

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57132; File No. SR-NYSEArca-2007-125)

January 11, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Relating to the Continued Listing Standards for Equity Index-Linked Securities

I. Introduction

On December 5, 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”), 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 proposal to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a), which sets forth the Exchange’s continued listing criteria for Equity Index-Linked Securities.<sup>3</sup> The proposed rule change was published for comment in the Federal Register on December 12, 2007.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to remove from NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a) the continued listing requirement for Equity Index-Linked Securities that prohibits the number of components comprising the underlying index from increasing or decreasing by 33 1/3% from the original number of index components at the time of initial listing of such securities (the “33 1/3%

---

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

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

<sup>3</sup> NYSE Arca Equities Rule 5.2(j)(6) defines Equity Index-Linked Securities as securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities, also referred to as the “Equity Reference Asset.” See NYSE Arca Equities Rule 5.2(j)(6).

<sup>4</sup> See Securities Exchange Act Release No. 56918 (December 6, 2007), 72 FR 70635 (“Notice”).

Requirement”).<sup>5</sup> The Exchange states that its listing standards for exchange-traded funds under NYSE Arca Equities Rule 5.2(j)(3) and those of other national securities exchanges do not impose this same limitation regarding the change in the number of components comprising the underlying index. The Exchange believes that, in the case of Equity Index-Linked Securities, investors purchase such securities because they believe that the underlying index methodology is accurately described in the offering documentation, and that the index sponsor will maintain the index methodology appropriately, so that the index will continue to represent the sector, geographic region, or other investment characteristics the index is designed to track. As such, rather than buying Equity Index-Linked Securities on the basis of the current contents of the index, the Exchange states that investors rely on the index sponsor to define and manage the index selection rules so that the index over time is sustainable in response to changing market conditions.

In addition, because Equity Index-Linked Securities may have terms that endure for as long as 30 years, the Exchange states it is likely that the underlying index for such securities will ultimately change in ways that will render them non-compliant with NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(ii), and as a result, the Exchange believes that the 33 1/3% Requirement penalizes Equity Index-Linked Securities with such long-term maturities. Specifically, Equity Index-Linked Securities based on total industry/country composite indexes are at risk of being delisted prior to the stated maturity date. In addition, new issues of Equity Index-Linked Securities may not be launched because of issuer concerns regarding the negative impact of the possible delisting of such securities due to index component changes that reflect expanding or retracting industry sectors or changes in the geographical business environment. The Exchange

---

<sup>5</sup> See NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(ii).

does not believe that it is protective of investors to require the delisting of those Equity Index-Linked Securities in such event.

Under the proposal, the Exchange seeks to maintain the 10-component minimum requirement in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(ii) as a continued listing standard by moving reference to this requirement to Rule 5.2(j)(6)(B)(I)(2)(a), which would make reference to Rule 5.2(j)(6)(B)(I)(1)(a), as proposed. NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(a) requires that each underlying index have at least 10 component securities of different issuers.

### III. Commission's Findings and Order Granting Approval of the Proposed Rule Change

After careful review and based on the Exchange's representations, the Commission 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>6</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> in that it is designed 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 transactions in securities, 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 notes that, pursuant to NYSE Arca Equities Rule 5.2(j)(6)(A)(b), certain issues of Equity Index-Linked Securities may have terms that endure for as long as 30 years and, depending on the degree of focus and investment objectives of the Equity Reference

---

<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

Asset, the number of components comprising the underlying equity index may change during this time period and could put an issue of Equity Index-Linked Securities at risk of being non-compliant with the 33 1/3% Requirement. Therefore, Equity Index-Linked Securities could be subject to delisting prior to their stated maturity date. The Commission believes that eliminating the 33 1/3% Requirement 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.<sup>8</sup> The Commission notes that each issue of Equity Index-Linked Securities must continue to maintain all of the initial listing standards for Equity Index-Linked Securities, including the continued requirement that each underlying index have a minimum of 10 component securities of different issuers under NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(a), and satisfy the continued listing requirements under NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a), including the enhanced minimum concentration limits under NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(i). Given the variety of certain equity indexes that focus on specific industry sectors and geographic markets, for example, and the extended duration of maturities for certain Equity Index-Linked Securities, the Commission believes that the number of components in an index may increase or decrease by more than 33 1/3% from the number of components in the index at the time of initial listing without adversely impacting the interests of investors. At the same time, the Commission believes that the proposal should benefit investors by creating additional alternatives to investing in such products and competition in the market for Equity Index-Linked Securities, while maintaining transparency of the underlying components comprising an index. As such, the Commission believes it is reasonable and consistent with the

---

<sup>8</sup> Id.

Act for the Exchange to modify the listing standards for Equity Index-Linked Securities in the manner described in the proposal.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSEArca-2007-125), be, and it hereby is, approved.

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

Florence E. Harmon  
Deputy Secretary

---

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).