

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59747; File No. SR-NYSEArca-2009-20)

April 10, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of the Safety First Trust Certificates Linked to the S&P 500® Index

On March 6, 2009, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the Safety First Trust Series 2009-1, Principal-Protected Trust Certificates Linked to the S&P 500® Index (“Certificates”).<sup>3</sup> The proposed rule change was published in the Federal Register on March 19, 2009.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

I. Description of the Proposal

NYSE Arca proposes to list and trade the Certificates under NYSE Arca Equities Rule 5.2(j)(7), which governs the listing of Trust Certificates.<sup>5</sup> The Certificates are preferred

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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> See Registration Statement, Safety First Trust Series 2009-1, dated October 31, 2008 (Nos. 333-154914, 154914-08, and 154914-11); Registration Statement for Safety First Trust Series 2009-1, dated February 18, 2009 (Nos. 333-157386 and 333-157386-01) (collectively, “Registration Statement”).

<sup>4</sup> See Securities Exchange Act Release No. 59562 (March 12, 2009), 74 FR 11794 (“Notice”).

<sup>5</sup> Trust Certificates pay an amount at maturity based upon the performance of an underlying index or indexes of equity securities (“Equity Index Reference Asset”); instruments that are direct obligations of the issuing company, either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style), entitling the holder to a cash settlement in U.S. dollars to the extent

securities of Safety First Trust Series 2009-1 (“Trust”) and will mature on a specified date in 2014 (“Maturity Date”). Investors will receive at maturity for each certificate held intact an amount in cash equal to \$10 plus a “Supplemental Distribution Amount,” which may be positive or zero. The Supplemental Distribution Amount will be based on the percentage change of the value of the S&P 500 Index (“Index”) during the term of the Certificates. The Supplemental Distribution Amount for each Certificate will equal the product of (a) \$10, (b) the percentage change in the value of the Index, and (c) the Participation Rate, which is 90%-100%,<sup>6</sup> provided that the Supplemental Distribution Amount will not be less than zero.<sup>7</sup> A holder of the Certificates has an interest in two separate securities of Citigroup Funding Inc., the issuer of the Certificates: (1) equity index participation securities; and (2) equity index warrants.

Additional information about the Trust and the Certificates, including without limitation, the Maturity Date, valuation and pricing dates, equity index participation securities, equity index warrants, and risks can be found in the Notice and the Registration Statement.

## II. Discussion and Commission’s Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>8</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the

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that the foreign or domestic index has declined below (for a put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index (“Index Warrants”); or a combination of two or more Equity Index Reference Assets or Index Warrants. See NYSE Arca Equities Rules 5.2(j)(7)(i)-(iii).

<sup>6</sup> The Participation Rate will be determined at the time of issuance of the Certificates.

<sup>7</sup> The Trust payments will not be guaranteed pursuant to a financial guaranty insurance policy. See Commentary .10 to NYSE Arca Equities Rule 5.2(j)(7).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the Exchange's rules be 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction 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.

The Commission finds that the proposal to list and trade the Certificates on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>11</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange will disseminate quotation and last-sale data information via the Consolidated Tape. The value of the Index is calculated on at least a 15-second basis and is widely disseminated by major market data vendors and financial publications.

The Commission further believes that the proposal to list and trade the Certificates is reasonably designed to promote fair disclosure of information that may be necessary to price the Certificates. If the value of the Index 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. The Exchange may consider all relevant

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

<sup>11</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

factors in exercising its discretion to halt or suspend trading in Trust Certificates.<sup>12</sup> Standard & Poor's ("S&P"),<sup>13</sup> which publishes the Index, is not a registered broker-dealer, and Citigroup Funding, Inc. is not affiliated with S&P. With respect to any index upon which the value of an issue of Trust Certificates is based and that is maintained by a broker-dealer, the Exchange would require that such broker-dealer erect a "firewall" around personnel responsible for the maintenance of such index or who have access to information concerning adjustments to the index, and the index would be required to be calculated by a third party who is not a broker-dealer. In addition, the Exchange states that it has a generally policy prohibiting the distribution of material, non-public information by its employees.

The Certificates will be subject to the requirements of NYSE Arca Equities Rule 5.2(j)(7), including the continued listing criteria. Additionally, NYSE Arca states that: (1) at least one million publicly held trading units will be issued prior to listing and trading on the Exchange, with at least 400 public beneficial holders; (2) the issuer, Citigroup Funding, Inc., has total assets of at least \$100 million and a net worth of at least \$10 million; and (3) the issuer will be required to have either (a) a minimum tangible net worth of \$250,000,000, or (b) a minimum tangible net worth of \$150,000,000 and the original issue price of the Certificates, combined with all of the issuer's other Trust Certificates listed on a national securities exchange or

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<sup>12</sup> Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Trust Certificates inadvisable. These may include: (1) the extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

<sup>13</sup> S&P is a division of The McGraw-Hill Companies, Inc.

otherwise publicly traded in the United States, must not be greater than 25% of the issuer's tangible net worth at the time of issuance.<sup>14</sup>

Further, the Exchange has represented that the Certificates are equity securities subject to the Exchange's rules governing the trading of equity securities, including the Exchange's equity margin rules. In support of this proposal, the Exchange has made the following representations:

- (1) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Certificates in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.
- (2) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Certificates. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and exchanges of Trust Certificates; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Trust Certificates; (c) trading hours; and (d) trading information. In addition, the Information Bulletin will reference that an issue of Trust Certificates is subject to various fees and expenses described in the applicable prospectus.

This approval order is based on the Exchange's representations.

### III. Accelerated Approval

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<sup>14</sup> The Commission notes that the foregoing criteria relating to the issuance and the issuer are substantially similar to the requirements applicable to Index-Linked Securities. See NYSE Arca Equities Rule 5.2(j)(6)(A).

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the Federal Register. The Commission notes that it has previously approved for listing and trading on the Exchange other issues of Trust Certificates issued by Citigroup Funding, Inc. based on the Index that have similar characteristics and payout provisions to the Certificates.<sup>16</sup> In addition, no comments were received on the proposed rule change during the 21-day comment period, and the Commission believes that the Exchange's proposal to list and trade the Certificates under NYSE Arca Equities Rule 5.2(j)(7) does not present any novel or significant regulatory issues. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Trust Certificates.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the

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

<sup>16</sup> See Securities Exchange Act Release No. 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR-NYSEArca-2008-123) (order approving NYSE Arca Equities Rule 5.2(j)(7) and listing on the Exchange of 14 issues thereunder).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSEArca-2009-20) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).