

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63129; File No. SR-NYSEArca-2010-91)

October 19, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendment to NYSE Arca Equities Rule 8.500 to Accommodate Trading of Trust Units

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 12, 2010, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 NYSE Arca Equities Rule 8.500 (“Trust Units”) to provide that the issuers of Trust Units listed or traded pursuant to unlisted trading privileges (“UTP”) may invest directly in investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities rather than solely in the assets of a trust, partnership, limited liability company, corporation or other similar entity constituted as a commodity pool that holds such investments. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and at the Exchange’s Web site at www.nyse.com.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

NYSE Arca Equities Rule 8.500 permits listing or trading pursuant to UTP of Trust Units, which are defined as securities that are issued by a trust or other similar entity that invests in the assets of a trust, partnership, limited liability company, corporation or other similar entity constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities.⁴ NYSE Arca Equities Rule 8.500 was adopted in contemplation of the trading pursuant to UTP of shares of the Nuveen Commodities Income and Growth Fund (“Fund”), sponsored by Nuveen Investments, Inc. (“Nuveen”). The Exchange proposes to amend NYSE Arca Equities Rule 8.500(b)(2) to provide that the issuers of Trust Units listed or traded pursuant to UTP may invest directly in investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities rather than solely in the assets of a trust, partnership, limited

⁴ See Securities Exchange Act Release No. 57059 (December 28, 2007), 73 FR 909 (January 4, 2008) (SR-NYSEArca-2006-76) (notice of filing and order granting accelerated approval of proposed rule change relating to trading shares of the Nuveen Commodities Income and Growth Fund pursuant to UTP).

liability company, corporation or other similar entity constituted as a commodity pool that holds such investments.

The American Stock Exchange LLC (“Amex”) (now known as NYSE Amex LLC (“NYSE Amex”)) initially had proposed to list the Fund and adopted Amex Rules 1600 et seq. in contemplation of such listing.⁵ The Fund did not commence listing on Amex in the form described in the Initial Amex Notice. Nuveen subsequently proposed to go forward with a listing of shares (the “Shares”) of the Fund on NYSE Amex under a new name, the Nuveen Diversified Commodity Fund. The Fund proposed to utilize a modified investment plan, which was described in detail in the NYSE Amex proposed rule change filed in connection with listing the Fund.⁶ As described in the NYSE Amex Notice, the Fund determined not to utilize the master/feeder structure described in the Initial Amex Notice due to a change in the interpretation of applicable tax law by the Internal Revenue Service. Instead, the Fund would make its own direct investments. Consequently, NYSE Amex proposed to amend the definition of Trust Units in NYSE Amex Rule 1600 to remove the master/feeder structure requirement and permit the listing of Trust Units where the issuer is constituted as a commodity pool which invests directly

⁵ See Securities Exchange Act Release No. 56880 (December 3, 2007), 72 FR 69259 (December 7, 2007) (SR-Amex-2006-96) (order approving proposed rule change relating to listing and trading of Trust Units of the Nuveen Commodities Income and Growth Fund). The investment plan of the Fund was described in detail in the Amex’s Form 19b-4 and in the notice published for SR-Amex-2006-96. See Securities Exchange Act Release No. 56465 (September 19, 2007), 72 FR 54489 (September 25, 2007) (“Initial Amex Notice”).

⁶ See Securities Exchange Act Release No. 61571 (February 23, 2010) 75 FR 9265 (March 1, 2010) (SR-NYSE Amex-2010-09) (notice of filing of proposed rule change amending NYSE Amex Trust Unit Rules and proposing the listing of the Nuveen Diversified Commodity Fund) (“NYSE Amex Notice”).

in commodities and commodity derivatives. The Commission approved listing of the Fund on NYSE Amex, and trading of the Fund on NYSE Amex commenced on September 28, 2010.⁷

In order to accommodate trading of Shares of the Fund on the Exchange pursuant to UTP, the Exchange proposes to amend NYSE Arca Equities Rule 8.500(b)(2) to define the term “Trust Units” as a security that is issued by a trust or similar entity constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities. The proposed rule change is substantially identical to that approved for NYSE Amex in the NYSE Amex Approval Order, except that proposed NYSE Arca Equities Rule 8.500 (b)(2) continues to include the words “and/or securities”, which are not included in NYSE Amex Rule 1600. The Exchange represents that all representations regarding the Fund listed and traded on NYSE Amex, as described in the NYSE Amex Notice and NYSE Amex Approval Order, continue to apply.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁸ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁹ 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

⁷ The Commission approved the proposed rule change in Securities Exchange Act Release No. 61807 (March 31, 2010), 75 FR 17818 (April 7, 2010) (SR-NYSE Amex-2010-09) (order approving proposed rule change amending NYSE Amex Trust Unit rules and proposing the listing of the Nuveen Diversified Commodity Fund) (“NYSE Amex Approval Order”).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

and a national market system. The Exchange believes that the proposed rule change will facilitate the trading pursuant to UTP of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)(iii) thereunder.¹³

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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 so that the Exchange can trade, on a UTP basis, shares of the Fund immediately. The Exchange believes that the immediate trading of shares of the Fund will promote competition among exchange markets trading such shares. The Commission believes that waiving the 30-day operative delay to permit the Exchange to trade, on a UTP basis, shares of the Fund without delay is consistent with the protection of investors and the public interest.¹⁴ The Commission notes that the proposed amendments to NYSE Arca Equities Rule 8.500 are similar to amendments to NYSE Amex Rule 1600, previously approved by the Commission¹⁵ and therefore do not raise any new regulatory issues. For these reasons, the Commission designates the proposed rule change as operative upon filing.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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.

¹⁴ 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).

¹⁵ See Securities Exchange Act Release No. 61807 (March 31, 2010), 75 FR 17818 (April 7, 2010) (SR-NYSE Amex-2010-09).

¹⁶ The Commission notes that this proposed rule change only permits trading of products under the proposed modifications to Exchange Rule 8.500 on and after the effective date of this filing and does not relate to any trading under such proposed rules prior to such date.

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 No. SR-NYSEArca-2010-91 on the subject line.

Paper comments:

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

All submissions should refer to File No. SR-NYSEArca-2010-91. 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 Web site viewing and printing 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 NYSE Arca.¹⁷ 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-NYSEArca-2010-91 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁷ The text of the proposed rule change is available on the Commission's website at www.sec.gov.

¹⁸ 17 CFR 200.30-3(a)(12).