

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59459; File No. SR-NYSEArca-2009-12)

February 26, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to SPDR Barclays Capital Convertible Bond ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 18, 2009, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or “Corporation”), proposes to list and trade shares of the following exchange-traded fund: SPDR<sup>®</sup> Barclays Capital Convertible Bond ETF. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

A, B, and C below, of the most significant parts 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 and trade the shares (“Shares”) of the following fund under NYSE Arca Equities Rule 5.2(j)(3), the Exchange’s listing standards for Investment Company Units (“Units”)<sup>3</sup>: SPDR® Barclays Capital Convertible Bond ETF (the “Fund”).<sup>4</sup>

According to the Fund’s Registration Statement, the Fund’s investment objective is to provide investment results that, before fees and expenses, correspond generally to the price and yield performance of the Barclays Capital U.S. Convertible Bond \$500MM Index (the “Index”), which aims to track the performance of the U.S. dollar-denominated convertibles markets with outstanding issue sizes greater than \$500 million. The Index includes the following major classes of convertible securities--cash pay bonds, zero-coupon/Original Issue Discount bonds, preferred securities, and mandatories.

The Fund uses a passive management strategy designed to track the price and yield performance of the Index. According to the Registration Statement, the Index represents the market of U.S. convertible bonds. As of December 31, 2008, there were 156 issues included in

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<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

<sup>4</sup> See the Registration Statement on Form N-1A of the SPDR Series Trust, dated January 15, 2009 (File Nos. 333-57793 and 811-08839) (the “Registration Statement”).

the Index. Convertible bonds are bonds that can be exchanged, at the option of the holder, for a specific number of shares of the issuer's preferred stock or common stock.

The Exchange is submitting this proposed rule change because the Index does not meet all of the “generic” listing requirements of Commentary .03 to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of Units based on an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market.<sup>5</sup> The Index includes U.S. convertible bonds and convertible preferred equity securities. The Index components consisting of U.S. convertible bonds separately meet the criteria set forth in Commentary .02(a) of Rule 5.2(j)(3) applicable to Units based on a fixed income index or portfolio. However, the Index components consisting of convertible preferred stocks do not separately meet the criteria set forth in Commentary .01(a) of Rule 5.2(j)(3) applicable to Units based on U.S. indexes or portfolios. As of November 30, 2008, 20.94% of the Index weight consisted of convertible preferred stocks. The Index does not meet the requirements of Commentary .01(a)(A)(2) in that convertible preferred stocks accounting for 78.56% of the weight of the convertible preferred portion of the Index each had a minimum worldwide monthly

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<sup>5</sup> Commentary .03 to Rule 5.2(j)(3) provides that the Corporation may list a series of Units based on a combination of indexes or a portfolio of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 (“Act”) provided each index or portfolio of equity and fixed income component securities separately meet either the criteria set forth in Commentary .01(a) of Rule 5.2(j)(3) (applicable to Units based on U.S., international or global equity indexes or portfolios) or Commentary .02(a) (applicable to Units based on a fixed income index or portfolio).

trading volume during each of the last six months of at least 250,000 shares, as of November 30, 2008.<sup>6</sup> In addition, the Index does not meet the requirements of Commentary .01(a)(A)(5) in that six of the 31 convertible preferred stocks in the Index as of November 30, 2008 are not listed on a national securities exchange.<sup>7</sup> The Exchange represents that (1) except for Commentary .01(a)(A)(2) and .01(a)(A)(5) to Rule 5.2(j)(3), the Shares currently satisfy all other of the generic listing standards under Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A-3<sup>8</sup> under the Act for the initial and continued listing of the Shares.

The Exchange notes that, notwithstanding the fact that the Index does not satisfy all criteria of Rule 5.2(j)(3)(A) applicable to U.S. equity indexes, the Index components include issues with substantial market capitalization. As noted above, the Index aims to track the performance of the U.S. convertibles markets with outstanding issue sizes greater than \$500 million, and Index components representing 97.24% of the Index weight had a market capitalization of \$100 million or more as of November 30, 2008. In addition, convertible preferred stocks have certain characteristics of fixed income securities (e.g., pricing influenced by changes in interest rates). The Exchange notes that the provisions in Rule 5.2(j)(3),

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<sup>6</sup> Commentary .01(a)(A)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares.

<sup>7</sup> Commentary .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3) provides that all securities in the Index or portfolio shall be US Component Stocks, as defined in Rule 5.2(j)(3) listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of regulation NMS under the Act. The Index does not include non-U.S. securities. As of November 30, 2008, six convertible preferred securities in the Index, accounting for 8% of the Index weight, were traded over-the-counter.

<sup>8</sup> 17 CFR 240.10A-3.

Commentary .02(a) applicable to Units based on fixed income indexes include a requirement relating to minimum principal amount outstanding, but not a requirement of minimum trading volume.<sup>9</sup> The Exchange believes that market capitalization is an appropriate measure of liquidity for such issues. Finally, with respect to the six convertible preferred stocks in the Index that are not exchange-listed, the Exchange notes that the parent companies for these issues are listed on the New York Stock Exchange.

Detailed descriptions of the Fund, the Underlying Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund ([www.SPDRETFs.com](http://www.SPDRETFs.com)), as applicable.

In addition, the Exchange represents that the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls and

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<sup>9</sup> Rule 5.2(j)(3), Commentary .02(a)(2) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each have a minimum original principal amount outstanding of \$100 million or more. As noted above, Index components representing 97.24% of the Index weight had a market capitalization of \$100 million or more as of November 30, 2008. The Exchange also notes that, in its proposed rule change proposing to adopt Commentary .02 to Rule 5.2(j)(3) (generic listing requirements for Units based on fixed income indexes), the Exchange represented that the provisions of Commentary .02 “would not require a minimum trading volume, due to the lower trading volume that generally occurs in the fixed income markets as compared to the equity markets.” See Securities Exchange Release No. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR-NYSEArca-2007-36).

Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.<sup>10</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>11</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>12</sup> 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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 an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.<sup>13</sup>

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<sup>10</sup> See, e.g., Securities Exchange Act Release No. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR-NYSEArca-2007-36) (order approving generic listing standards for Units based on fixed income indexes); Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (order approving rules for listing and trading of Units).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> E-mail from Sudhir Bhattacharyya, Vice President, NYSE Euronext, to Brian O’Neill, Attorney, Division of Trading and Markets, Commission, dated February 26, 2009.

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

No written comments were solicited or received with respect to 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 the 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 No. SR-NYSEArca-2009-12 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-12. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2009-12 and should be submitted on or before [insert date 21 days from the date of 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).