek to purchase the notes at a point when the underlying index is at a level that they perceive as providing an attractive growth opportunity. In the context of such a distribution arrangement, it is difficult for an issuer to guarantee its ability to sell a specific number of units on the listing date. However, the Exchange believes that this difficulty in ensuring the sale of 150,000 notes or 400 public holders on the listing date is not indicative of a likely long-term lack of liquidity in the notes or, for the reasons set forth in the prior paragraph, of a difficulty in establishing a pricing equilibrium in the notes or a successful two-sided market.

2. Statutory Basis

The Exchange believes that its proposal 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

⁸ See the May 2007 Amex Order (approving no minimum holders requirement if there is a weekly redemption right) and the October 2007 Amex Order (approving no minimum public distribution requirement if there is a weekly redemption right), supra at note 5.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade, 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.

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

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

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay and

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). The Exchange satisfied the requirement of this provision that the Exchange provide the Commission written notice of its intent to file the proposed rule

make the proposed rule change operative upon filing because the proposal raises no novel issues and is based on a previously approved proposal filed by NYSE Arca.¹³ The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Exchange's proposed amendment would conform its listing standards for Index-Linked Exchangeable Notes with respect to minimum public holders and public distribution to be substantively identical to the parallel listing standards of other national securities exchanges, which the Commission has previously approved. In addition, the Commission notes that it has also previously approved substantively identical rules for other new derivative security products.¹⁴ The Commission further believes that the proposal should benefit investors by creating, without undue delay, additional competition in the market for Index-Linked Exchangeable Notes. For these reasons, the Commission designates the proposed rule change as operative upon filing.¹⁵

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

change, along with a brief description and text of the proposed rule change, at least five business days prior to filing it.

¹³ See supra at note 5.

¹⁴ See supra at note 6.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Please include File Number SR-NYSEArca-2008-13 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-NYSEArca-2008-13. 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 10:00 a.m. and 3:00 p.m. Copies of such 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-NYSEArca-2008-13 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).