

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57561; File No. SR-NYSEArca-2008-29)

March 26, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 13, 2008, 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. On March 24, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) to modify the eligibility criteria for components of an index underlying Investment Company Units (“Units”).<sup>3</sup> The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

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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> Units are securities that represent 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, that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities or securities in another registered investment company that holds securities. See NYSE Arca Equities 5.2(j)(3).

## 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

Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) provides that NYSE Arca Equities may approve a series of Units for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Act,<sup>4</sup> if such series satisfies the criteria set forth in Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3). The Exchange proposes to exclude Units and certain other securities defined in Section 2 of NYSE Arca Equities Rule 8 (collectively, "Derivative Securities Products")<sup>5</sup> when applying the quantitative listing

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<sup>4</sup> Rule 19b-4(e) under the Act 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 Rule 19b-4(c)(1) under the Act (17 CFR 240.19b-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 derivatives securities product, and the SRO has a surveillance program for the product class. See 17 CFR 240.19b-4(e).

<sup>5</sup> The following securities are included in Section 2 of NYSE Arca Equities Rule 8: Portfolio Depositary Receipts (Rule 8.100); Trust Issued Receipts (Rule 8.200); Commodity-Based Trust Shares (Rule 8.201); Currency Trust Shares (Rule 8.202); Commodity Index Trust Shares (Rule 8.203); Partnership Units (Rule 8.300); and Paired Trust Shares (Rule 8.400). The Exchange has also proposed to adopt new NYSE Arca Equities Rule 8.600 (Managed Fund Shares). See Securities Exchange Act Release No. 57395 (February 28, 2008), 73 FR 11974 (March 5, 2008) (SR-NYSEArca-2008-25) (proposing, among other things, to adopt listing standards for Managed Fund Shares).

requirements of Commentary .01(a)(A) and (B) of NYSE Arca Equities Rule 5.2(j)(3) relating to the listing of Units based on a U.S. index or portfolio or an international or global index or portfolio, respectively.

With respect to Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3), the Exchange proposes to exclude Derivative Securities Products, as components, when applying the following existing component eligibility requirements: (1) component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least \$75 million (Commentary .01(a)(A)(1)); (2) component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares (Commentary .01(a)(A)(2)); and (3) the most heavily weighted component stock must not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks must not exceed 65% of the weight of the index or portfolio (Commentary .01(a)(A)(3)). Component stocks, in the aggregate, excluding Derivative Securities Products, would still be required to meet the criteria of these provisions. Thus, for example, when determining compliance with Commentaries .01(a)(A)(1) and (2) to NYSE Arca Equities Rule 5.2(j)(3), component stocks that, in the aggregate, account for at least 90% of the remaining index weight, after excluding any Derivative Securities Products, would be required to have a minimum market value of at least \$75 million and minimum monthly trading volume of 250,000 shares during each of the last six months, respectively. In addition, with respect to Commentary .01(a)(A)(3) to NYSE Arca Equities Rule 5.2(j)(3), when determining the component weight for the most heavily weighted stock and the five most heavily weighted component stocks for an

underlying index that includes a Derivative Securities Product, the weight of such Derivative Securities Product included in the underlying index or portfolio would not be considered.

In addition, the Exchange proposes to modify the requirement in Commentary .01(a)(A)(4) to NYSE Arca Equities Rule 5.2(j)(3), which requires that the underlying index or portfolio include a minimum of 13 component stocks. Specifically, the Exchange proposes that there shall be no minimum number of component stocks if: (1) one or more series of Units or Portfolio Depositary Receipts (as defined in NYSE Arca Equities Rule 8.100) constitute, at least in part, components underlying a series of Units; or (2) one or more series of Derivative Securities Products account for 100% of the weight of the index or portfolio. Thus, for example, if the index or portfolio underlying a series of Units includes one or more series of Units or Portfolio Depositary Receipts, or if it consists entirely of other Derivative Securities Products, then there would not be required to be any minimum number of component stocks (i.e., one or more components comprising the underlying index or portfolio would be acceptable). However, if the index or portfolio consists of Derivative Securities Products, other than Units or Portfolio Depositary Receipts, and other securities that are not Derivative Securities Products (e.g., common stocks), then there would have to be at least 13 components in the underlying index or portfolio.

Consistent with current Commentary .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3), all securities in the index or portfolio (including Derivative Securities Products) must nevertheless be U.S. Component Stocks that are listed on a national securities exchange and NMS Stocks, as defined in Rule 600 under the Act.<sup>6</sup>

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<sup>6</sup> See 17 CFR 242.600(b)(47).

With respect to Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3), the Exchange proposes to exclude Derivative Securities Products, as components, when applying the following existing component eligibility requirements: (1) component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least \$100 million (Commentary .01(a)(B)(1)); (2) component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares (Commentary .01(a)(B)(2)); and (3) the most heavily weighted component stock must not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks must not exceed 60% of the weight of the index or portfolio (Commentary .01(a)(B)(3)). Thus, for example, when determining compliance with Commentaries .01(a)(B)(1) and (2) to NYSE Arca Equities Rule 5.2(j)(3), component stocks that, in the aggregate, account for at least 90% of the remaining index weight, after excluding any Derivative Securities Products, would be required to have a minimum market value of at least \$100 million and minimum worldwide monthly trading volume of 250,000 shares during each of the last six months, respectively. In addition, with respect to Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3), when determining the component weight for the most heavily weighted stock and the five most heavily weighted component stocks for an underlying index that includes a Derivative Securities Product, the weight of such Derivative Securities Product included in the underlying index or portfolio would not be considered.

In addition, the Exchange proposes to modify the requirement in Commentary .01(a)(B)(4) to NYSE Arca Equities 5.2(j)(3), which requires that the underlying index or portfolio include a minimum of 20 component stocks. Specifically, the Exchange proposes that

there shall be no minimum number of component stocks if: (1) one or more series of Units or Portfolio Depositary Receipts (as defined in NYSE Arca Equities Rule 8.100) constitute, at least in part, components underlying a series of Units, or (2) one or more series of Derivative Securities Products account for 100% of the weight of the index or portfolio. Thus, for example, if the index or portfolio underlying a series of Units includes one or more series of Units or Portfolio Depositary Receipts, or if it consists entirely of other Derivative Securities Products, then there would not be required to be any minimum number of component stocks (i.e., one or more components comprising the underlying index or portfolio would be acceptable). However, if the index or portfolio consists of Derivative Securities Products, other than Units or Portfolio Depositary Receipts, and other securities that are not Derivative Securities Products (e.g., common stocks), then there would have to be at least 20 components in the underlying index or portfolio.

Consistent with current Commentary .01(a)(B)(5) to NYSE Arca Equities Rule 5.2(j)(3), each component that is a U.S. Component Stock (including Derivative Securities Products) would be required to be listed on a national securities exchange and be an NMS Stock, as defined in Rule 600 under the Act, and each component that is a Non-U.S. Component Stock (including Derivative Securities Products) would be required to be listed and traded on an exchange that has last-sale reporting.

The Exchange believes it is appropriate to exclude Derivative Securities Products from certain index component eligibility criteria for Units in so far as such Derivative Securities Products are themselves subject to specific quantitative listing and continued listing requirements of a national securities exchange on which such Derivative Securities Products are listed. Derivative Securities Products that are components of an index or portfolio underlying a

series of Units would have been listed and traded on a national securities exchange pursuant to a proposed rule change approved by the Commission pursuant to Section 19(b)(2) of the Act<sup>7</sup> or submitted by a national securities exchange pursuant to Section 19(b)(3)(A) of the Act,<sup>8</sup> or would have been listed by a national securities exchange pursuant to the requirements of Rule 19b-4(e) under the Act.<sup>9</sup> Finally, the Exchange notes that Derivative Securities Products are derivatively priced, and, therefore, the Exchange believes that it would not be necessary to apply the generic quantitative criteria (e.g., market capitalization, trading volume, index or portfolio component weighting) applicable to non-Derivative Securities Products (e.g., common stocks) to such products.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act,<sup>10</sup> which states that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in the proposal are intended to protect investors and the public interest.

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

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

<sup>9</sup> See supra note 4.

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

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 states that it has neither solicited nor received comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-29 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-2008-29. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information

that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-29 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.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).