

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53971; File No. SR-NYSEArca-2006-22)

June 12, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Increasing the Maximum Weighting of Certain Component Stocks in Indexes or Portfolios Underlying Investment Company Units.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 22, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Arca. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

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"), proposes to amend its rules governing NYSE Arca, L.L.C., the equities trading facility of NYSE Arca Equities. The Exchange proposes to amend Commentary .01(a)(3) to NYSE Arca Equities Rule 5.2(j)(3), to increase from 25 percent to 30 percent the maximum weight of the most heavily weighted component stock of an index or portfolio underlying a series of Investment Company Units ("ICUs").

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

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

The text of the proposed rule change is available on the NYSE Arca Web site ([www.nysearca.com](http://www.nysearca.com)), at the Commission's Public Reference Room, and the principal office of NYSE Arca.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca 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 III below. NYSE Arca 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

NYSE Arca Equities Rule 5.2(j)(3) provides listing standards for ICUs to permit listing and trading of these securities pursuant to Rule 19b-4(e) under the Exchange Act.<sup>3</sup> Rule 19b-4(e) 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 Rule 19b-4(c)(1) under the Exchange Act,<sup>4</sup> if the Commission has approved, pursuant to Section 19(b) of the Exchange Act,<sup>5</sup> the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities

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<sup>3</sup> 17 CFR 240.19b-4(e).

<sup>4</sup> 17 CFR 240.19b-4(c)(1).

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

product, and the SRO has a surveillance program for the product class.<sup>6</sup> These standards are frequently referred to as "generic" listing standards.

In October of 1999, the Commission approved PCX Equities<sup>7</sup> Rule 5.2(j)(3), which sets forth the rules related to the listing and trading criteria for ICUs.<sup>8</sup> In July 2001, the Commission also approved the Pacific Exchange's<sup>9</sup> generic listing standards for the listing and trading, or the trading pursuant to unlisted trading privileges, of ICUs under PCX Equities Rule 5.2(j)(3).<sup>10</sup>

NYSE Arca Equities Rule 5.2(j)(3) provides that, upon the initial listing of a series of ICUs under Rule 19b-4(e), component stocks that in the aggregate account for at least 90 percent of the weight of the index or portfolio underlying such series must have a minimum market value of at least \$75 million. In addition, the component stocks in the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90 percent of the weight of the index or portfolio. These standards assure that the underlying index's or portfolio's component stocks are generally actively traded and with substantial market capitalization.

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<sup>6</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

<sup>7</sup> PCX Equities, Inc. was the predecessor to NYSE Arca Equities.

<sup>8</sup> See Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29).

<sup>9</sup> The Pacific Exchange, Inc. was the predecessor to NYSE Arca.

<sup>10</sup> See Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14).

Currently, Commentary .01(a)(3) to NYSE Arca Equities Rule 5.2(j)(3) also provides that the most heavily weighted component stock in an underlying index or portfolio cannot exceed 25 percent of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65 percent of the weight of the index or portfolio. The Exchange proposes to increase from 25 percent to 30 percent the permissible weight of the most heavily weighted component stock in an underlying index or portfolio.<sup>11</sup> The five most heavily weighted stocks would continue to be required to represent no more than 65 percent of the weight of the index or portfolio. The Exchange states that this change will provide additional flexibility to issuers of ICUs to be listed pursuant to Rule 19b-4(e) in developing ICUs based on indexes or portfolios.

The Exchange notes that unit investment trusts and mutual funds are subject to Internal Revenue Code Subchapter M requirements applicable to regulated investment companies. In order to maintain regulated investment company status, these entities would be required to rebalance their portfolios quarterly to avoid any one stock exceeding a 25 percent weighting in the trust's or fund's portfolio.<sup>12</sup>

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<sup>11</sup> The New York Stock Exchange LLC ("NYSE") recently proposed a substantially identical revision to its ICU rules. See SR-NYSE-2006-39, available on the NYSE Web site ([www.nyse.com](http://www.nyse.com)), and infra note 18.

<sup>12</sup> According to NYSE Arca, under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company, the securities of a single issuer can account for no more than 25 percent of a fund's total assets, and at least 50 percent of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5 percent of such fund's total assets.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>14</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

### 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 Exchange Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were neither solicited nor received.

## III. 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 Exchange 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

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

<sup>14</sup> 15 U.S.C. 78f(b)(5).

- Send an email to [rules-comments@sec.gov](mailto:rules-comments@sec.gov). Please include File No. SR-NYSEArca-2006-22 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, D.C. 20549-1090.

All submissions should refer to File No. SR-NYSEArca-2006-22. 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. Copies of such filing will also be available for inspection and copying at the principal office of NYSE Arca. 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-2006-22 and should be submitted [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Exchange Act,<sup>16</sup> which requires that the rules of an exchange be designed 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 and protect investors and the public interest. The Commission believes that the proposed rule is reasonably designed to provide additional flexibility in listing ICUs under the Exchange's generic listing standards. The Commission further believes that the proposed rule change will serve to protect investors and the public interest by maintaining the size and liquidity requirements applicable to the securities underlying the relevant index or portfolio.

Under Section 19(b)(2) of the Exchange Act,<sup>17</sup> the Commission may not approve any proposed rule change prior the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of the filing thereof in the Federal Register. The

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<sup>15</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and a capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

Commission notes that it has previously approved similar proposals by the American Stock Exchange LLC ("Amex"), and Chicago Board Options Exchange, Incorporated ("CBOE") to increase to 30 percent the permissible weight of the most heavily weighted component stock in an underlying index.<sup>18</sup>

For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change pursuant to Section 19(b)(2) of the Exchange Act.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR-NYSEArca-2006-22) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris  
Secretary

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<sup>18</sup> See Securities Exchange Act Release Nos. 44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR-Amex-2001-25) (approving an increase for indexes underlying Portfolio Depositary Receipts and Index Fund shares listed on the Amex) and 44908 (October 4, 2001), 66 FR 52161 (October 12, 2001) (SR-CBOE-2001-38) (approving an increase for indexes underlying Index Portfolio Receipts and Index Portfolio Shares listed on the CBOE). See also Securities Exchange Act Release No. 53934 (June 1, 2006), 71 FR 33326 (June 8, 2006) (NYSE 2006-39) (approving an increase for indexes or portfolios underlying a series of Investment Company Units listed on NYSE).

<sup>19</sup> 17 CFR 200.30-3(a)(12).