

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57634; File No. SR-NYSEArca-2008-35)

April 8, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Amendment No. 1 Thereto and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Equity Index-Linked Securities

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 March 26, 2008, 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 and II below, which items have been substantially prepared by the Exchange. On April 4, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as amended, and approves the proposed rule change, as modified, on an accelerated basis.

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

The Exchange proposes to amend its rules governing NYSE Arca, L.L.C. (also referred to as the “NYSE Arca Marketplace”), which is the equities trading facility of NYSE Arca Equities. The Exchange is proposing to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2), the Exchange’s continued listing standard for equity index-linked securities (“Equity Index-Linked Securities”) to: (i) clarify equity index rebalancing criteria; and (ii) amend the index rebalancing requirement for equal-dollar or modified equal-dollar weighed indexes. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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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 III 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

NYSE Arca proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2), the Exchange's continued listing standard for Equity Index-Linked Securities. Specifically, the Exchange proposes to: (i) clarify equity index rebalancing criteria; and (ii) amend the semiannual index rebalancing requirement for equal-dollar or modified equal-dollar weighted indexes.

For Equity Index-Linked Securities, the Exchange proposes to remove, in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(i), the requirement that only capitalization weighted, modified capitalization weighted, and price weighted indexes be reviewed as of the first day of January and July in each year. The Exchange does not believe that it is consistent to impose specific semiannual index reviews only to capitalization weighted, modified capitalization weighted, or price weighted indexes.

For Equity Index-Linked Securities, the Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(d), which currently requires that equity indexes based upon the equal-dollar, or modified equal-dollar weighting method be rebalanced at least semiannually. The Exchange does not believe that it is consistent to impose a specific semiannual rebalancing

requirement only to equal-dollar or modified equal-dollar weighted indexes. Instead, the Exchange proposes that all indexes be rebalanced at least annually. An index is rebalanced in accordance with its stated methodology, as determined by a third-party index sponsor.

The Exchange notes that a significant number of currently existing equity indexes that utilize the equal-dollar or modified equal-dollar weighting methodology are rebalanced annually rather than semiannually. As the issuer of Equity Index-Linked Securities generally licenses the right to utilize the underlying index from a third-party index sponsor, it is often not within the issuer's control to have the index rebalanced more frequently. As such, it is not currently possible under Rule 5.2(j)(6)(B)(I) to list Equity Index-Linked Securities based on such indexes. However, as these types of indexes are relatively common and detailed information concerning the procedures governing the construction of the underlying index will be available to investors either in the issuer's prospectus or on the index sponsor's Web site, the Exchange believes that it is appropriate to allow investors to make their own decisions as to the sufficiency of rebalancing of an equal-dollar or modified equal-dollar weighted index underlying an issuance of Equity Index-Linked Securities. Amending the generic listing standards for Equity Index-Linked Securities would promote competition and benefit investors, issuers, and third-party index sponsors since it would allow NYSE Arca to list, without the delay associated with a stand-alone rule filing, Equity Index-Linked Securities based on a broader group of indexes. The Exchange notes that its listing standards for Investment Company Units<sup>3</sup> do not impose a semiannual index rebalancing requirement for equal-dollar or modified equal-dollar weighted index.

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<sup>3</sup> See NYSE Arca Rule 5.2(j)(3) Commentary .01.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</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, and, in general, to protect investors and the public interest.

### 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

## 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 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>4</sup> 15 U.S.C. 78f(b).

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

- Send e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-35 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 Number SR-NYSEArca-2008-35. 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, 100 F Street, NE, Washington, DC 20549, 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-2008-35 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

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

After careful consideration, 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> and, in particular, the requirements of Section 6 of the Act.<sup>7</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange be 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 believes that the proposed rule change will provide for consistent criteria for the rebalancing of indexes based on different methodologies. The Commission further believes that the proposal should facilitate the listing and trading of Equity Index-Linked Securities based on indexes with different rebalancing requirements, thus benefiting investors by providing them with a wider selection of derivative products. The Commission notes that the proposed rule change would also conform index requirements for Equity Index-Linked Securities to the requirements<sup>9</sup> applicable to equity-based Investment Company Units.

The Commission finds good cause for approving the proposed rule change prior to the

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<sup>6</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>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See NYSE Arca Equities Rule 5.2(j)(3).

30<sup>th</sup> day after the date of publication of the notice of filing thereof in the Federal Register. The Commission notes that the proposed rule change is similar to a proposal related to index rebalancing of Equity Index-Linked Securities<sup>10</sup> that was recently approved by the Commission and does not believe that this proposal raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>11</sup> to approve the proposed rule change on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change, as modified (SR-NYSEArca-2008-35), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> See Securities Exchange Act Release No. 56838 (November 26, 2007), 72 FR 67774 (November 30, 2007) (SR-NYSEArca-2007-118).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> Id.

<sup>13</sup> 17 CFR 200.30-3(a)(12).