

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61240; File No. SR-NYSEArca-2009-101)

December 24, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending Equities Rule 5.2(j)(3)

On November 5, 2009, NYSE Arca, Inc. (“Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), the initial listing standards for Investment Company Units. The proposed rule change was published for comment in the Federal Register on November 24, 2009.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

Arca proposes to amend the initial listing standards for Investment Company Units (“ICUs”), which are based both on U.S. indexes or portfolios, and international or global indexes or portfolios. Specifically, Arca proposes to amend the trading volume listing standard to lower the minimum component stock weight requirement from 90% to 70% of the weight of the underlying index or portfolio. Arca also proposes to measure minimum monthly trading volume as averaged over the last six months. Currently, the minimum monthly trading volume is measured during each of the last six months. With respect to international or global indexes or portfolios, Arca proposes to clarify that the component stock trading volumes are determined on a global basis. Finally, as an option for meeting the listing requirements, Arca proposes to adopt a

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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> See Securities Exchange Act Release No. 61022 (November 17, 2009), 74 FR 61388 (“Notice”).

minimum notional volume traded per month of \$25,000,000, also averaged over the last six months.

The Commission has carefully reviewed the proposed rule change and 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<sup>4</sup> and, in particular, Section 6(b)(5) of the Act,<sup>5</sup> which requires that an exchange have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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 to protect investors and the public interest.

The Commission believes that the proposed 70% weighting requirement should: (1) be sufficient to help ensure that a substantial portion of the underlying index or portfolio remains liquid; and (2) facilitate the listing and trading of ICUs benefit investors by providing them with a wider selection of derivative products. When this requirement is combined with other listing requirements, the Commission believes that the underlying index or portfolio will remain sufficiently liquid to minimize potential manipulation.

The Commission also believes that the proposed use of minimum notional volume as an alternative measure to minimum trading volume should mitigate the volume discrepancies between low- and high-priced stocks. In addition, measuring minimum trading volume and notional volume based on a six-month average should help to eliminate seasonal volume fluctuations that may occur in the trading of component securities.

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<sup>4</sup> 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).

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

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEArca-2009-101) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).