

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57603; File No. SR-NYSEArca-2007-104)

April 2, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Listing Standards for Warrants, Rights, and Units

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> notice is hereby given that on October 3, 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, II, and III below, which Items have been substantially prepared by the Exchange. On March 27, 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 Rules 5.2(f) and 5.5(e), which relate to the Exchange’s initial and continued listing standards for warrants, to apply such standards to rights to purchase listed securities. In addition, the Exchange proposes to adopt new NYSE Arca Equities Rule 5.2(k) which relate to listing requirements for Units.<sup>3</sup> The text of the

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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> “Units” are defined as paired securities which may be transferred and traded only in combination with one another as a single economic unit. See NYSE Arca Equities Rule 5.1(b)(20). Currently, the Exchange has continued listing standards for Units in NYSE Arca Equities Rule 5.5(a), which references NYSE Arca Equities Rules 5.5(b) – (e). NYSE Arca Equities Rules 5.5(b) – (e) relate to the continued listing requirements for common stock and common stock equivalent securities, preferred stock and secondary

proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://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: (1) amend NYSE Arca Equities Rules 5.2(f) and 5.5(e), the Exchange’s initial and continued listing standards for warrants, to apply such standards to rights to purchase securities;<sup>4</sup> and (2) adopt new NYSE Arca Equities Rule 5.2(k) to add listing standards for Units. The Exchange states that the proposed rule changes herein are modeled upon the rules of The NASDAQ Stock Market LLC (“Nasdaq”).<sup>5</sup>

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classes of common stock, bonds and debentures, and warrants, respectively. See NYSE Arca Equities Rules 5.5(b) – (e). See also infra note 8.

<sup>4</sup> The initial and continued listing standards for warrants under NYSE Arca Equities Rules 5.2(f) and 5.5(e), respectively, were approved by the Commission in 1994. See Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998 (August 1, 1994) (SR-PSE-93-12) (approving quantitative and qualitative listing standards with respect to common stock, preferred stock, bonds and debentures, warrants, contingent value rights, and other securities).

<sup>5</sup> The Exchange states that Nasdaq’s initial listing standards for warrants and rights are set forth in Nasdaq Rule 4420(d), and its continued listing standards for warrants and rights are set forth in Nasdaq Rule 4450(d). In addition, Nasdaq’s initial listing standards for units are set forth in Nasdaq Rule 4420(h). The Exchange also states that the proposal

### Listing Standards for Warrants and Rights

Currently, NYSE Arca Equities Rule 5.2(f) addresses the Exchange's initial listing standards for warrants. The Exchange proposes to add rights to this Rule and apply these same initial listing standards to both warrants and rights to purchase securities.<sup>6</sup> As is the case for warrants, at least 500,000 rights must be publicly held by not less than 250 public beneficial holders under NYSE Arca Equities Rule 5.2(f)(1), as amended. The purpose for this change is to allow the Exchange to list rights so that it can offer investors more investment options, while also remaining competitive in the marketplace.

Currently, NYSE Arca Equities Rule 5.2(f)(2) provides, in part, that the Exchange will not list warrants unless the common stock of the company or other security underlying the warrants is already listed (and meets the pertinent continued listing requirements) or will be listed on the Exchange concurrently with the warrants. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(f)(2) to provide that the common stock of the company or other security underlying the warrants and rights must be listed and trading (and meets the pertinent continued listing standards), or will be listed and trading, on a national securities exchange concurrently with the listing and trading of warrants or rights, as applicable. The Exchange notes that it would not list a warrant or right if the security underlying such warrant or right is no longer trading or is subject to a trading halt, as imposed by the national securities exchange listing such underlying security. Therefore, the Exchange believes that investors would remain protected.

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regarding the listing standards for Units are based, in part, on provisions contained in the Company Guide of the American Stock Exchange LLC ("Amex"). See infra note 11.

<sup>6</sup> The Exchange states that Nasdaq made a similar change to its rule, which is now contained in Nasdaq Rule 4420(d). See Securities Exchange Act Release No. 43435 (October 11, 2000), 65 FR 62779 (October 19, 2000) (SR-NASD-99-69) (approving, among other things, the inclusion of rights in the initial listing standards for warrants).

Currently, NYSE Arca Equities Rule 5.5(e) addresses the continued listing of warrants on the Exchange. NYSE Arca Equities Rule 5.5(e) states that, for continued listing, the common stock of the company or other security underlying the warrants must meet the applicable Tier I maintenance requirements. The Exchange proposes to amend this Rule so that such continued listing standard would apply to both warrants and rights to purchase listed securities.<sup>7</sup> As is the case with the proposal to add rights to the initial listing standards, the purpose for this change is to allow the Exchange to list rights so that it can offer investors more investment options, while also remaining competitive in the marketplace.

As stated above, NYSE Arca Equities Rule 5.5(e) provides, in pertinent part, that the underlying common stock of the company or other security must meet the applicable Tier I maintenance requirements under NYSE Arca Equities Rule 5.5. The Exchange proposes to amend this language to state that, in the case of warrants and rights, the common stock of the company or other security underlying the warrants or rights, as applicable, must continue to be listed on a national securities exchange. The Exchange believes that, as long as the security underlying warrants and rights satisfies the listing standards of another national securities exchange and are otherwise in good standing for trading, investors would be able to obtain additional investment options and, at the same time, remain protected. The Exchange also proposes this change to simplify the continued listing standards under NYSE Arca Equities Rule 5.5(e) and ensure that the issuer of an underlying security is listed on a national securities exchange, in the interest of protecting investors.

#### Listing Standards for Units

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<sup>7</sup> The Exchange states that Nasdaq's continued listing standards for warrants also apply to rights, as set forth in Nasdaq Rule 4450(d).

Currently, the Exchange has no separate initial quantitative listing standards for Units, although it does have a definition and continued listing standards for Units.<sup>8</sup> The Exchange proposes to adopt initial listing standards for Units under proposed NYSE Arca Equities Rule 5.2(k). The Exchange states that the proposed standards are substantially similar to those under Nasdaq Rule 4420(h).<sup>9</sup>

In particular, under proposed NYSE Arca Equities Rule 5.2(k), all Units must have at least one equity component and that all components must meet the initial and continued listing standards in NYSE Arca Equities Rules 5.2(k) and 5.5 (a) – (e), as applicable, or in the case of debt components, meet certain specified criteria including: (1) an aggregate market value or principal amount of at least \$5 million; (2) a requirement that the issuer of the debt security have equity securities that are listed on a national securities exchange; and (3) in the case of convertible debt, limitations on changes to conversion prices, subject to an exception, and a real-time last sale reporting requirement for the equity security into which the debt is convertible.<sup>10</sup> In addition, all components of the Unit must be issued by the same issuer, and all Units and issuers of such Units must comply with the initial and continued listing standards of NYSE Arca Equities Rules 5.2(k) and 5.5(a) – (e), as applicable.

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<sup>8</sup> See supra note 3. NYSE Arca Equities Rule 5.5(a) states that, in the case of Units, the Exchange will normally consider suspending dealings in or delisting if any of the component parts do not meet the applicable listing standards as set forth in NYSE Arca Equities Rules 5.5(b) – (e). If one or more of the components is otherwise qualified for listing, that component may remain listed. Where all component parts of a Unit do not meet the applicable listing standards as set forth in NYSE Arca Equities Rules 5.5(b) – (e), the Unit will be delisted from the Exchange.

<sup>9</sup> See Nasdaq Rule 4420(h). See also Securities Exchange Act Release No. 49746 (May 20, 2004), 69 FR 30356 (May 27, 2004) (SR-NASD-2004-81) (approving listing standards for units).

The Exchange also proposes that Units be subject to a minimum listing period of 30 days from the first day of listing, except that the period may be shortened if the Units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw Units from listing must provide the Exchange with notice of such intent at least 15 days prior to withdrawal. Accordingly, the Exchange believes that these provisions will provide investors a meaningful period of time to react to the withdrawal of the Unit from listing and trading.

Under proposed NYSE Arca Equities Rule 5.2(k)(3), each issuer of Units must include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations thereunder a statement regarding any intention to delist the Units immediately after the minimum inclusion period referenced above. In addition, an issuer of a Unit would be required to provide information regarding the terms and conditions of the components of the Unit, the ratio of the components comprising the Unit, and when a component of the Unit is separately listed on an exchange on the issuer's Internet Web site, or if it does not maintain a Web site, in its annual report provided to Unit holders. Further, an issuer would be required to immediately publicize through, at a minimum, a public announcement through the news media, any change in the terms of a listed Unit, such as changes to the terms and conditions of any of the components or to the ratio of components within the Unit. The Exchange believes that this heightened disclosure requirement is appropriate to ensure that sufficient information regarding the attributes of these securities is publicly available on a timely basis.

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<sup>10</sup> The Exchange notes that real-time last sale reporting must be available for the underlying equity security, and it will not be sufficient that the Unit containing such equity security be subject to last sale reporting.

The Exchange also proposes to add language clarifying the applicability of certain continued listing standards relating to components of Units that have separated.<sup>11</sup> The Exchange states that, when Units in good standing begin to separate into their component securities, the remaining Units that are still intact and the components of those Units which have separated may all be separately listed and continue to trade, provided that they meet the applicable continued listing standards. The proposal specifies that, in determining whether an individual component meets the applicable distribution requirements specified in the continued listing standards, the Units that are intact and freely separable into their component parts will be counted toward the total numbers required for continued listing of the component. For example, if 1,000,000 shares of common stock are publicly held after separation from their Units, and 500,000 intact and freely separable Units are publicly held, the common stock would be credited with having 1,500,000 shares publicly held, enabling it to meet the publicly held shares requirement for common stock, which requires at least 1,100,000 shares of common stock to be publicly held.<sup>12</sup> If the Units are no longer freely separable and/or listed on the Exchange, the separately-traded components would still be required to meet their applicable continued listing standards.

Despite the fact that the aggregated distribution values satisfy the continued listing distribution standards, under the proposal, the Exchange would also consider suspending trading in, or removing from listing, an individual component or Unit when, in the opinion of the Exchange, the public distribution or aggregate market value of such component or Unit becomes

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<sup>11</sup> The Exchange states that its proposal to clarify the applicability of listing standards relating to components of Units that have separated is modeled upon Section 1003(g)(ii) and (iii) of the Amex Company Guide. See Securities Exchange Act Release No. 55675 (April 26, 2007), 72 FR 24638 (May 3, 2007) (SR-Amex-2006-114) (approving amendments to listing standards for units).

<sup>12</sup> See NYSE Arca Equities Rule 5.5(b)(1).

so reduced as to make continued listing on the Exchange inadvisable. In its review of the advisability of the continued listing of an individual component or Unit under such circumstances, the Exchange proposes to take into account the trading characteristics of the component or Unit and whether it would be in the public interest for trading in such component or Unit to continue.

The Exchange states that it will halt or suspend trading in the Units or rights, as the case may be, when the underlying security is halted on the relevant national securities exchange. In addition, for Units and rights that are listed on the Exchange and based upon an underlying security listed on another national securities exchange, the Exchange represents that it will monitor Units and rights under the Exchange's applicable continued listing standards.

As is the case with the initial and continued listing standards for rights, the Exchange states that the purpose for the proposed initial listing standards for Units is to allow the Exchange to list Units so that it can offer investors more investment options, while also remaining competitive in the marketplace.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act,<sup>13</sup> which states that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of rights and Units that will enhance competition among

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<sup>13</sup> 15 U.S.C. 78f(b)(5).

market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in the proposal are intended to protect investors and the public interest.

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

The Exchange states that written comments on the proposed rule change were neither solicited nor received.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-

2007-104 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-2007-104. 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-2007-104 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.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).