

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55890; File No. SR-NYSEArca-2007-37)

June 8, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to List and Trade Shares of the Four Funds of StateShares, Inc.

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 April 10, 2007, 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 and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The Exchange proposes to list and trade shares (“Shares”) of the following four funds (“Funds”) of StateShares™, Inc. (“Company”) based on certain underlying securities indexes (“Indexes” or the “Underlying Indexes”) pursuant to NYSE Arca Equities Rule 5.2(j)(3):

- StateShares™ Georgia 50 Exchange-Traded Fund
- StateShares™ North Carolina 50 Exchange-Traded Fund
- StateShares™ Virginia 50 Exchange-Traded Fund
- StateShares™ Washington 50 Exchange-Traded Fund

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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 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 III 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

The Exchange proposes to list the Shares of the Funds. The Company is an investment company with 22 series of underlying fund portfolios and is registered under the Investment Company Act of 1940 ("1940 Act").³ Each Fund is registered with the Commission under the 1940 Act as an open-end, non-diversified management investment company. Each Fund's investment objective is to seek to track the performance, before fees and expenses, of a particular Underlying Index, as described more fully below. Each Fund focuses on a different geographic index.

³ See Post-Effective Amendment No. 1 to the Company's Registration Statement on Form N-1A, as filed with the Commission on February 28, 2007 and accompanying Statement of Additional Information ("SAI") (File No. 333-139823) ("Registration Statement"). The Company was organized as a Maryland corporation on December 26, 2006.

Under NYSE Arca Equities Rule 5.2(j)(3), the Exchange may list and/or trade pursuant to unlisted trading privileges (“UTP”) “Investment Company Units” (“ICUs”).⁴ The Funds do not meet the “generic” listing requirements of NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of ICUs pursuant to Rule 19b-4(e) under the Act,⁵ and thus cannot be listed without a filing made pursuant to Rule 19b-4 under the Act.⁶ Specifically, the Indexes underlying these four Shares do not meet the requirement of Commentary .01(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) that, for component stocks representing at least 90% of the weight of the Underlying Index, each of such stocks has a minimum monthly trading volume during each of the last six months of at least 250,000 shares.⁷

Operation of the Funds

XShares Advisors LLC, a subsidiary of XShares Group LLC (“XG”) would be the investment adviser (“Advisor”) to the Funds. The Advisor is registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (“Advisers Act”).⁸ The Advisor would have overall responsibility for the general management and

⁴ See Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-1998-29) (approving NYSE Arca Equities Rule 5.2(j)(3)); Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (approving generic listing standards for ICUs).

⁵ 17 CFR 240.19b-4(e).

⁶ 17 CFR 240.19b-4.

⁷ As of April 4, 2007, stocks with a monthly trading volume during each of the last six months of at least 250,000 shares represented 88.26%, 87.63%, 84.28%, and 89.34% of the weight of the S&P Custom/StateShares™ Georgia 50 Index, S&P Custom/StateShares™ North Carolina 50 Index, S&P Custom/StateShares™ Virginia 50 Index, and S&P Custom/StateShares™ Washington 50 Index, respectively. Source: Bloomberg.

⁸ 15 U.S.C. 80b.

administration of each Fund, subject to the supervision of the Funds' Board of Directors. Under the Investment Advisory Agreement, the Advisor would be responsible for arranging sub-advisory, transfer agency, custody, fund administration, and all other non-distribution-related services for each Fund. The Advisor would also be responsible for employing any sampling strategy for each Fund. Pursuant to the Investment Advisory Agreement, the Advisor would be authorized to engage one or more sub-advisors to perform any of the services contemplated to be performed by the Advisor under the Investment Advisory Agreement.

BNY Investment Advisors ("Sub-Advisor"), a separate identifiable division of The Bank of New York ("BONY"), a New York State banking corporation, would act as investment sub-advisor to each Fund. Pursuant to a Sub-Advisory Agreement between the Advisor and the Sub-Advisor, the Sub-Advisor would be responsible for the day-to-day management of each Fund, subject to the supervision of the Advisor and the Funds' Board of Directors. The Sub-Advisor would be responsible for implementing the replication strategy for each Fund with regard to its Underlying Index and for general administration, compliance, and management services, as may be agreed between the Advisor and the Sub-Advisor from time to time.

The Index Administrator

Standard & Poor's is the index administrator ("Index Administrator") and in that capacity has sole responsibility and authority for maintaining each Underlying Index and determining, in accordance with the objective criteria, which securities are to be added or removed from an Underlying Index. Each Underlying Index is compiled, maintained, and calculated without regard to the Advisor, Sub-Advisor, or Distributor (described

below). The Index Administrator has no obligation to take the specific needs of the Advisor, Sub-Advisor, or Distributor into account in the determination and calculation of the Underlying Index.

Administrator, Accounting Agent, Custodian, and Transfer Agent

BONY would serve as administrator, accounting agent, custodian, and transfer agent for each Fund (“Administrator”). As the Administrator, BONY would be obligated on a continuous basis to provide certain administration, valuation, accounting, and computational services necessary for the proper administration of the Company and each Fund. BONY also would hold each Fund’s assets, calculate the NAV of each Fund’s Shares, and calculate net income and realized capital gains or losses for each Fund.

The Distributor

ALPS Distributors, Inc. (“Distributor”) would be the distributor of Creation Units (as described more fully below) for each Fund on an agency basis. The Distributor has entered into a Distribution Agreement with the Company pursuant to which it would distribute the Shares of each Fund. Shares would be offered continuously for sale by each Fund through the Distributor only in Creation Unit Aggregations (as described more fully below). Fund Shares in less than Creation Unit Aggregations would not be distributed by the Distributor. The Distributor would deliver the prospectuses and, upon request, the Statement of Additional Information (“SAI”) to persons purchasing Creation Unit Aggregations and would maintain records of orders placed with it. The Distributor is a broker-dealer registered under the Act and a member of NASD.

Each Fund has elected and intends to continue to qualify as a “regulated investment company” (a “RIC”) under the Internal Revenue Code (“Code”). Among

other things, each Fund must meet certain diversification tests imposed by the Code to satisfy RIC requirements.⁹

Description of the Funds and the Underlying Indexes

According to the Funds' Registration Statement, each Fund's investment objective is to seek to track the performance, before fees and expenses, of a particular Underlying Index. Each Underlying Index is designed to track various geographic sub-sectors of the economy and serve as: (1) performance benchmarks for portfolio managers and investors who invest in securities of these issuers; (2) performance yardsticks for issuers in these geographic areas; and (3) vehicles for directing attention to regional investments and allocations within the U.S. economy. Each Fund focuses on a different geographic index. The Underlying Indices have been designed geographically in each of the following areas: Georgia, North Carolina, Virginia, and Washington.

Each Underlying Index was created and developed by XG based on its own proprietary model. In developing each Underlying Index, XG has established specific characterization/inclusion/exclusion criteria governing the stocks that are included in each Underlying Index. Each Underlying Index is maintained by the Index Administrator based on such criteria and is generally reconstituted on an annual basis. Decisions

⁹ Among these is a requirement that, at the close of each quarter of each Fund's taxable year: (1) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other RICs, and other securities, with such other securities limited for the purpose of this calculation with respect to any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer; and (2) not more than 25% of the value of its total assets may be invested in securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Code) and that are engaged in the same or similar trades or business (other than U.S. government securities or other RICs).

regarding additions to, and removals from, each individual Underlying Index are made by the Index Administrator, on an annual basis, in its sole discretion.

The Advisor uses a “passive,” or “indexing,” approach in managing each Fund. The Funds do not seek to outperform any particular market sector and would not assume temporary defensive positions when markets decline or appear overvalued. Each Fund would invest at least 90% of its assets in the common stocks of companies in the Underlying Index. Because each Underlying Index is comprised only of stocks from companies headquartered in the named State, as indicated by its name (e.g., only “Georgia” companies are contained in the S&P Custom/StateShares™ Georgia 50 Index), each Fund would invest at least 90% of its assets in such companies. Each Fund may also invest up to 10% of its assets in futures contracts, options on futures contracts, options, or swaps on securities of companies in the Underlying Index, as well as cash and cash equivalents, such as money market instruments (subject to applicable limitations of the 1940 Act). Each Fund would attempt to replicate the Underlying Index by matching the weighting of securities in its portfolio with such securities’ weightings in the Underlying Index.¹⁰ In managing the Funds, the Advisor seeks a correlation of 0.95 or better between each Fund’s performance and the performance of the Underlying Index. A figure of 1.00 would represent perfect correlation. There is no guarantee that the Advisor will be able to obtain this level of correlation.

From time to time, it may not be possible, for regulatory or other legal reasons, to replicate each Underlying Index and in such cases the Advisor may pursue a sampling

¹⁰ Each company in the applicable Underlying Index is assigned a weight factor based upon total employees. Companies with more employees are assigned higher weighting than companies with fewer employees.

strategy in managing the portfolio. Pursuant to this strategy, a Fund may invest the remainder of its assets in securities of companies not included in an Underlying Index if the Advisor believes that such securities would assist the Fund in tracking the Underlying Index. If a Fund pursues a sampling strategy, it would continue to invest at least 90% of its assets in the common stocks of the companies in the Underlying Index.

The component securities of the Underlying Indexes are all listed on a national securities exchange.¹¹ Only companies with market capitalizations greater than \$100 million for at least two of the preceding three quarters are eligible for inclusion in each of the Indexes. The StateShares™ Georgia 50 Exchange-Traded Fund seeks to track the performance, before fees and expenses, of the S&P Custom/StateShares™ Georgia 50 Index. The StateShares™ North Carolina 50 Exchange-Traded Fund seeks to track the performance, before fees and expenses, of the S&P Custom/StateShares™ North Carolina 50 Index. The StateShares™ Virginia 50 Exchange-Traded Fund seeks to track the performance, before fees and expenses, of the S&P Custom/StateShares™ Virginia 50 Index. The StateShares™ Washington 50 Exchange-Traded Fund seeks to track the performance, before fees and expenses, of the S&P Custom/StateShares™ Washington 50 Index.

Information about each Underlying Index, including the component securities in each Underlying Index and value of the securities in each Underlying Index are disseminated every 15 seconds during the Core Trading Session through Reuters.

¹¹ See e-mail from Tim Malinowski, Director, NYSE Group, Inc. on May 30, 2007 to Mitra Mehr, Special Counsel, Division of Market Regulation (“Division”), Commission (“NYSE Arca May 30th e-mail”)

Each Fund would impose transaction fees on in-kind purchases and redemptions of the Fund to cover the custodial and other costs incurred by the Fund in effecting in-kind trades. To compensate the Company for transfer and other transaction costs involved in creation transactions through the clearing process (as described below), investors would be required to pay a fixed creation transaction fee, payable to the Company regardless of the number of creations made each day. A redemption transaction fee would be imposed to offset transfer and other transaction costs that may be incurred by a Fund. An additional variable charge for cash redemptions (when cash redemptions are available or specified) for a Fund may be imposed. The creation and redemption transaction fees for creations and redemptions in-kind for the Funds are described in the Funds' prospectuses.

Each Fund would issue and redeem, on a continuous basis, shares at its net asset value ("NAV") only in blocks of 100,000 shares or multiples thereof (each, a "Creation Unit" or a "Creation Unit Aggregation"), generally in exchange for a basket of equity securities included in the Underlying Index, together with the deposit of a specified cash payment. Shares would be redeemable only in Creation Unit Aggregations, and, generally, in exchange for portfolio securities and a specified cash payment.

All orders to purchase Shares of each Fund in Creation Units must be placed with the Distributor by or through an "Authorized Participant," which is either: (1) a "Participating Organization," *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC"), a clearing agency that is registered with the Commission (the "Clearing Process"); or (2) a Depository Trust Company ("DTC")

Participant that has executed a “Participant Agreement” with the Distributor governing the purchase and redemption of Creation Units.

Consideration for Purchase of Creation Units

The consideration for purchase of a Creation Unit from each Fund generally consists of the in-kind deposit of a designated portfolio of equity securities (“Deposit Securities”) per each Creation Unit Aggregation constituting a substantial replication of the stocks included in each Fund’s Underlying Index and an amount of cash (“Cash Component”) consisting of a Balancing Amount (described below) and a transaction fee. Together, the Deposit Securities and the Cash Component constitute the Fund Deposit.

The Balancing Amount is an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities (“Deposit Amount”). It ensures that the NAV of a Fund Deposit (not including the transaction fee) is identical to the NAV of the Creation Unit it is used to purchase. If the Balancing Amount is a positive number (i.e., the NAV per Creation Unit exceeds the market value of the Deposit Securities), then that amount would be paid by the purchaser to the Fund in cash. If the Balancing Amount is a negative number (i.e., the NAV per Creation Unit is less than the market value of the Deposit Securities), then that amount would be paid by the Fund to the purchaser in cash (except as offset by the transaction fee).

The Company, through the NSCC, makes available on each business day, immediately prior to the opening of business on the NYSE (currently 9:30 a.m. Eastern Time), a list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit for each Fund (based on information at the end of the previous business day). The Fund Deposit is applicable, subject to any adjustments as

described below, to effect purchases of Creation Units of a Fund until such time as the next-announced Fund Deposit composition is made available. Each Fund reserves the right to accept a nonconforming Fund Deposit.

The identity and number of shares of the Deposit Securities required for a Fund Deposit may change to reflect rebalancing adjustments and corporate actions by a Fund, or in response to adjustments to the weighting or composition of the component stocks of the Underlying Index. In addition, the Company reserves the right to permit or require the substitution of an amount of cash — i.e., a “cash in lieu” amount — to be added to the Cash Component to replace any Deposit Security that: (1) may not be available in sufficient quantity for delivery; (2) may not be eligible for transfer through the Clearing Process; or (3) may not be eligible for trading by a Participating Organization or the investor for which a Participating Organization is acting. Brokerage commissions incurred in connection with acquisition of Deposit Securities not eligible for transfer through the systems of DTC and hence not eligible for transfer through the Clearing Process would be an expense of each Fund. However, the Advisor, subject to the approval of the Board of Directors, may adjust the transaction fee to protect existing shareholders from this expense.

In addition to the list of names and numbers of securities constituting the current Deposit Securities, the Company, through the NSCC, would also make available on each business day the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of each Fund. All questions as to the number of shares of each security in the Deposit Securities and the validity, form, eligibility, and acceptance for deposit of any securities to be delivered should be

determined by the appropriate Fund, and the Fund's determination should be final and binding.

Redemption of Shares in Creation Units

Fund Shares may be redeemed only in Creation Unit Aggregations at their NAV next determined after receipt of a redemption request in proper form by a Fund through the Administrator and only on a business day. A Fund would not redeem Shares in amounts less than Creation Unit Aggregations. A beneficial owner must accumulate enough Shares in the secondary market to constitute a Creation Unit Aggregation to have such Shares redeemed by the Company. There can be no assurance, however, that there will be sufficient liquidity in the public trading market at any time to permit assembly of a Creation Unit Aggregation. Investors should expect to incur brokerage and other costs in connection with assembling a sufficient number of Fund Shares to constitute a redeemable Creation Unit Aggregation.

With respect to a Fund, the Administrator, through the NSCC, makes available prior to the opening of business on the NYSE (currently 9:30 a.m. Eastern Time) on each business day, the identity of the Fund securities that would be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as described below) on that day. Fund Shares received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Unit Aggregations.

Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit Aggregation would generally consist of Fund Shares, as announced on the business day of the request for redemption received in proper form, plus or minus cash in an amount equal to the difference between the NAV of the Fund

Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Shares (the “Cash Redemption Amount”), less a redemption transaction fee. If the Fund Shares have a value greater than the Fund Shares’ NAV, a compensating cash payment equal to the difference must be made by or through an Authorized Participant by the redeeming shareholder.

The right of redemption may be suspended or the date of payment postponed for each Fund: (1) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (2) for any period during which trading on the NYSE is suspended or restricted; (3) for any period during which an emergency exists as a result of which disposal of the shares of a Fund or determination of a Fund’s NAV is not reasonably practicable; or (4) in such other circumstances as is permitted by the Commission.

Dividends, Distributions, and Taxes

Dividends from net investment income, if any, would be declared and paid annually by each Fund. Distributions of net realized securities gains, if any, generally would be declared and paid once a year, but the Company may make distributions on a more frequent basis for a Fund to improve index tracking or to comply with the distribution requirements of the Code, in all events in a manner consistent with the provisions of the 1940 Act.

Dividends and other distributions on Shares would be distributed on a pro-rata basis to beneficial owners of such Shares. Dividend payments would be made through DTC Participants and Indirect Participants to beneficial owners then of record with proceeds received from the Company.

The Company would make additional distributions to the extent necessary: (1) to distribute the entire annual taxable income of the Company, plus any net capital gains; and (2) to avoid imposition of the excise tax imposed by Section 4982 of the Code. Management of the Company reserves the right to declare special dividends if, in its reasonable discretion, such action is necessary or advisable to preserve the status of each Fund as a RIC or to avoid imposition of income or excise taxes on undistributed income.

Dividend Reinvestment Service

The Company would not make the DTC book-entry dividend reinvestment service available for use by beneficial owners for reinvestment of their cash proceeds, but certain individual broker-dealers may make available the DTC book-entry Dividend Reinvestment Service for use by beneficial owners of Funds through DTC Participants for reinvestment of their dividend distributions. Investors would have to contact their brokers to ascertain the availability and description of these services. A broker-dealer could require investors to adhere to specific procedures and timetables to participate in the dividend reinvestment service, and investors would have to ascertain from their brokers such necessary details. If this service is available and used, dividend distributions of both income and realized gains would be automatically reinvested in additional whole Shares issued by the same Fund based on a payable date NAV.

Availability of Information Regarding Shares and Underlying Indexes

The Company, through the NSCC, would make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern Time), a list of the names and the required number of shares of each Deposit

Security to be included in the current Fund Deposit for each Fund (based on information at the end of the previous business day).

According to the Funds' Registration Statement, the NAV of each Fund's shares would be calculated each business day as of the close of regular trading on the NYSE, generally 4:00 p.m. Eastern Time. NAV per-share would be computed by dividing the net assets by the number of shares outstanding.

Additional information regarding the indicative value of shares of each Fund, also known as the "indicative optimized portfolio value" ("IOPV"), would be disseminated every 15 seconds through the Consolidated Tape throughout the Opening, Core, and Late Trading Sessions (4:00 a.m. to 8:00 p.m. Eastern Time) by the Exchange. The IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by a Fund at a particular point in time or the best possible valuation of the current portfolio. Therefore, the IOPV should not be viewed as a "real-time" update of the NAV, which is computed only once a day. The IOPV is generally determined by using both current market quotations and/or quotations obtained from broker-dealers that may trade in the portfolio securities held by a Fund.

The Funds' Web site (<http://www.StateSharesinc.com>) would show the prior day's closing NAV and closing market price for each Shares. In addition, the Funds' Web site will contain the following information, on a per-Share basis, for each Fund: (1) the prior business day's NAV and the Bid/Ask Price and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for

each of the four previous calendar quarters. In addition, the Funds' Web site would contain information regarding the premiums and discounts at which shares of each Fund has traded. The Exchange would also disseminate a variety of data such as Total Cash Amount Per Creation Unit, Shares Outstanding, and NAV with respect to each Fund on a daily basis by means of CTA and CQ High Speed Lines. In addition, quotation and last-sale information for the Shares would be widely disseminated pursuant to the CTA Plan.¹²

Each Fund's portfolio holdings would be publicly disseminated each day that a Fund is open for business through financial reporting and news services including publicly available Web sites. In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, would be publicly disseminated daily prior to the opening of the NYSE, via the NSCC.

The Company has informed the Exchange that each Fund would make the NAV for each Fund available to all market participants at the same time. If the NAV is not disseminated to all market participants at the same time, the Exchange would halt trading in the Fund Shares.

Information about each Underlying Index, including the component securities in each Underlying Index and the value of the securities in each Underlying Index, would be

¹² See e-mail from Tim Malinowski, Director, NYSE Group, Inc. on May 24, 2007 to Mitra Mehr, Special Counsel, Division, Commission.

disseminated every 15 seconds during NYSE Arca's Core Trading Session through Reuters.¹³

The Underlying Indexes:

S&P Custom/StateShares™ Georgia 50 Index. As of April 4, 2007, the S&P Custom/StateShares™ Georgia 50 Index component securities had a modified market capitalization of approximately \$72,107,201,000, representing 50 securities. The five highest weighted securities represented approximately 15.37% of the index weight. The heaviest weighted security represented approximately 3.20% of the index weight. Component stocks accounting for only 88.26% of the weight of the Index satisfied the requirement of having monthly trading volume during each of the last six months of at least 250,000 shares.¹⁴

S&P Custom/StateShares™ North Carolina 50 Index. As of April 4, 2007, the S&P Custom/StateShares™ North Carolina 50 Index component securities had a modified market capitalization of approximately \$75,522,378,000, representing 50 securities. The five highest weighted securities represented approximately 15.22% of the index weight. The heaviest weighted security represented approximately 3.30% of the index weight. Component stocks accounting for only 87.63% of the weight of the Index satisfied the requirement of having monthly trading volume during each of the last six months of at least 250,000 shares.¹⁵

¹³ See e-mail from Tim Malinowski, Director, NYSE Group, Inc. on June 7, 2007 to Mitra Mehr, Special Counsel, Division, Commission.

¹⁴ Source: Bloomberg.

¹⁵ See Id.

S&P Custom/StateShares™ Virginia 50 Index. As of April 4, 2007, the S&P Custom/StateShares™ Virginia 50 Index component securities had a modified market capitalization of approximately \$69,886,467,000, representing 50 securities. The five highest weighted securities represented approximately 15.79% of the index weight. The heaviest weighted security represented approximately 3.67% of the index weight. Component stocks accounting for only 84.28% of the weight of the index satisfied the requirement of having monthly trading volume during each of the last six months of at least 250,000 shares.¹⁶

S&P Custom/StateShares™ Washington 50 Index. As of April 4, 2007, the S&P Custom/StateShares™ Washington 50 Index component securities had a modified market capitalization of approximately \$70,059,732,000, representing 50 securities. The five highest weighted securities represented approximately 15.48% of the index weight. The heaviest weighted security represented approximately 3.34% of the index weight. Component stocks accounting for only 89.34% of the weight of the index satisfied the requirement of having monthly trading volume during each of the last six months of at least 250,000 shares.¹⁷

Criteria for Initial and Continued Listing

The Shares would be subject to the criteria for initial and continued listing of ICUs under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2). A minimum of one Creation Unit (at least 100,000 Shares) would be required to be outstanding at the start of trading. This requirement would be comparable to requirements that have been applied to previously listed series of ICUs. The Exchange believes that the proposed minimum

¹⁶ See Id.

¹⁷ See Id.

number of Shares outstanding at the start of trading is sufficient to provide market liquidity.

The continued listing criteria for ICUs under NYSE Arca Equities Rule 5.5(g)(2) provide that the Exchange would consider the suspension of trading and delisting (if applicable) of the Shares in any of the following circumstances:

- Following the initial 12-month period beginning upon the commencement of trading of the Shares of a Fund, there are fewer than 50 record and/or beneficial holders of such Shares for 30 or more consecutive trading days; or
- The value of the Underlying Index of a Fund is no longer calculated or available; or
- Such other event occurs or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

In addition, the Exchange would remove the Shares from trading and listing upon termination of the Company.

The Exchange represents the Company is required to comply with Rule 10A-3 under the Act¹⁸ for the initial and continued listing of the Shares.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for each Fund on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34 (4:00 a.m. to 8:00 p.m. Eastern Time). The minimum trading increment for shares of the Funds on the Exchange would be \$0.01.

¹⁸ 17 CFR 240.10A-3

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of each Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities comprising an Underlying Index and/or the financial instruments of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares would be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule¹⁹ or by the halt or suspension of trading of the underlying securities. If the IOPV or the Index value applicable to a series of ICUs is not being calculated or widely disseminated as required, the Exchange may halt trading during the day in which the interruption to the calculation or wide dissemination of the IOPV or the Index value occurs. If the interruption to the dissemination of the IOPV or the Index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

¹⁹ NYSE Arca Equities Rule 7.12.

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 obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.²⁰

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin would discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a),²¹ which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information

²⁰ For a list of the current members and affiliate members of ISG, [see www.isgportal.com](http://www.isgportal.com).

²¹ NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for its customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that it believes would be useful to make a recommendation. See Securities Exchange Act Release No. 34-54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR-PCX-2005-115).

regarding the IOPV is disseminated; (4) the requirement that each ETP Holder deliver a prospectus to an investor purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Bulletin would reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin would also discuss any exemptive, no-action, and interpretive relief granted by the Commission from Section 11(d)(1) of the Act²² and certain rules under the Act, including Rule 10a-1, Regulation SHO, Rule 10b-10, Rule 14e-5, Rule 10b-17, Rule 11d1-2, Rules 15c1-5 and 15c1-6, and Rules 101 and 102 of Regulation M under the Act. The Bulletin would also disclose that the NAV for the Shares would be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act²³ in general, and furthers the objectives of Section 6(b)(5)²⁴ 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 mechanism of a free and open market and a national market system.

²² 15 U.S.C. 78k(d)(1).

²³ 15 U.S.C. 78f(b).

²⁴ 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

Written comments on the proposed rule change were neither solicited nor received.

III. 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-2007-37 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-2007-37. 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. Copies of such 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-2007-37 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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 a national securities exchange.²⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁶ which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

²⁵ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁶ 15 U.S.C. 78f(b)(5).

open market and a national market system, and in general to protect investors and the public interest.

The Shares of the four Funds do not meet the “generic” listing standards of NYSE Arca Rule 5.2(j)(3) and thus cannot be listed in reliance upon Rule 19b-4(e) under the Act. The Underlying Indexes do not meet the requirement of Commentary .01(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), which requires that component stocks of an Underlying Index representing at least 90% of the weight of the Underlying Index have a minimum monthly trading volume during each of the last six months of at least 250,000 shares. Instead, as of April 4, 2007, for each Fund, component stocks representing just under 90% of the weight of each Underlying Index had a minimum monthly trading volume during each of the last six months of at least 250,000.²⁷ The Commission believes that the listing and trading of the Shares is consistent with the Act. The Commission notes that it previously has approved exchange rules that contemplate the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria by only a slight amount.²⁸

²⁷ The percentages ranged from 84.28% for the S&P Custom/StateShares™ Virginia 50 Index to 89.34% for the S&P Custom/StateShares™ Washington 50 Index. See supra note 7.

²⁸ See Securities Exchange Act Release No. 55699 (May 3, 2007), 72 FR 26435 (May 9, 2007) (SR-NYSEArca-2007-27) (approving the listing and trading of shares of the iShares FTSE NAREIT Residential Index Fund where the weighting of the five highest components of the underlying index was only marginally higher than that required by NYSE Arca’s generic listing standards); Securities Exchange Act Release No. 52826 (November 22, 2005), 70 FR 71874 (November 30, 2005) (SR-NYSEArca-2005-67) (approving the listing and trading of shares of the iShares Dow Jones U.S. Energy Sector Index Fund and the iShares Dow Jones U.S. Telecommunications Sector Index Fund where the weighting of the five highest components of the respective underlying indexes was higher than that

The Commission believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,²⁹ 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. Quotation and last-sale information for the Shares will be widely disseminated pursuant to the CTA Plan. Moreover, the IOPV will be calculated and disseminated at least every 15 seconds throughout NYSE Arca's three trading sessions, and the Index value will be calculated and disseminated every 15 seconds during the Exchange's Core Trading Session. The NAV of each Fund will be calculated and disseminated once each trading day. The Funds' Web site would include, among other things, each Fund's prospectus and SAI, information regarding the Underlying Index for each Fund,³⁰ the prior day's closing NAV, a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against the NAV on a per-share basis, and information regarding the premiums and discounts at which shares of each Fund have traded. In sum, the Commission believes that the proposal is reasonably designed to facilitate access to information that will assist investors in properly valuing the Shares.

required by NYSE Arca's generic listing standards). See also Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR-NYSE-2002-28) (approving the trading pursuant to UTP of shares of Vanguard Total Stock Market (VIPERs), iShares Russell 2000 Index Funds, iShares Russell 2000 Value Index Funds and iShares Russell 2000 Growth Funds, none of which met the volume requirement of the generic listing criteria for NYSE).

²⁹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

³⁰ See NYSE Arca May 30th e-mail.

The Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF appropriately. The Exchange has represented that if the NAV is not disseminated to all market participants at the same time, the Exchange would halt trading in the Fund shares.

The Commission believes that the proposal is reasonably designed to preclude trading of the Shares when transparency is impaired. If the IOPV or the Index value applicable to a series of Shares is not being calculated and disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IOPV or the Index value occurs. If the interruption to the calculation and dissemination of the IOPV or the Index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

The Commission finds that the Exchange's proposed rules and procedures for trading of the Shares are consistent with the Act. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange will rely on its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. These procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. The Exchange may obtain information via the ISG from other exchanges that are members or affiliates 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 Shares.
3. If the IOPV or the Index value applicable to a series of Shares is not being calculated and disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IOPV or the Index value occurs. If the interruption to the calculation and dissemination of the IOPV or the Index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

This Order is conditioned on NYSE Arca's adherence to the foregoing representations.

The Commission finds good cause to approve the proposed rule change, prior to the thirtieth day after publication for comment in the Federal Register pursuant to Section 19(b)(2) of the Act.³¹ Except for one criterion relating to the monthly trading volume of the components of the Underlying Indexes, each Fund meets the "generic" listing standards of NYSE Arca Equities Rule 5.2(j)(3). In this case, as of April 4, 2007, component stocks representing just under 90% of the weight of each Underlying Index had a minimum monthly trading volume during each of the last six months of at least 250,000, as required by NYSE Arca generic listing standards.³² The Commission notes

³¹ 15 U.S.C. 78s(b)(2).

³² Component stocks representing only 88.26% (S&P Custom/StateShares™ Georgia 50 Index), 87.63% (S&P Custom/StateShares™ North Carolina 50 Index), 84.28% (S&P Custom/StateShares™ Virginia 50 Index), and 89.34% (S&P Custom/StateShares™ Washington 50 Index) of the weight of each Underlying Index had a minimum monthly trading volume during each of the last six months of at least 250,000.

that it previously has approved exchange rules that contemplate the listing and trading of derivative securities based on indices with underlying component stocks that did not meet certain quantitative criteria of the generic listing standards by a slight amount.³³ The listing and trading of the Shares do not appear to present any new or significant regulatory concerns. Accelerating approval will allow the Shares to trade on NYSE Arca without undue delay and should generate additional competition in the market for such products.

³³ See supra note 28.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁴ that the proposed rule change (SR-NYSEArca-2007-37), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁵

Nancy M. Morris
Secretary

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).