

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58437; File No. SR-NYSEArca-2008-77)

August 28, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change to List and Trade the Barclays Middle East Equities (MSCI GCC) Non Exchange Traded Notes Due 2038

I. Introduction

On July 17, 2008, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”), 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 proposed rule change to list and trade the Barclays Middle East Equities (MSCI GCC) Non Exchange Traded Notes Due 2038. The proposed rule change was published for comment in the Federal Register on July 29, 2008.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposed to list and trade shares of the Barclays Middle East Equities (MSCI GCC) Non Exchange Traded Notes due 2038 (“Notes”), which are linked to the MSCI Gulf Cooperation Council (GCC) Countries ex-Saudi Arabia Net Total Return IndexSM (U.S. dollar) (“Index”), under NYSE Arca Equities Rule 5.2(j)(6), which includes the Exchange’s

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58208 (July 22, 2008), 73 FR 43968.

listing standards for Equity Index-Linked Securities.⁴ The Notes are senior unsecured debt obligations of Barclays Bank PLC (“Barclays”). The Index is comprised of all of the equity securities (each an “Index Component” and, collectively, the “Index Components”) that are included in the following five individual country indices (each a “Country Index” and, collectively, the “Country Indices”): (1) MSCI Bahrain IndexSM; (2) MSCI Kuwait IndexSM; (3) MSCI Oman IndexSM; (4) MSCI Qatar IndexSM; and (5) MSCI United Arab Emirates IndexSM. Each Country Index is a free float-adjusted market capitalization index that is designed to measure the market performance, including price performance and income from dividend payments, of equity securities in the country it represents. The Index and the Country Indices are calculated and maintained by MSCI, Inc.

The Exchange submitted the proposed rule change because the Index does not meet all of the “generic” listing requirements of NYSE Arca Equities Rule 5.2(j)(6) applicable to the listing of Equity Index-Linked Securities. Specifically, the Index meets all such requirements except for those set forth in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(ii)⁵ and (v).⁶ The Exchange

⁴ Equity Index-Linked Securities are 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 (“Equity Reference Asset”).

⁵ NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(ii) provides that each component security of the underlying index shall have trading volume in each of the last six months of not less than 1,000,000 shares per month, except that for each of the lowest dollar weighted component securities in the index that, in the aggregate, account for no more than 10% of the dollar weight of the index, the trading volume shall be at least 500,000 shares per month in each of the last six months. The Exchange represented that as of July 17, 2008, in each of the prior six months, 87.995% of the Index had a trading volume of 1,000,000 shares, and 8.79% of the bottom 10% of the Index had a trading volume of 500,000 shares.

⁶ NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) provides that all component securities of the underlying index shall be either (A) securities (other than foreign country securities and American Depositary Receipts (“ADRs”)) that are (x) issued by an Act reporting company or by an investment company registered under the Investment Company Act of 1940, which in each case is listed on a national securities exchange, and (y) an “NMS

represented that: (1) except for NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(ii) and (v), the Notes currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(6) applicable to Equity Index-Linked Securities; (2) the continued listing standards under NYSE Arca Equities Rule 5.2(j)(6) applicable to Equity Index-Linked Securities shall apply to the Notes; and (3) Barclays is required to comply with Rule 10A-3 under the Act⁷ for the initial and continued listing of the Notes. In addition, the Exchange represented that the Notes will comply with all other requirements applicable to Equity Index-Linked Securities including, but not limited to, requirements relating to the dissemination of key information such as the Equity Reference Asset value and Intraday Indicative Value, rules and policies governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Index-Linked Securities, generally, and Equity Index-Linked Securities, in particular.⁸

stock” (as defined in Rule 600 of Regulation NMS) or (B) foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group (“ISG”) or parties to comprehensive surveillance sharing agreements with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the index. See Securities Exchange Act Release No. 58376 (August 18, 2008), 73 FR 49726 (August 22, 2008) (SR-NYSEArca-2008-70) (approving certain amendments to NYSE Arca Equities Rule 5.2(j)(6)(B)(I) and, as a result, the renumbering of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(vi) to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v), among other subsections).

⁷ 17 CFR 240.10A-3.

⁸ See, e.g., Securities Exchange Act Release Nos. 56637 (October 10, 2007), 72 FR 58704 (October 16, 2007) (SR-NYSEArca-2007-92); 57132 (January 11, 2008), 73 FR 3300 (January 17, 2008) (SR-NYSEArca-2007-125); 56838 (November 26, 2007), 72 FR 67774 (November 30, 2007) (SR-NYSEArca-2007-118); 56879 (December 3, 2007) 72 FR 69271 (December 7, 2007) (SR-NYSEArca-2007-110); and 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63).

The Exchange stated that the Index Components are all components of the Country Indices, and that, as of April 25, 2008, there were 103 stocks in the Index of which: 5 were included in the MSCI Bahrain IndexSM; 47 were included in the MSCI Kuwait IndexSM; 9 were included in the MSCI Oman IndexSM; 16 were included in the MSCI Qatar IndexSM; and 26 were included in the MSCI United Arab Emirates IndexSM. Each Index Component is included in the Index at a weight that reflects the ratio of its free float-adjusted market capitalization (i.e., free public float multiplied by price) to the free float-adjusted market capitalization of all the Index Components.

In addition, the Exchange noted that as of April 25, 2008, the market capitalization of the Index was approximately \$125.176 billion of which: 1.28% was represented by components of the MSCI Bahrain IndexSM; 49.23% was represented by components of the MSCI Kuwait IndexSM; 3.56% was represented by components of the MSCI Oman IndexSM; 15.00% was represented by components of the MSCI Qatar IndexSM; and 30.94% was represented by components of the MSCI United Arab Emirates IndexSM, traded on the Bahrain Stock Exchange, Kuwait Stock Exchange, Muscat Securities Market, Doha Securities Market, and the Dubai Financial Market or Abu Dhabi Securities Market (collectively, “Middle East Exchanges”), respectively.

With respect to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v), which requires that at least 80% of the component stock trade on markets that are members of ISG or parties to comprehensive surveillance sharing agreements with the Exchange, the Exchange represented that it has attempted, but was unable, to enter into comprehensive surveillance sharing agreements with the Middle East Exchanges, which are not members of ISG.

The Exchange stated that it might be unable to obtain surveillance information from the Middle East Exchanges regarding the component stocks, but that it intended to use its existing surveillance procedures applicable to derivative products to monitor trading in the Notes. The Exchange represented that such procedures are adequate to properly monitor Exchange trading of the Notes in all trading sessions and to deter and detect violations of Exchange rules. The Exchange also noted that its current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange added that it may obtain information via ISG from other exchanges that are members of ISG.⁹

Notwithstanding the Notes' inability to meet the requirements of NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(ii) and (v), the Exchange stated that the Index is sufficiently broad-based in scope and, as such, less susceptible to potential manipulation, insofar as the Index contains 105 companies, listed in five countries, with no one Middle East Exchange listing greater than 50% of the Index Components. The Exchange further stated that no one Index Component dominates the underlying Index.

Detailed descriptions of the Notes, the Index (including the methodology used to determine the composition of the Index), fees, redemption procedures and payment at redemption, payment at maturity, taxes, and risk factors relating to the Notes are available in the Prospectus¹⁰ or on the Web site for the Notes (www.barclays.com), as applicable.

⁹ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

¹⁰ See Barclay's Prospectus, as amended, filed pursuant to Rule 424(b)(2) under the Act (File No. 333-145845).

III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to list and trade the Notes is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² 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, 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.

Although NYSE Arca Equities Rule 5.2(j)(6)(B)(I) permits the Exchange to approve the listing and trading of Equity Index-Linked Securities, the Notes do not meet all of the generic listing requirements thereunder because the components of the Index do not meet the requirements in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(ii) and (v).¹³ NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(ii) provides that each component security of the underlying index shall have trading volume in each of the last six months of not less than 1,000,000 shares per month, except that for each of the lowest dollar weighted component securities in the index that, in the aggregate, account for no more than 10% of the dollar weight of the index, the trading volume shall be at least 500,000 shares per month in each of the last six months. According to the Exchange, as of July 17, 2008, in each of the prior six months, 87.995% of the Index had a trading volume of 1,000,000 shares, and 8.79% of the bottom 10% of the Index had a trading

¹¹ 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).

¹² 15 U.S.C. 78f(b)(5).

¹³ See supra notes 5 and 6, respectively, and accompanying text.

volume of 500,000 shares. Such percentages do not meet the minimum required thresholds and, therefore, the Notes cannot be listed and traded pursuant to the generic listing standards of NYSE Arca Equities Rule 5.2(j)(6)(B)(I) applicable to Equity Index-Linked Securities.

In addition, NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) provides that all component securities of the underlying index shall be either (A) securities (other than foreign country securities and ADRs) that are (x) issued by an Act reporting company or by an investment company registered under the Investment Company Act of 1940, which, in each case, is listed on a national securities exchange, and (y) an “NMS stock” (as defined in Rule 600 of Regulation NMS) or (B) foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of ISG or parties to comprehensive surveillance sharing agreements with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the index. According to the Exchange, in the case of the Notes, the components underlying the Index are foreign country securities that trade on foreign trading markets with which the Exchange has not entered into any comprehensive surveillance sharing agreements. In addition, the Exchange stated that none of the Middle East Exchanges are members of ISG.

The Commission notes that the Exchange represents that it has attempted, but to date has not been able, to enter into comprehensive surveillance sharing agreements with the Middle East Exchanges. The Commission further notes that, in certain limited circumstances, it has previously approved the listing and trading of derivative securities products based on indices that were composed of stocks for which a national securities exchange has not entered into a

comprehensive surveillance sharing agreement with the relevant foreign exchange.¹⁴ The Exchange has represented that it intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Notes and that such procedures are adequate to properly monitor Exchange trading of the Notes in all trading sessions and to deter and detect violations of Exchange rules.

In addition, the Exchange has represented that the Notes will comply with all other requirements applicable to Equity Index-Linked Securities including, but not limited to, requirements relating to the dissemination of key information such as the Equity Reference Asset value and Intraday Indicative Value, rules and policies governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Index-Linked Securities, generally, and Equity Index-Linked Securities, in particular.¹⁵

The Commission believes that the listing and trading of the Notes is consistent with the Act. The Commission notes that, based on the Exchange's representations, the Notes otherwise meet all of the other applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(6). The Commission notes that the Index is composed of all of the equity securities (103 stocks) that are included in five separate Country Indices and has a total market capitalization of over \$100 billion. The Commission further notes that it has previously approved the listing and

¹⁴ See, e.g., Securities Exchange Act Release No. 54944 (December 15, 2006), 71 FR 77432 (December 26, 2006) (SR-NYSE-2006-69) (approving the listing and trading of exchange-traded notes linked to the MSCI India Equities Index).

¹⁵ See supra note 8.

trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria.¹⁶

For the foregoing reasons, the Commission believes that the proposal to list and trade the Notes is consistent with the Act and finds good cause for approving the proposed rule change. This order is based on the Exchange's representations.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEArca-2008-77) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon
Acting Secretary

¹⁶ See Securities Exchange Act Release No. 57349 (February 19, 2008), 73 FR 10084 (February 25, 2008) (SR-NYSEArca-2008-22). See also Securities Exchange Act Release Nos. 55953 (June 25, 2007), 72 FR 36084 (July 2, 2007) (SR-NYSE-2007-46); and 56695 (October 24, 2007), 72 FR 61413 (October 30, 2007) (SR-NYSEArca-2007-111).

¹⁷ 17 CFR 200.30-3(a)(12).