

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55339; File No. SR-NYSEArca-2007-14)

February 23, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend Existing Rules for Investment Company 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 February 8, 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. The Commission is publishing this notice and order to solicit comment on the proposed rule change from interested persons.

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

NYSE Arca, proposes to modify its listing standards applicable to Investment Company Units (“Investment Company Units” or “ICUs”) by amending Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3) to eliminate the requirement that the calculation methodology for the index underlying a series of ICUs must be one of those enumerated in the commentary. The text of the proposed rule change is available at NYSE Arca, the Commission’s Public Reference Room, and [www.nysearca.com/regulation/filings.asp](http://www.nysearca.com/regulation/filings.asp).

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

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

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 eliminate the requirement that the prescribed calculation methodology for the index underlying a series of ICUs must be one of those enumerated in Commentary .01(b)(1) of Rule 5.2(j)(3). The proposed rule change is based on proposed rule changes of both the American Stock Exchange and New York Stock Exchange.<sup>3</sup>

The Exchange has adopted listing standards applicable to ICUs which are consistent with the listing criteria currently used by other national securities exchanges, and trading standards pursuant to which the Exchange may either list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges (“UTP”) basis.<sup>4</sup> An

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<sup>3</sup> See Securities Exchange Act Release No. 55240 (February 5, 2007), 72 FR 06624 (February 12, 2007). See also SR-NYSE-2007-12 (submitted to the Commission).

<sup>4</sup> In October 1999, the Commission approved NYSE Arca Equities Rule 5.2(j)(3), which sets forth the rules related to listing and trading criteria for Investment Company Units. See Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-1998-29). In July 2001, the Commission also approved the Exchange’s generic listing standards for listing and trading, or the trading pursuant to UTP, of Investment Company Units under

Investment Company Unit is defined in NYSE Arca Equities Rule 5.1(b)(15) as a security representing an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company or a similar entity. A registered investment company is registered under the Investment Company Act of 1940.<sup>5</sup>

The “generic” listing criteria of Commentary .01 to Rule 5.2(j)(3) permits listing or trading pursuant to UTP of ICUs that satisfy such criteria in reliance upon Rule 19b-4(e) under the Act,<sup>6</sup> without a separate filing. Commentary .01(b)(1) to Rule 5.2(j)(3) currently requires that where a series of ICUs approved for trading (including pursuant to UTP) on the Exchange in reliance upon Rule 19b-4(e) of the Act, the index underlying the series of ICUs must be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology or a methodology weighting components of the index based on any, some or all of the following: sales, cash flow, book value, and dividends.<sup>7</sup>

The Exchange proposes to delete Commentary .01(b)(1) to Rule 5.2(j)(3) and thereby eliminate the calculation methodology limitation.

In recent years, academics and market professionals have explored and defined a growing list of innovations in index construction. Most recently, the Commission approved amendments to the generic listing criteria to accommodate new index

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NYSE Arca Equities Rule 5.2(j)(3). See Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14).

<sup>5</sup> 15 U.S.C. 80a.

<sup>6</sup> 17 CFR 240.19b-4(e).

<sup>7</sup> See Securities Exchange Act Release No. 54490 (September 22, 2006), 71 FR 58034 (October 2, 2006) (SR-NYSEArca-2006-61) (approving underlying index weightings for: sales, cash flow, book value and dividends).

weighting methodologies based on ranking companies by financial data such as sales, cash flow, book value and dividends.<sup>8</sup> The Exchange believes there are multiple ways for indexes to be constructed to serve useful market purposes. Additional methodologies are under active development by academics and market professionals and permitting only certain specified index weighting methods does not take into account the rapid innovation in this area. The Exchange believes that, with respect to ICUs listed pursuant to Rule 19b-4(e) under the Act, applying the numerical weighting and liquidity criteria and index dissemination requirements set forth in the remainder of Commentary .01 to Rule 5.2(j)(3), without imposing constraints on the index methodology, will provide greater flexibility to indexers and ICU issuers to develop indexes that meet the investment objectives of investors. In addition, the proposed rule change would allow ICUs based on a non-traditional weighting methodology to be brought to market more quickly, thereby reducing burdens on ICU issuers and other market participants and promoting competition.

The Exchange notes that the numerical criteria in Commentary .01 already define the concentration limits, diversity requirements and liquidity requirements of the companies in the underlying index. For example, the generic listing standards for domestic indexes require, among other things, that an index include at least 13 stocks, that the most heavily weighted component stock of an index cannot exceed 30% of the index or portfolio weight, and the five most heavily weighted component stocks of an index cannot exceed 65% of the index or portfolio weight. ICUs and their underlying indexes would continue to be subject to all other requirements of Rule 5.2(j)(3) and

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<sup>8</sup> See Securities Exchange Act Release No. 54649 (October 24, 2006); 71 FR 63816 (October 31, 2006) (SR-NYSE-2006-88).

Commentary .01. Under these circumstances, the Exchange believes that removal of the index weighting requirements of Commentary .01(b)(1) will not compromise investor protection.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>9</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>10</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 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 Act.

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

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

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed modifications, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change.

The Commission has determined that a 15-day comment period is appropriate in this case.

#### 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 ([www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml))  
or
- Send an e-mail to [rules-comments@sec.gov](mailto:rules-comments@sec.gov). Please include File No. SR-NYSEArca-2007-14 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 No. SR-NYSEArca-2007-14. 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

([www.sec.gov/rules/sro.shtml](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 also will be available for inspection and copying at the principal offices 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 No. SR-NYSEArca-2007-14 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).