

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58984; File No. SR-NYSEArca-2008-121)

November 20, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 5.2(j)(6) to Increase the Permissible Aggregate Weight of Underlying Foreign Country Securities

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 29, 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 prepared by NYSE Arca. 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 Rule 5.2(j)(6) in order to permit foreign country securities whose primary foreign markets are not subject to a comprehensive surveillance sharing agreement to account for up to 50% of the aggregate weight of the index. The text of the proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange’s listing standards for equity index linked securities (“Equity Index-Linked Securities”) limit the permissible aggregate weight of underlying foreign country securities to 20% of the overall index where the primary trading markets of the foreign country securities or American Depositary Receipts (“ADRs”) are not members of the Intermarket Surveillance Group (“ISG”) or are not otherwise parties to comprehensive surveillance sharing agreements (“CSSA”) with the Exchange. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) to increase the permissible aggregate weight of such underlying foreign country securities up to 50% of the overall index.³ According to the proposal, the Exchange will permit the listing and trading of Equity Index-Linked Securities where the underlying foreign country securities or ADRs, which trade on foreign markets that are not ISG members or are not otherwise subject to a CSSA agreement with the Exchange, account for up to 50% of the aggregate dollar weight of the index, so long as:

³ E-mail from Andrew Stevens, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated November 20, 2008.

(i) the securities of any one primary foreign market which is not an ISG member or does not have a CSSA with the Exchange do not represent more than 20% of the dollar weight of the index, and (ii) the securities of any two primary foreign markets which are not ISG members or do not have a CSSA with the Exchange do not represent more than 33% of the dollar weight of the index. As a result of the proposed amendment, the Exchange also seeks to make additional minor modifications to Rule 5.2(j)(6)(B)(I)(1)(b)(v) relating to punctuation and format and other non-substantive changes.⁴

This amendment is consistent with NYSE Arca Options Rule 5.3(g)(2)(A), which establishes the standards for the listing and trading of options on Exchange-Traded Funds. Approved in 2001, the Commission specifically noted in its order that requiring comprehensive surveillance agreement to be in place between the Exchange and the primary markets for foreign securities that comprise 50% or more of the weight of the underlying index “provides an adequate mechanism for the exchange of surveillance sharing information necessary to detect and deter possible market manipulation.”⁵ The Commission also recognized that the additional conditions regarding the concentration of foreign securities in any one or more uncovered

⁴ E-mail from Tim Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated November 5, 2008.

⁵ See Securities Exchange Act Release No. 44025 (February 28, 2001), 66 FR 13986 (March 8, 2001) (SR-PCX-01-12). This rule change is also consistent with Commentary .06 of Rule 915 of the American Stock Exchange, Inc. [sic] (“Amex”). See Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) (SR-Amex-96-44) (order approving Commentary .06 to Amex Rule 915, establishing the 50% / 20% / 33% standards for purposes of listing and trading options on Exchange Traded Funds).

countries, ensure that a “significant percentage of the portfolio is not made up of securities from uncovered countries.”⁶

The Exchange believes that the proposed amendment does not impose any burden on competition or significantly affect the protection of investors. The revised standard allows for increased flexibility with respect to listing and trading Equity Index-Linked Securities, while also providing an adequate mechanism for the exchange of surveillance sharing information necessary to detect and deter possible market manipulation.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁷ of the Act, in general, and furthers the objectives of Section 6(b)(5)⁸ 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 proposed standard, which is consistent with NYSE Arca Options Rule 5.3(g)(2)(A), provides an appropriate mechanism for the exchange of surveillance sharing information necessary to detect and deter possible market manipulation.

⁶ Id. See also Securities Exchange Act Release No. 40761 (December 8 1998), 63 FR 70952 (December 22, 1998) (S7-13-98) (in its guidance to self-regulatory organizations on new derivative securities products, the Commission noted the then recent approval of Commentary .06 to Amex Rule 915 for its discussion of an appropriate percentage of CSSA coverage (as it pertained to the specific product class of options)).

⁷ 15 U.S.C. 78f(b).

⁸ 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

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

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 self-regulatory organization consents, the Commission will:

- A. by order approve the 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. Please include File Number SR-NYSEArca-2008-121 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-121. 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-2008-121 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.⁹

Florence E. Harmon
Acting Secretary

⁹ 17 CFR 200.30-3(a)(12).