

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57701; File No. SR-NYSEArca-2008-20)

April 23, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Adopt Listing Rules Relating to Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities

I. Introduction

On February 14, 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”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt generic listing standards for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities. On March 14, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on March 24, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57505 (March 14, 2008), 73 FR 15550.

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)⁴ to adopt new generic listing standards, pursuant to which the Exchange would be able to list and trade Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities without Commission approval under Rule 19b-4(e) under the Act.⁵ The Exchange also proposes to make conforming changes to Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) to extend its application to Futures-Linked Securities and Multifactor Index-Linked Securities that are composed in part of Commodity, Currency, or Futures Reference Assets (as defined herein).

The Exchange represents that any securities it lists and/or trades pursuant to Rule 19b-4(e)(1) and NYSE Arca Equities Rule 5.2(j)(6), as amended, will satisfy the proposed standards

⁴ NYSE Arca Equities Rule 5.2(j)(6) currently sets forth the Exchange’s generic listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities. See NYSE Arca Equities Rule 5.2(j)(6). Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (“Equity Reference Asset”). Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in NYSE Arca Equities Rule 8.201), or a basket or index of any of the foregoing (“Commodity Reference Asset”). Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in NYSE Arca Equities Rule 8.202), or a basket or index of any of the foregoing (“Currency Reference Asset”). As a result of the proposed rule change, “Index-Linked Securities,” which currently include Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities, will also include, by definition, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities.

⁵ Rule 19b-4(e)(1) 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 paragraph (c)(1) of Rule 19b-4 under the Act (17 CFR 240.19b-4(c)(1)), if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), the SRO’s trading rules, procedures, and listing standards for the

set forth therein. The Exchange states that within five business days after commencement of trading of any such security under NYSE Arca Equities Rule 5.2(j)(6), as amended, the Exchange will file a Form 19b-4(e).⁶

Fixed Income Index-Linked Securities

Fixed Income Index-Linked Securities are securities that provide for the payment at maturity based on the performance of one or more indexes or portfolios of debt securities that are notes, bonds, debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof, or a basket or index of any of the foregoing (collectively, “Fixed Income Reference Asset”). Fixed Income Index-Linked Securities, like other Index-Linked Securities, will be subject to the general criteria in NYSE Arca Equities Rule 5.2(j)(6)(A) for initial listing.

For the initial listing of a series of Fixed Income Index-Linked Securities, the Fixed Income Reference Asset must either: (1) have been reviewed and approved for the trading of options, Investment Company Units (as defined in NYSE Arca Equities Rule 5.2(j)(3)), or other derivatives by the Commission under Section 19(b)(2) of the Act⁷ and rules thereunder and the conditions set forth in the Commission’s approval order continue to be satisfied, or (2) meet the following requirements:⁸

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).

⁶ See 17 CFR 240.19b-4(e)(2)(ii); 17 CFR 249.820.

⁷ 15 U.S.C. 78s(b)(2).

⁸ The Exchange notes that the quantitative standards for Fixed Income Reference Assets are substantially similar to those set forth under Commentary .02 to NYSE Arca Equities

- Components of the Fixed Income Reference Asset that, in the aggregate, account for at least 75% of the dollar weight of the Fixed Income Reference Asset must each have a minimum original principal amount outstanding of \$100 million or more;
- A component of the Fixed Income Reference Asset may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the Fixed Income Reference Asset;
- No component of the Fixed Income Reference Asset (excluding Treasury Securities and GSE Securities) will represent more than 30% of the dollar weight of the Fixed Income Reference Asset, and the five highest dollar weighted components in the Fixed Income Reference Asset will not, in the aggregate, account for more than 65% of the dollar weight of the Fixed Income Reference Asset;
- An underlying Fixed Income Reference Asset (excluding one consisting entirely of exempted securities)⁹ must include a minimum of 13 non-affiliated issuers; and
- Component securities that, in the aggregate, account for at least 90% of the dollar weight of the Fixed Income Reference Asset must be from one of the following: (1) issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act;¹⁰ or (2) issuers that have a worldwide market value of outstanding common equity held by non-affiliates of \$700 million or more; or (3) issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining

Rule 5.2(j)(3) relating to fixed income securities underlying Investment Company Units. See Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

⁹ The Exchange notes that, for purposes of this standard, “exempted securities” refers to Treasury Securities and GSE Securities, as defined in proposed NYSE Arca Equities Rule 5.2(j)(6)(iv).

¹⁰ 15 U.S.C. 78m; 15 U.S.C. 78o(d).

principal amount of at least \$1 billion; or (4) exempted securities, as defined in Section 3(a)(12) of the Act;¹¹ or (5) issuers that are a government of a foreign country or a political subdivision of a foreign country.

With respect to any series of Fixed Income Index-Linked Securities, the value of the Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per business day. In addition, the Exchange will commence delisting or removal proceedings if:¹²

- Any of the initial listing criteria for Fixed Income Index-Linked Securities are not continuously maintained;
- The aggregate market value or the principal amount of the Fixed Income Index-Linked Securities publicly held is less than \$400,000;
- The value of the Fixed Income Reference Asset is no longer calculated or available and a new Fixed Income Reference is substituted, unless the new Fixed Income Reference Asset meets the requirements of NYSE Arca Equities Rule 5.2(j)(6); or
- Such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Futures-Linked Securities

Futures-Linked Securities are securities that provide for the payment at maturity based on the performance of an index of (1) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any

¹¹ 15 U.S.C. 78c(a)(12).

¹² The Exchange notes that the continued listing standards for each of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities

of the foregoing, or (2) interest rate futures or options or derivatives on the foregoing (collectively, “Futures Reference Asset”). Futures-Linked Securities will also be subject to the general criteria in NYSE Arca Equities Rule 5.2(j)(6)(A) for initial listing. An issue of Futures-Linked Securities must meet one of the initial listing standards set forth below:

- The Futures Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Futures-Linked Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act¹³ and rules thereunder and the conditions set forth in the Commission’s approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- The pricing information for components of a Futures Reference Asset must be derived from a market which is an Intermarket Surveillance Group (“ISG”) member or affiliate member or with which the Exchange has a comprehensive surveillance sharing agreement. A Futures Reference Asset may include components representing not more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that do not meet the specified foregoing requirements; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset.

In addition, an issue of Futures-Linked Securities must meet both of the following initial listing criteria:

are substantially similar to those standards currently applicable to other Index-Linked Securities.

¹³ 15 U.S.C. 78s(b)(2).

- The value of the Futures Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34);¹⁴ and
- In the case of Futures-Linked Securities that are periodically redeemable, the indicative value of the subject Futures-Linked Securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

The Exchange will commence delisting or removal proceedings if:

- Any of the initial listing criteria for Futures-Linked Securities are not continuously maintained;
- The aggregate market value or the principal amount of the Futures-Linked Securities publicly held is less than \$400,000;
- The value of the Futures Reference Asset is no longer calculated or available and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of NYSE Arca Equities Rule 5.2(j)(6); or
- Such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Multifactor Index-Linked Securities

Multifactor Index-Linked Securities are securities that provide for payment at maturity based on the performance of any combination of two or more Equity Reference Assets,

¹⁴ See NYSE Arca Equities Rule 7.34 (generally describing the three trading sessions of the Exchange to include the Opening Session, from 4:00 a.m. to 9:30 a.m. Eastern Time or “ET,” Core Trading Session, from 9:30 a.m. to 4:00 p.m. ET, and Late Trading Session, from 4:00 p.m. to 8:00 p.m. ET).

Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, or Futures Reference Assets (collectively, the “Multifactor Reference Asset,” and together with Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, and Futures Reference Assets, collectively, the “Reference Assets”). In addition, a Multifactor Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, London Interbank Offered Rate (“LIBOR”), Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates. The Exchange states that, for purposes of a notional investment as a component of a Multifactor Reference Asset, a long LIBOR weighting would represent a leverage charge offsetting long positions in the underlying Reference Assets.

Multifactor Index-Linked Securities will be subject to the general criteria under NYSE Arca Equities Rule 5.2(j)(6)(A) for initial listing. In addition, for a series of Multifactor Index-Linked Securities to be appropriate for listing, each component of the Multifactor Reference Asset must either: (1) have been reviewed and approved for the trading of options, Investment Company Units, or other derivatives under Section 19(b)(2) of the Act¹⁵ and rules thereunder and the conditions set forth in the Commission’s approval order continued to be satisfied; or (2) meet the applicable requirements for initial and continued listing set forth in the relevant section of NYSE Arca Equities Rule 5.2(j)(6). In addition, an issue of Multifactor Index-Linked Securities must meet both of the following initial listing criteria:

¹⁵ 15 U.S.C. 78s(b)(2).

- The value of the Multifactor Reference Asset must be calculated and widely disseminated to the public on at least a 15-second basis during the time the Multifactor Index-Linked Security trades on the Exchange; and
- In the case of Multifactor Index-Linked Securities that are periodically redeemable, the indicative value of the Multifactor Index-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Multifactor Index-Linked Securities trade on the Exchange.

The Exchange will commence delisting or removal proceedings if:

- Any of the initial listing criteria for Multifactor Index-Linked Securities are not continuously maintained;
- The aggregate market value or the principal amount of the Multifactor Index-Linked Securities publicly held is less than \$400,000;
- The value of the Multifactor Reference Asset is no longer calculated or available and a new Multifactor Reference Asset is substituted, unless the new Multifactor Reference Assets meets the requirements of NYSE Arca Equities Rule 5.2(j)(6); or
- Such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Information Circular

Upon evaluating the nature and complexity of each Fixed Income Index-Linked Security, Futures-Linked Security, or Multifactor Index-Linked Security, the Exchange represents that it

will prepare and distribute, if appropriate, an Information Circular to ETP Holders¹⁶ describing the product. Accordingly, the Information Circular will disclose the particular structure and corresponding risks of a Fixed Income Index-Linked Security, Futures-Linked Security, or Multifactor Index-Linked Security traded on the Exchange. In particular, the Information Circular will set forth the Exchange's suitability rule that requires ETP Holders recommending a transaction in Fixed Income Index-Linked Securities, Futures-Linked Securities, or Multifactor Index-Linked Securities: (1) to determine that such transaction is suitable for the customer (NYSE Arca Equities Rule 9.2(a)); and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such transaction. In addition, the Information Circular will reference the requirement that ETP Holders must deliver a prospectus to investors purchasing newly issued Index-Linked Securities prior to or concurrently with the confirmation of a transaction. The Information Circular will also note that all of the Exchange's equity trading rules will be applicable to trading in Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities. Finally, the Information Circular will discuss the risks involved in trading such securities during the Opening and Late Trading Sessions¹⁷ when an updated indicative value or Reference Asset value, as applicable, will not be calculated or publicly disseminated.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Index-Linked Securities) to monitor trading in Fixed Income

¹⁶ ETP Holder refers to a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or "ETP." An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act. See NYSE Arca Equities Rule 1.1(n).

Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of such securities in all trading sessions and to deter and detect violations of Exchange rules. The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange may also obtain information via ISG from other exchanges who are members or affiliate members of ISG.¹⁸ In addition, the Exchange also has a generally policy prohibiting the distribution of material, non-public information by its employees.

Trading Halts

If the indicative value or Reference Asset value applicable to a series of Index-Linked Securities is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Firewall Procedures

Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities, like other Index-Linked Securities, will be subject to the firewall requirements under NYSE Arca Equities Rule 5.2(j)(6)(C). The firewall requirements provide that, if the value of an Index-Linked Security is based in whole or in part on an index that is maintained by

¹⁷ See supra note 14.

a broker-dealer, the broker-dealer shall erect a “firewall” around the personnel responsible for the maintenance of the underlying index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer.

Furthermore, as provided in NYSE Arca Equities Rule 5.2(j)(6)(C), any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio.

Commentary .01

The Exchange has also proposed conforming changes to Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) relating to the obligations of an Exchange ETP Holder acting as a registered Market Maker in order to extend its application to Futures-Linked Securities and Multifactor Index-Linked Securities to the extent that such securities are composed, in part, of Commodity, Currency, or Futures Reference Assets.¹⁹

III. Discussion and Commission’s Findings

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

¹⁸ The Exchange notes that not all of the instruments underlying Index-Linked Securities may trade on exchanges that are members or affiliate members of ISG.

¹⁹ The Exchange states that Equity Index-Linked Securities and Fixed Income Index-Linked Securities are not explicitly included in Commentary .01 to NYSE Arca Rule 5.2(j)(6) because such securities are already subject to the requirements of NYSE Arca Equities Rule 7.26 (Limitations on Dealings).

a national securities exchange.²⁰ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,²¹ which requires, among other things, that the Exchange's rules be designed 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 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.

A. Generic Listing Standards for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities

To list and trade Fixed Income Index-Linked Securities, Futures-Linked Securities, or Multifactor Index-Linked Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act²² and Rule 19b-4 thereunder.²³ However, Rule 19b-4(e) 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 Commission has previously approved generic listing standards pursuant to Rule 19b-4(e) for Investment Company Units based on the performance of fixed income securities and

²⁰ In approving this proposed 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).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78s(b)(1).

²³ 17 CFR 240.19b-4.

notes that such standards are substantially similar to those proposed to be applicable to Fixed Income Index-Linked Securities.²⁴ In addition, with respect to the proposed generic listing standards for Multifactor Index-Linked Securities, the Commission has previously approved generic listing standards pursuant to Rule 19b-4(e) for Investment Company Units based on the performance of a combination of assets.²⁵ The Commission also notes that the proposed generic standards applicable to Futures-Linked Securities are substantively identical to those currently applicable to Commodity-Linked Securities with respect to the pricing information for the respective underlying assets.²⁶ Lastly, the Commission notes that the proposed continued listing standards for each of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities are substantively identical to those standards currently applicable to other Index-Linked Securities.²⁷

In approving these securities for Exchange trading, the Commission considered applicable Exchange rules that govern their trading. The Commission believes that generic listing standards for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities should fulfill the intended objective of Rule 19b-4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without

²⁴ See Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) (setting forth the generic listing and trading standards for Investment Company Units based on fixed income securities); see supra note 8 and accompanying text.

²⁵ See Commentary .03 to NYSE Arca Equities Rule 5.2(j)(3) (setting forth the generic listing and trading standards for Investment Company Units based on a combination of assets representing equity and fixed income securities and requiring that each index or portfolio of equity or fixed income component securities separately satisfy its own applicable generic criteria for listing and trading pursuant to Rule 19b-4(e)).

²⁶ See NYSE Arca Equities Rule 5.2(j)(6)(B)(II); see also infra note 38 and accompanying text.

the need for public comment and Commission approval.²⁸ The Exchange's ability to rely on Rule 19b-4(e) to list and trade Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities that meet the applicable requirements and minimum standards should reduce the time frame for bringing these securities to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly.

B. Listing and Trading Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities

Taken together, the Commission finds that the proposal contains adequate rules and procedures to govern the listing and trading of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities pursuant to Rule 19b-4(e) on the Exchange. Products listed and traded under the proposed generic standards will be subject to the full panoply of NYSE Arca Equities rules and procedures that currently govern the trading of equity securities on the Exchange.

The listing requirements under NYSE Arca Equities Rule 5.2(j)(6)(A), which set forth criteria applicable to all Index-Linked Securities, will apply to Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities under the proposed rule change.²⁹ With respect to Fixed Income Index-Linked Securities, the definition of

²⁷ See supra note 12.

²⁸ The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) of the Act, requesting Commission approval to list and trade a particular series of Index-Linked Securities.

²⁹ See NYSE Arca Equities Rule 5.2(j)(6)(A) (providing, among other things, minimum tangible net worth requirements of each issuer of Index-Linked Securities, and minimum

Fixed Income Reference Asset includes the same types of fixed income securities that may underlie Investment Company Units under Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).³⁰ In addition, the Exchange's proposed eligibility criteria for Fixed Income Reference Assets, which are substantively identical to the criteria applicable to fixed income-based Investment Company Units, include, among other things, minimum standards relating to original principal amount outstanding for each component of the Fixed Income Reference Asset, maximum concentration limits for each such component, and minimum number of non-affiliated issuers of such components.³¹ The Commission believes that these requirements should help to ensure that the underlying components of a Fixed Income Reference Asset are adequately capitalized, sufficiently liquid, and diversified. In addition, the Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per business day.

In the case of Futures-Linked Securities, the underlying asset must either be an index of (1) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing, or (2) interest rate futures, or options on, or derivatives of, such interest rate futures. In addition, as with Commodity Reference Assets, Futures Reference Assets to which Futures-Linked Securities are linked must either have been reviewed and approved for trading by the Commission or the pricing information of their underlying components must be derived from certain required

distribution and holder, principal amount/market value, and term thresholds for each issuance of such securities).

³⁰ Compare proposed NYSE Arca Equities Rule 5.2(j)(6)(iv) with Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

³¹ See supra note 8.

sources, subject to exceptions.³² These requirements should help to ensure that the components comprising a Futures Reference Asset are adequately transparent and subject to rules and standards of applicable exchanges that trade such components and that the Exchange is able to obtain information with respect to disruptions in, or unusual trading of, such components.³³ To enhance the transparency of such Futures-Linked Securities, the proposal also would require (1) the value of the Futures Reference Asset to be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session, (2) in the case of Futures-Linked Securities that are periodically redeemable, the indicative value of such securities to be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

In the case of Multifactor Index-Linked Securities, the Multifactor Reference Asset may be comprised of any combination of two or more Reference Assets and a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, LIBOR, Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates. As stated earlier, the Commission notes that the proposed generic standards applicable to Multifactor Index-Linked Securities are substantially similar to those standards applicable to Investment Company Units that are based on a combination of equity and fixed income securities in that each underlying Reference Asset must satisfy its own applicable minimum criteria and standards for the listing and trading of a series of Multifactor Index-Linked Securities. In addition, under the proposed rule change, (1) the value of the Multifactor Reference Asset must be calculated and widely disseminated on at least a 15-second basis during

³² See infra note 38 and accompanying text.

³³ See id.

the time such securities trade on the Exchange, and (2) in the case of Multifactor Index-Linked Securities that are periodically redeemable, the indicative value must be calculated and widely disseminated on at least a 15-second basis during the time such securities trade on the Exchange.

The Exchange has also developed continued listing criteria that would require it to commence delisting or removal proceedings in circumstances that make further dealings in Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities inadvisable.³⁴ The Commission notes that such standards are substantively identical to those continued listing standards currently applicable to other Index-Linked Securities, and the Commission believes that such delisting criteria should help ensure the maintenance of fair and orderly markets for such securities. The Commission further notes that, under the proposal, if the indicative value or Reference Asset value applicable to a series of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities is not disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs; however, if the interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Such provisions relating to trading halts currently apply to Index-Linked

³⁴ See proposed NYSE Arca Equities Rules 5.2(j)(6)(B)(IV)(3), 5.2(j)(6)(B)(V)(2), and 5.2(j)(6)(B)(VI)(3) (providing that the Exchange will commence delisting or removal proceedings for any series of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities, respectively, if: (a) any of the applicable initial listing criteria are not continuously maintained; (b) the aggregate market value or the principal amount of the applicable security publicly held is less than \$400,000; (c) the value of the applicable Reference Asset is no longer calculated or available and a new Reference Asset is substituted, unless such new Reference Asset meets the applicable requirements under NYSE Arca Equities Rule 5.2(j)(6); and (d) such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings inadvisable).

Securities, and the Commission believes that the trading halt requirements promote the availability of key information for the benefit investors and other market participants.³⁵

Lastly, the Commission notes that the proposal would make conforming changes to Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) relating to the obligations of an Exchange ETP Holder acting as a registered Market Maker.³⁶ Specifically, the proposal would extend the application of Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) to Futures-Linked Securities and Multifactor Index-Linked Securities, to the extent such securities are composed, in part, of Commodity, Currency, or Futures Reference Assets. The Commission believes that this proposal should deter conflicts of interest and the use of material, non-public information with respect to ETP Holders that engage in transactions that involve Futures-Linked Securities and certain Multifactor Index-Linked Securities and the relevant components that underlie such securities.³⁷

C. Surveillance

The Commission notes that Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities would be subject to the Exchange's existing surveillance procedures applicable to derivative products (including Index-Linked Securities). The Exchange has represented that its surveillance procedures are adequate to properly monitor the trading of Index-Linked Securities listed pursuant to these proposed generic listing standards in all trading sessions and to deter and detect violations of Exchange rules. In addition, the

³⁵ See NYSE Arca Equities Rule 5.2(j)(6)(E).

³⁶ See Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) (setting forth, among other things, restrictions on dealings of ETP Holders acting as a registered Market Makers, requirements relating to restrictions to the flow of material, non-public information, and obligations relating to the maintenance of certain accounts and books and records).

³⁷ See supra note 19.

Commission notes that, with respect to the proposed Fixed Income-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities, the Exchange has represented that it will be able to obtain information from those markets that are full members or affiliate members of the ISG and that the Exchange has a general policy prohibiting the distribution of material, non-public information by its employees. The Commission further notes that, for Futures-Linked Securities, the pricing information for components of a Futures Reference Asset must be derived from a market that is an ISG member or affiliate member or with which the Exchange has a comprehensive surveillance sharing agreement, subject to certain exceptions.³⁸

D. Information Circular

The Exchange has represented that, upon evaluating the nature and complexity of each Fixed Income Index-Linked Security, Futures-Linked Security, and Multifactor Index-Linked Security, it will prepare and distribute, as appropriate, an Information Circular to ETP Holders describing the product, the particular structure of the product, and the corresponding risks of the Index-Linked Security traded on the Exchange. In addition, the Information Circular will set forth the Exchange's suitability requirements with respect to recommendations in transactions in Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities to customers and the prospectus delivery requirements for such products. The Information Circular will also identify and describe the Exchange's trading rules governing the trading of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor

³⁸ See proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(V)(1)(b) (providing that the Futures Reference Asset may not include components representing more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that are neither ISG members or parties to a comprehensive surveillance sharing agreement with the Exchange and that no such single component may exceed 7% of the dollar weight of the Futures Reference Asset).

Index-Linked Securities and will discuss the risks involved in trading such securities during the Opening and Late Trading Sessions when an updated indicative value or Reference Asset value, as applicable, will not be calculated or publicly disseminated.³⁹

E. Firewall Procedures

Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities, like other Index-Linked Securities, will be subject to the existing firewall requirements under NYSE Arca Equities Rule 5.2(j)(6)(C). The firewall requirements provide that, if the value of an Index-Linked Security is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect a “firewall” around the personnel responsible for the maintenance of the underlying index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer.

Furthermore, as provided in existing NYSE Arca Equities Rule 5.2(j)(6)(C), any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴⁰ that the

³⁹ See supra note 14.

⁴⁰ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSEArca-2008-20), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

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

Florence E. Harmon
Deputy Secretary

⁴¹ 17 CFR 200.30-3(a)(12).