

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59180; File No. SR-NYSEArca-2008-121)

December 30, 2008

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

I. Introduction

On October 29, 2008, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² a proposed rule change amending NYSE Arca Equities Rule 5.2(j)(6) relating to the listing of Equity Index-Linked Securities.³ The proposed rule change was published for comment in the Federal Register on November 28, 2008.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange’s listing standards for Equity Index-Linked Securities, among other criteria, currently limit the permissible aggregate weight of underlying foreign country securities and American Depositary Receipts (“ADRs”) that can be included in the Equity Reference Asset to 20% of the overall index where the primary trading markets of such foreign country

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Equity Index-Linked Securities are securities, the payment at maturity of which is based on the performance of an underlying index or indexes of equity securities (“Equity Reference Asset”).

⁴ See Securities Exchange Act Release No. 58984 (November 20, 2008), 73 FR 72546.

securities or foreign country securities underlying such ADRs are not members of the Intermarket Surveillance Group (“ISG”) or parties to comprehensive surveillance sharing agreements (“CSSAs”) with the Exchange. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) to increase the permissible aggregate weight of such underlying foreign country securities and ADRs up to 50% of the overall index, subject to certain other limitations.

Specifically, the proposal would permit the listing and trading of Equity Index-Linked Securities where the underlying foreign country securities and/or foreign country securities underlying ADRs primarily trading on non-U.S. markets that are not ISG members or otherwise subject to a CSSA agreement with the Exchange account for up to 50% of the aggregate dollar weight of the index, provided that: (1) the securities of any one primary foreign market which is not an ISG member or does not have a CSSA with the Exchange (“Non-Reciprocal Foreign Markets”) do not represent more than 20% of the dollar weight of the index; and (2) the securities of any two Non-Reciprocal Foreign Markets do not represent more than 33% of the dollar weight of the index. The Exchange also seeks to make technical and non-substantive modifications to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v).

III. Discussion and Commission’s Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the

⁵ 15 U.S.C. 78f.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ which requires that the rules of the Exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in Section 6(b)(5) of the Act. As a result of the proposal, the permissible percentage of underlying foreign country securities and/or foreign country securities underlying ADRs trading on foreign markets that are not ISG members or parties to a CSSA with the Exchange would be limited to 50% of the overall dollar weight of the index. The Commission believes that this portion of the proposal would permit increased flexibility with respect to listing and trading Equity Index-Linked Securities. At the same time, the proposed amendment also provides that the securities trading on: (1) any one Non-Reciprocal Foreign Market must not constitute more than 20% of the overall dollar weight of the index; and (2) any two Non-Reciprocal Foreign Markets must not constitute more than 33% of the overall dollar weight of the index. These conditions establish concentration limits designed to ensure that a significant percentage of an underlying index is not composed of securities trading on any one or two Non-Reciprocal Foreign Markets. Additionally, in light of its proposed revision to the listing criteria for Equity Index-Linked Securities, the Exchange has renewed its representation that its

⁷ 15 U.S.C. 78f(b)(5).

surveillance procedures applicable to Equity Index-Linked Securities are adequate to detect and deter violations of its Rules and all applicable federal securities laws.⁸

The Commission also believes that the technical and non-substantive changes to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) clarify the format and application of the proposed amendment related to Equity Index-Linked Securities.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSEArca-2008-121) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Acting Secretary

⁸ See E-Mail from Tim Malinowski, Director, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated December 23, 2008. See also Securities Exchange Act Release No. 56637 (October 10, 2007), 72 FR 58704, 58709 (October 16, 2007).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).