

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58474; File No. SR-NYSEArca-2008-79)

September 8, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change to List and Trade ELEMENTS<sup>SM</sup> Linked to the CS/RT Emerging Infrastructure Total Return Index Powered by HOLT<sup>TM</sup> due 2023

I. Introduction

On July 22, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the ELEMENTS<sup>SM</sup> Linked to the CS/RT Emerging Infrastructure Total Return Index Powered by HOLT<sup>TM</sup> due 2023. The proposed rule change was published for comment in the Federal Register on August 7, 2008.<sup>3</sup> 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 the ELEMENTS<sup>SM</sup> Linked to the CS/RT Emerging Infrastructure Total Return Index Powered by HOLT<sup>TM</sup> due 2023 (the “Notes”), which are linked to the CS/RT Emerging Infrastructure Total Return Index Powered by HOLT<sup>TM</sup> (U.S. dollar) (the “Index”), under NYSE Arca Equities Rule 5.2(j)(6), which includes the Exchange’s

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

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

<sup>3</sup> See Securities Exchange Act Release No. 58276 (July 31, 2008), 73 FR 46126.

listing standards for Equity Index-Linked Securities.<sup>4</sup> The Notes are senior unsecured debt obligations of Credit Suisse, acting through its Nassau Branch (“Credit Suisse”). The Index is comprised of 50 equally-weighted exchange-listed emerging infrastructure-related companies that are chosen according to a rules-based methodology for scoring stocks (each an “Index Component” and, collectively, the “Index Components”). The Index enables investors to participate in the performance of a selection of companies that have a focus on infrastructure, power and utilities, or agriculture and derive at least 15% of their revenue from the Global Emerging Markets (“GEM”). A GEM is defined as any country except the United States, Canada, Australia, New Zealand, Japan, Hong Kong, Singapore, Austria, Belgium, Luxembourg, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom.<sup>5</sup>

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 Rule 5.2(j)(6)(B)(I)(1)(b)(v).<sup>6</sup> The Exchange

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<sup>4</sup> 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”). See NYSE Arca Equities Rule 5.2(j)(6)(i).

<sup>5</sup> The Exchange stated that 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 prospectus or on the Web site for the Notes ([www.credit-suisse.com](http://www.credit-suisse.com)), as applicable. See Credit Suisse’s prospectus, as amended, filed pursuant to Rule 424(b)(2) under the Act (File No. 333-132936-14).

<sup>6</sup> 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, are 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

represented that: (1) except for NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(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) Credit Suisse is required to comply with Rule 10A-3 under the Act<sup>7</sup> 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, rules and policies governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins 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.<sup>8</sup>

The Exchange stated that, as of April 30, 2008, the market capitalization of the ten largest Index Components accounting for the top 20% of the Index weight was approximately \$873.9

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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, renumbering 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).

<sup>7</sup> 17 CFR 240.10A-3.

<sup>8</sup> See, e.g., Securities Exchange Act Release Nos. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63); 56637 (October 10, 2007), 72 FR 58704 (October 16, 2007) (SR-NYSEArca-2007-92); 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 57132 (January 11, 2008), 73 FR 3300 (January 17, 2008) (SR-NYSEArca-2007-125).

billion. The highest weighted stock was Vodafone Group PLC, which accounted for 2% of the Index weight and had a market capitalization of approximately \$209.6 billion.

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 markets on which approximately 36% of the Index Components trade. Specifically, the Exchange does not have comprehensive surveillance sharing agreements with Euronext Amsterdam (2%), Euronext Lisbon (2%), Euronext Paris (6%), JSE Securities Exchange (Johannesburg) (6%), Borsa Italiana (Milan) (4%), Prague Stock Exchange (2%), Bovespa (State of São Paulo Stock Exchange) (4%), Singapore Stock Exchange (2%), and Bolsa de Madrid (8%), and these markets are not members of ISG.

The Exchange stated that it might be unable to obtain surveillance information from the above-noted exchanges regarding the relevant component stocks, but that it intended to utilize its existing surveillance procedures applicable to derivative products, including Equity Index-Linked Securities, 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's 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 further stated that it may obtain information via ISG from other exchanges who are

members of ISG.<sup>9</sup>

Notwithstanding the Notes' inability to meet the requirements of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v), the Exchange believes that the underlying Index is sufficiently broad-based in scope and, as such, is less susceptible to manipulation: the Index contains 50 companies, listed in 23 countries with no one exchange that is not covered by a comprehensive surveillance sharing agreement listing greater than 8% of such companies. The Exchange added that no one security dominates the underlying Index, thereby serving to protect the public interest and promote capital formation.

### 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.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> 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) permits the Exchange to consider Equity Index-Linked Securities for listing and trading pursuant to Rule 19b-4(e) under the Act,<sup>12</sup> the Notes do not meet all of the generic listing requirements thereunder because the components of

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<sup>9</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>10</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>11</sup> 15 U.S.C. 78f(b)(5).

the Index do not meet the requirements in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v).<sup>13</sup> NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) provides that 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, are 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, approximately 36% of the dollar weight of the Index represents Index Components trading on foreign trading markets that are not members of ISG and with which the Exchange has not entered into any comprehensive surveillance sharing agreements.

The Commission notes that the Exchange represents that it has attempted, but has not been able, to enter into comprehensive surveillance sharing agreements with Euronext Amsterdam, Euronext Lisbon, Euronext Paris, JSE Securities Exchange (Johannesburg), Borsa Italiana (Milan), Prague Stock Exchange, Bovespa (State of São Paulo Stock Exchange), Singapore Stock Exchange, and Bolsa de Madrid. The Commission further notes that, in certain limited circumstances, it has approved the listing and trading of derivative securities products based on indices that were composed of stocks for which a national securities exchange

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<sup>12</sup> 17 CFR 240.19b-4(e).

<sup>13</sup> See supra note 6 and accompanying text.

has not entered into a comprehensive surveillance sharing agreement with the relevant foreign exchange.<sup>14</sup> The Exchange has represented that it intends to utilize its existing surveillance procedures applicable to derivative products, including Equity Index-Linked Securities, 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, rules and policies governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins 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.<sup>15</sup>

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 also notes that the Index is composed of securities of 50 companies listed in 23 countries. The Commission further notes that it has previously approved the listing and trading of derivative securities products based on indices that were composed of stocks that

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<sup>14</sup> See, e.g., Securities Exchange Act Release Nos. 58437 (August 28, 2008), 73 FR 51684 (September 4, 2008) (SR-NYSEArca-2008-77) (approving the listing and trading of exchange-traded notes linked to Barclays Middle East Equities (MSCI GCC)) and 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).

<sup>15</sup> See supra note 8 and accompanying text.

did not meet certain quantitative generic listing criteria.<sup>16</sup>

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,<sup>17</sup> that the proposed rule change (SR-NYSEArca-2008-79) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Florence E. Harmon  
Acting Secretary

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<sup>16</sup> See, e.g., Securities Exchange Act Release Nos. 57349 (February 19, 2008), 73 FR 10084 (February 25, 2008) (SR-NYSEArca-2008-22) and 58437 (August 28, 2008), 73 FR 51684 (September 4, 2008) (SR-NYSEArca-2008-77). 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).

<sup>17</sup> 15 U.S.C. 78s(b)(1).

<sup>18</sup> 17 CFR 200.30-3(a)(12).