

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57505; File No. SR-NYSEArca-2008-20)

March 14, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Adopt Listing Rules Relating to Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked 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 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”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On March 14, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 5.2(j)(6), which sets forth the Exchange’s listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities,³ to permit the listing and trading of Fixed Income

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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

Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities thereunder. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

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 IV 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 amend NYSE Arca Equities Rule 5.2(j)(6) 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,⁴ and to make

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"). See NYSE Arca Equities Rule 5.2(j)(6). 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.

⁴ 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

conforming changes to Commentary .01 of 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 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).⁵

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

(15 U.S.C. 78s(b)), the SRO’s trading rules, procedures, and listing standards for the 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).

⁵ See 17 CFR 240.19b-4(e)(2)(ii); 17 CFR 249.820.

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 Act⁶ and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied, or (2) meet the following requirements:⁷

- 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)⁸ must include a minimum of 13 non-affiliated issuers; and

⁶ 15 U.S.C. 78s(b)(2).

⁷ 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 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).

⁸ 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).

- 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;⁹ 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 principal amount of at least \$1 billion; or (4) exempted securities, as defined in Section 3(a)(12) of the Act;¹⁰ or (5) issuers that are a government of a foreign country or a political subdivision of a foreign country; and

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:¹¹

- 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;

⁹ 15 U.S.C. 78m; 15 U.S.C. 78o(d).

¹⁰ 15 U.S.C. 78c(a)(12).

¹¹ The Exchange notes that the continued listing standards for each of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities are substantially similar to those standards currently applicable to other Index-Linked Securities.

- 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 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 Act¹² 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

¹² 15 U.S.C. 78s(b)(2).

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:

- 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);¹³ 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;

¹³ See NYSE Arca Equities Rule 7.34 (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).

- 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, 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 Act¹⁴ 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:

- 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

¹⁴ 15 U.S.C. 78s(b)(2).

- 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 Holders¹⁵ 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

¹⁵ 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).

securities during the Opening and Late Trading Sessions¹⁶ 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 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.¹⁷ 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.

¹⁶ See supra note 13.

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 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

¹⁷ 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.

Multifactor Index-Linked Securities to the extent that such securities are composed, in part, of Commodity, Currency, or Futures Reference Assets.¹⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ 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, 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 Exchange states that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

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

¹⁸ The Exchange states that Equity Index-Linked Securities and Fixed Income Index-Linked Securities are excluded from Commentary .01 to NYSE Arca Rule 5.2(j)(6) because such securities are subject to the requirements of NYSE Arca Equities Rule 7.26 (Limitations on Dealings).

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

The Exchange states that it has neither solicited nor received written comments on 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 Exchange consents, the Commission will:

- A. by order approve such 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-2008-20 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-2008-20. 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-2008-20 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.²¹

Florence E. Harmon
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).