

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57815; File No. SR-NYSEArca-2007-104)

May 12, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Listing Standards for Warrants, Rights, and Units

I. Introduction

On October 3, 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”)¹ and Rule 19b-4 thereunder,² a proposal to apply certain initial and continued listing standards to rights to purchase listed securities and to adopt new listing requirements for Units.³ On March 27, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the Federal Register on April 8, 2008.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “Units” are defined as paired securities which may be transferred and traded only in combination with one another as a single economic unit. See NYSE Arca Equities Rule 5.1(b)(20). Currently, the Exchange has continued listing standards for Units in NYSE Arca Equities Rule 5.5(a), which references NYSE Arca Equities Rules 5.5(b) – (e). NYSE Arca Equities Rules 5.5(b) – (e) relate to the continued listing requirements for common stock and common stock equivalent securities, preferred stock and secondary classes of common stock, bonds and debentures, and warrants, respectively. See NYSE Arca Equities Rules 5.5(b) – (e). See also infra note 9.

⁴ See Securities Exchange Act Release No. 57603 (April 2, 2008), 73 FR 19125.

The Exchange proposes to: (1) amend NYSE Arca Equities Rules 5.2(f) and 5.5(e), the Exchange’s initial and continued listing standards for warrants, to apply such standards to rights to purchase securities;⁵ and (2) adopt new NYSE Arca Equities Rule 5.2(k) to add listing standards for Units. The Exchange states that the proposed rule changes herein are modeled upon the rules of The NASDAQ Stock Market LLC (“Nasdaq”) and provisions contained in the Company Guide of the American Stock Exchange LLC (“Amex”).⁶

Listing Standards for Warrants and Rights

Currently, NYSE Arca Equities Rule 5.2(f) addresses the Exchange’s initial listing standards for warrants. The Exchange proposes to add rights to this Rule and apply these same initial listing standards to both warrants and rights to purchase securities.⁷ As is the case for warrants, at least 500,000 rights must be publicly held by not less than 250 public beneficial holders under NYSE Arca Equities Rule 5.2(f)(1), as amended. The purpose for this change is to allow the Exchange to list rights so that it can offer investors more investment options, while also remaining competitive in the marketplace.

⁵ The initial and continued listing standards for warrants under NYSE Arca Equities Rules 5.2(f) and 5.5(e), respectively, were approved by the Commission in 1994. See Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998 (August 1, 1994) (SR-PSE-93-12) (approving quantitative and qualitative listing standards with respect to common stock, preferred stock, bonds and debentures, warrants, contingent value rights, and other securities).

⁶ The Exchange states that Nasdaq’s initial listing standards for warrants and rights are set forth in Nasdaq Rule 4420(d), and its continued listing standards for warrants and rights are set forth in Nasdaq Rule 4450(d). In addition, Nasdaq’s initial listing standards for units are set forth in Nasdaq Rule 4420(h). The Exchange also states that the proposal regarding the listing standards for Units are based, in part, on provisions contained in the Amex Company Guide. See infra note 12.

⁷ The Exchange states that Nasdaq made a similar change to its rule, which is now contained in Nasdaq Rule 4420(d). See Securities Exchange Act Release No. 43435 (October 11, 2000), 65 FR 62779 (October 19, 2000) (SR-NASD-99-69) (approving, among other things, the inclusion of rights in the initial listing standards for warrants).

Currently, NYSE Arca Equities Rule 5.2(f)(2) provides, in part, that the Exchange will not list warrants unless the common stock of the company or other security underlying the warrants is already listed (and meets the pertinent continued listing requirements) or will be listed on the Exchange concurrently with the warrants. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(f)(2) to provide that the common stock of the company or other security underlying the warrants and rights must be listed and trading (and meets the pertinent continued listing standards), or will be listed and trading, on a national securities exchange concurrently with the listing and trading of warrants or rights, as applicable. The Exchange notes that it would not list a warrant or right if the security underlying such warrant or right is no longer trading or is subject to a trading halt, as imposed by the national securities exchange listing such underlying security. Therefore, the Exchange believes that investors would remain protected.

Currently, NYSE Arca Equities Rule 5.5(e) addresses the continued listing of warrants on the Exchange. NYSE Arca Equities Rule 5.5(e) states that, for continued listing, the common stock of the company or other security underlying the warrants must meet the applicable Tier I maintenance requirements. The Exchange proposes to amend this Rule so that the continued listing standard, as proposed to be modified as discussed below, would apply to both warrants and rights to purchase listed securities.⁸ As is the case with the proposal to add rights to the initial listing standards, the purpose for this change is to allow the Exchange to list rights so that it can offer investors more investment options, while also remaining competitive in the marketplace.

As stated above, NYSE Arca Equities Rule 5.5(e) provides, in pertinent part, that the underlying common stock of the company or other security must meet the applicable Tier I

⁸ The Exchange states that Nasdaq's continued listing standards for warrants also apply to rights, as set forth in Nasdaq Rule 4450(d).

maintenance requirements under NYSE Arca Equities Rule 5.5. The Exchange proposes to amend this language to state that, in the case of warrants and rights, the common stock of the company or other security underlying the warrants or rights, as applicable, must continue to be listed on a national securities exchange. The Exchange believes that, as long as the security underlying warrants and rights satisfies the listing standards of another national securities exchange and are otherwise in good standing for trading, investors would be able to obtain additional investment options and, at the same time, remain protected. The Exchange also proposes this change to simplify the continued listing standards under NYSE Arca Equities Rule 5.5(e) and ensure that the issuer of an underlying security is listed on a national securities exchange, in the interest of protecting investors.

Listing Standards for Units

Currently, the Exchange has no separate initial quantitative listing standards for Units, although it has a definition and continued listing standards for Units.⁹ The Exchange proposes to adopt initial listing standards for Units under proposed NYSE Arca Equities Rule 5.2(k). The Exchange states that the proposed standards are substantially similar to those under Nasdaq Rule 4420(h).¹⁰

In particular, under proposed NYSE Arca Equities Rule 5.2(k), all Units must have at least one equity component and all components must meet the initial and continued listing

⁹ NYSE Arca Equities Rule 5.5(a) states that, in the case of Units, the Exchange will normally consider suspending dealings in or delisting if any of the component parts do not meet the applicable listing standards as set forth in NYSE Arca Equities Rules 5.5(b) – (e). If one or more of the components is otherwise qualified for listing, that component may remain listed. Where all component parts of a Unit do not meet the applicable listing standards as set forth in NYSE Arca Equities Rules 5.5(b) – (e), the Unit will be delisted from the Exchange. See supra note 3.

¹⁰ See Nasdaq Rule 4420(h). See also Securities Exchange Act Release No. 49746 (May 20, 2004), 69 FR 30356 (May 27, 2004) (SR-NASD-2004-81) (approving listing standards for units).

standards in NYSE Arca Equities Rules 5.2(k) and 5.5 (a) – (e), as applicable, or in the case of debt components, meet certain specified criteria including: (1) an aggregate market value or principal amount of at least \$5 million; (2) a requirement that the issuer of the debt security have equity securities that are listed on a national securities exchange; and (3) in the case of convertible debt, limitations on changes to conversion prices, subject to an exception, and a real-time last sale reporting requirement for the equity security into which the debt is convertible.¹¹ In addition, all components of the Unit must be issued by the same issuer, and all Units and issuers of such Units must comply with the initial and continued listing standards of NYSE Arca Equities Rules 5.2(k) and 5.5(a) – (e), as applicable.

The Exchange also proposes that Units be subject to a minimum listing period of 30 days from the first day of listing, except that the period may be shortened if the Units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw Units from listing must provide the Exchange with notice of such intent at least 15 days prior to withdrawal. Accordingly, the Exchange believes that these provisions will provide investors a meaningful period of time to react to the withdrawal of the Unit from listing and trading.

Under proposed NYSE Arca Equities Rule 5.2(k)(3), each issuer of Units must include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations thereunder a statement regarding any intention to delist the Units immediately after the minimum inclusion period referenced above. In addition, an issuer of a Unit would be required to provide information regarding the terms and conditions of the components of the

¹¹ The Exchange notes that real-time last sale reporting must be available for the underlying equity security, and it will not be sufficient that the Unit containing such equity security be subject to last sale reporting.

Unit, the ratio of the components comprising the Unit, and when a component of the Unit is separately listed on an exchange, on the issuer's Internet Web site, or if it does not maintain a Web site, in its annual report provided to Unit holders. Further, an issuer would be required to immediately publicize through, at a minimum, a public announcement through the news media, any change in the terms of a listed Unit, such as changes to the terms and conditions of any of the components or to the ratio of components within the Unit. The Exchange believes that this heightened disclosure requirement is appropriate to ensure that sufficient information regarding the attributes of these securities is publicly available on a timely basis.

The Exchange also proposes to add language clarifying the applicability of certain continued listing standards relating to components of Units that have separated.¹² The Exchange states that, when Units in good standing begin to separate into their component securities, the remaining Units that are still intact and the components of those Units which have separated may all be separately listed and continue to trade, provided that they meet the applicable continued listing standards. The proposal specifies that, in determining whether an individual component meets the applicable distribution requirements specified in the continued listing standards, the Units that are intact and freely separable into their component parts will be counted toward the total numbers required for continued listing of the component. For example, if 1,000,000 shares of common stock are publicly held after separation from their Units, and 500,000 intact and freely separable Units are publicly held, the common stock would be credited with having 1,500,000 shares publicly held, enabling it to meet the publicly held shares requirement for

¹² The Exchange states that its proposal to clarify the applicability of listing standards relating to components of Units that have separated is modeled upon Section 1003(g)(ii) and (iii) of the Amex Company Guide. See Securities Exchange Act Release No. 55675 (April 26, 2007), 72 FR 24638 (May 3, 2007) (SR-Amex-2006-114) (approving amendments to the listing standards for units).

common stock, which requires at least 1,100,000 shares of common stock to be publicly held.¹³

If the Units are no longer freely separable and/or listed on the Exchange, the separately-traded components would still be required to meet their applicable continued listing standards, however, without aggregation of the Units.

Despite the fact that the aggregated distribution values satisfy the continued listing distribution standards, in certain circumstances under the proposal, the Exchange would also consider suspending trading in, or removing from listing, an individual component or Unit when, in the opinion of the Exchange, the public distribution or aggregate market value of such component or Unit becomes so reduced as to make continued listing on the Exchange inadvisable. In its review of the advisability of the continued listing of an individual component or Unit under such circumstances, the Exchange proposes to take into account the trading characteristics of the component or Unit and whether it would be in the public interest for trading in such component or Unit to continue.

The Exchange states that it will halt or suspend trading in the Units or rights, as the case may be, when the underlying security is halted on the relevant national securities exchange. In addition, for Units and rights that are listed on the Exchange and based upon an underlying security listed on another national securities exchange, the Exchange represents that it will monitor Units and rights under the Exchange's applicable continued listing standards.

As is the case with the initial and continued listing standards for rights, the Exchange states that the purpose for the proposed initial listing standards for Units is to allow the Exchange to list Units so that it can offer investors more investment options, while also remaining competitive in the marketplace.

¹³ See NYSE Arca Equities Rule 5.5(b)(1).

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.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁵ 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.

With respect to the proposal to apply the initial and continued listing standards for warrants to rights to purchase securities, the Commission notes that it has approved the application of such standards to rights with respect to the rules of another national securities exchange.¹⁶ The Commission believes that, in the case of warrants or rights, as applicable, the Exchange's proposal to permit the underlying security to be listed and trading on another national securities exchange should benefit investors by offering additional investment options on the Exchange for warrants and rights and, at the same time, protect such investors, as long as the underlying security satisfies the applicable initial and continued listing standards of such other national securities exchange. The Commission notes that, with respect to rights listed on the Exchange and based on an underlying security listed on another national securities exchange,

¹⁴ 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).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See supra notes 6 and 7.

the Exchange will halt or suspend trading in rights when the underlying security is halted on the relevant national securities exchange.¹⁷ The Commission expects that the Exchange will also monitor on a continuous basis the application of the continued listing standards under proposed NYSE Arca Equities Rule 5.5(e) as they relate to such rights. Under proposed NYSE Arca Equities Rule 5.5(e), if the security underlying a series of rights or warrants is delisted by another national securities exchange, the Exchange must delist such rights.

With respect to the adoption of listing standards for Units, the Commission notes that it has approved substantially similar standards for other national securities exchanges.¹⁸ The Commission believes that, in the case of Units based on a debt security component, the Exchange's proposal to permit the issuer of such debt component to have equity securities listed on another national securities exchange should benefit investors by offering additional investment options on the Exchange for Units.¹⁹ The Commission notes that, with respect to Units listed on the Exchange, the Exchange will halt or suspend trading in such Units when the trading of an underlying security component is halted. In addition, the Commission further notes that the Exchange will monitor on a continuous basis the application of the continued listing standards under NYSE Arca Equities Rule 5.5(a) as they relate to such Units. Lastly, under the proposed rule, if it appears that not enough Units will be separated to allow the components to

¹⁷ The Commission further notes that, by virtue of the requirement that the security underlying the right must be listed and trading on a national securities exchange, such security will be subject to last-sale reporting. As a result, the Commission expects the Exchange, and the Exchange has committed, to halt trading in a series of rights if the underlying security is halted on the relevant national securities exchange.

¹⁸ See supra notes 10 and 12.

¹⁹ In the case of Units based on a debt security component, the Commission notes that, if a series of equity securities of the issuer of the debt security component is delisted on a national securities exchange, the Exchange would be expected to halt trading in the related Units and institute delisting proceedings for such Units.

meet the public distribution and aggregate market value requirements independently or there are other concerns, the rule makes clear that the Exchange should consider delisting the components or Unit. This recognizes the fact that although the rule allows the aggregation of Units and components for purposes of the applicable distribution standards, the Exchange will need to ensure that there is some minimal level of liquidity in each component and Unit and should consider delisting if the public distribution or the aggregate market value of the components or Unit has become so reduced as to make continued listing on the Exchange inadvisable. In this regard, the Exchange will take into account the individual distribution values and the trading characteristics of the component or Unit and whether it would be in the public interest for continued trading of such component or Unit.²⁰

The Commission believes that the proposal should help to promote transparency of the Exchange rules relating to the initial and continued listing of rights and Units and provide clearer guidance for members and investors trading in such securities. As noted above, the security components underlying a series of rights or Units, as applicable, will be subject to last-sale reporting by virtue of being listed on the Exchange or another national securities exchange, and the Commission notes that the Exchange will halt trading in such series of rights or Units, as applicable, if a security component thereunder ceases to trade on the relevant market or if such security component is no longer subject to last-sale reporting and is delisted on a national securities exchange. For the foregoing reasons, the Commission believes it is reasonable and

²⁰ The Commission notes that minimum distribution requirements are extremely important to ensure, among other things, the liquidity of a security and an active public market. The changes being approved for meeting the distribution standards applicable to Units and their components recognize the unique trading characteristics and challenges that can occur in meeting the minimum standards during the separation period of the Units, while containing certain protections to ensure certain minimum standards will be met.

consistent with the Act for the Exchange to adopt listing standards for rights and Units in the manner described in the proposal.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NYSEArca-2007-104), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).