

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58564; File No. SR-NYSEArca-2008-86)

September 17, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change to List and Trade the WisdomTree Dreyfus Emerging Markets Fund

I. Introduction

On August 11, 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 WisdomTree Dreyfus Emerging Markets Fund (“Fund”). The proposed rule change was published for comment in the Federal Register on August 26, 2008.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the shares (“Shares”) of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.⁴ The Fund will be an actively managed exchange traded fund. The Shares will

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58396 (August 20, 2008), 73 FR 50385 (“Notice”).

⁴ Managed Fund Shares are securities that represent an interest in a registered investment company organized as an open-end management investment company or similar entity that invests in a portfolio of securities selected by such investment company’s investment adviser consistent with such investment company’s investment objectives and policies. See NYSE Arca Equities Rule 8.600(c)(1); Securities Exchange Act Release No. 57619

be offered by the WisdomTree Trust (“Trust”), which was established as a Delaware statutory trust on December 15, 2005. The Trust is registered with the Commission as an investment company.⁵

A. Description of the Shares and the Fund

WisdomTree Asset Management, Inc. (“WisdomTree Asset Management”) is the investment adviser to the Fund.⁶ The Exchange represents that WisdomTree Asset Management is not affiliated with any broker-dealer. The Bank of New York is the administrator, custodian, and transfer agent for the Fund. ALPS Distributors, Inc. serves as the distributor for the Fund.⁷

The Fund seeks to earn current income reflective of money market rates in emerging market currencies available to foreign investors, as well as provide exposure to changes in the value of emerging market currencies relative to the U.S. dollar. The Exchange notes that because the Fund’s investment objective was adopted as a non-fundamental investment policy, the Fund’s investment objective may be changed without a vote of shareholders.

(April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25) (approving, among other things, rules permitting the listing and trading of Managed Fund Shares).

⁵ See Post-Effective Amendment No. 14 to Registration Statement on Form N-1A for the Trust (File Nos. 333-132380 and 811-21864) (“Registration Statement”). The Exchange states that the descriptions of the Fund and the Shares contained in the Notice are based on information in the Registration Statement.

⁶ WisdomTree Investments, Inc. is the parent company of WisdomTree Asset Management.

⁷ The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). See Investment Company Act Release No. 28147 (February 6, 2008), 73 FR 7776 (February 11, 2008) (File No. 812-13470). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Exchange states that the Trust’s application for exemptive relief under the 1940 Act provides that the Fund will comply with federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption

The Fund seeks to achieve its investment objective by investing in short-term securities and instruments designed to provide exposure to the currencies and money market rates of a specified set of emerging market countries. The set of countries is selected and reconstituted on an annual basis with similar allocations to each country being established (in U.S. dollar terms) at the reconstitution date and consequently reset each quarter. Although the Fund is actively managed, the Exchange states that the Fund would strive to adhere to these general parameters in both currency selection and approximate allocation, unless it is believed to be to the detriment of the Fund.

A basket of from five to twelve currencies is selected at least annually from a pool of eligible currencies to provide a representative and diversified proxy for developing market currencies relative to the U.S. dollar. Countries and their capital markets are first classified as frontier, emerging, developing, and developed markets based on a number of quantitative and qualitative factors to determine eligibility. Only the currencies of countries and capital markets classified as developing or emerging markets will be deemed eligible. The selection of the constituent currencies is then driven by the liquidity and tradability of the individual currencies, a country's economic and capital market development, and optimized regional and economic diversification. The Fund attempts to invest in instruments that provide exposure to the most liquid currencies in the geographical regions in which the Fund invests. The Fund will seek to provide an equally-weighted exposure to these currencies. The Fund will be rebalanced on a quarterly basis to maintain this equal weighting. The basket will be reconstituted each year following a similar classification and selection process. Significant events, such as the reclassification of a country's currency from developing to developed, may cause the Fund to

requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

reconstitute its portfolio more frequently than annually. At launch, the Fund initially will select a subset of the following markets: Brazil, Chile, China, the Czech Republic, Hungary, India, Malaysia, Mexico, Poland, Russia, South Africa, South Korea, Taiwan, Turkey, and Thailand.⁸

The Exchange adds that, in addition to using the BIS Survey to assess liquidity, the Fund's portfolio managers also will use information about transaction volume, bid-ask spreads, and average transaction size in each currency and in contracts and derivatives on such currencies to assess liquidity, obtaining this information through market observation, subscription services, and from publicly available sources.

The Exchange notes that, because the market for money market instruments in these countries generally is less liquid and accessible to foreign investors than corresponding markets in more developed economies, the Fund intends to achieve exposure to the applicable non-U.S. market(s) by investing primarily in short-term U.S. money market securities and in forward currency contracts and swaps, the combination of which is designed to create a position economically similar to a money market instrument denominated in a non-U.S. currency.⁹

⁸ Data for the currencies of these countries is included in the Bank for International Settlements Triennial Central Bank Survey, December 2007 ("BIS Survey"). The Fund will invest in instruments that provide exposure to currencies selected from the top 42 currencies in the chart included in the BIS Survey (Currency distribution of foreign exchange turnover), reflecting the percentage share of average daily turnover for the applicable month and year.

⁹ The Fund may pursue its objectives through direct investments in money market instruments issued by entities in the applicable non-U.S. country and denominated in the applicable non-U.S. currency when WisdomTree Asset Management believes it is in the best interest of the Fund to do so. The decision to secure exposure directly or indirectly will be a function of, among other things, market accessibility, credit exposure, and tax ramifications for foreign investors. If the Fund pursues direct investment, eligible investments will include short-term securities issued by the applicable foreign government and its agencies or instrumentalities, bank debt obligations and time deposits, bankers' acceptances, commercial paper, short-term corporate debt obligations, mortgage-backed securities, and asset-backed securities.

The Fund generally will maintain a weighted average portfolio maturity of 90 days or less, will not purchase any money market instrument with a remaining maturity of more than 397 calendar days, and will not invest in non-U.S. equity securities. The Exchange notes that the Fund will issue and redeem Shares on a continuous basis at net asset value (“NAV”)¹⁰ only in large blocks of shares, typically 50,000 shares or more (“Creation Units”), in transactions with authorized participants. Creation Units of the Fund are usually issued in exchange for cash, and redemptions are effected usually in exchange for a basket of U.S. money market instruments and/or a designated amount of cash. Once created, Shares of the Fund trade on the secondary market in amounts less than a Creation Unit.

The Exchange states that more information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, can be found in the Registration Statement.

B. Availability of Information

The Fund’s Web site (www.wisdomtree.com), which will be publicly available prior to the public offering of the Shares, will include a downloadable form of the prospectus for the Fund. The Web site will include additional quantitative information for the Fund, updated on a daily basis, including: (1) the prior business day’s reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”),¹¹ and a calculation of the

¹⁰ The NAV of the Fund’s Shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange LLC, generally 4:00 p.m. Eastern time (“ET”). The NAV per share is calculated by dividing the Fund’s net assets by the number of Fund Shares outstanding. The Exchange states that additional information regarding the valuation of Fund investments in calculating the Fund’s NAV can be found in the Registration Statement.

¹¹ The Bid/Ask Price of the Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in the Core Trading Session¹² on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (“Disclosed Portfolio”)¹³ held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the business day.¹⁴

In addition, an estimated value, defined in NYSE Arca Equities Rule 8.600(c)(3) as the “Portfolio Indicative Value,” which reflects an estimated intraday value of the Fund’s portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and disseminated by the Exchange at least every 15 seconds during the Core Trading Session through the facilities of the Consolidated Tape Association. The Exchange states that the dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

¹² See NYSE Arca Equities Rule 7.34. The Core Trading Session is from 9:30 a.m. to 4:00 p.m. ET.

¹³ See NYSE Arca Equities Rule 8.600(c)(2) (defining Disclosed Portfolio as the identities and quantities of the securities and other assets held by the investment company that will form the basis for the investment company’s calculation of NAV at the end of the business day.

¹⁴ Under accounting procedures followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

The Exchange further states that information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be available via the Consolidated Tape Association high-speed line.

C. Initial and Continued Listing

The Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. A minimum of 100,000 Shares will be required to be outstanding at the commencement of trading. The Exchange states that this minimum number of Shares required to be outstanding is comparable to requirements that have been applied to previously listed series of exchange-traded funds. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading will be sufficient to provide market liquidity. In addition, the Exchange states that it will obtain a representation from the Trust prior to the listing of the Fund Shares that the NAV per Share will be calculated daily and that the NAV and Disclosed Portfolio will be made available to all market participants at the same time.¹⁵ The Exchange further represents that, for initial and/or continued listing, the Shares must be in compliance with Rule 10A-3 under the Act,¹⁶ as provided by NYSE Arca Equities Rule 5.3.

D. Trading Halts

¹⁵ E-mail from Tim Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated September 11, 2008. See NYSE Arca Equities Rule 8.600(d)(1).

¹⁶ See 17 CFR 240.10A-3.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Shares of the Fund will be halted if the “circuit breaker” parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Finally, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth specific circumstances under which trading in the Shares of the Fund may/must be halted.

E. Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. The Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. ET, in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange states that it has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for the Shares on the Exchange will be \$0.01.

F. Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which includes Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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 states that it may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of ISG.¹⁷ In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

G. Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a),¹⁸ which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly

¹⁷ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all of the components of the Disclosed Portfolio for the Fund may trade on exchanges that are members of ISG.

¹⁸ NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that the ETP Holder believes would be useful to make a recommendation. See Securities Exchange Act Release No. 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR-PCX-2005-115).

disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement and will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. ET each trading day.

III. Discussion and Commission's Findings

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.¹⁹ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,²⁰ which requires, among other things, that the Exchange's rules 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 notes that, for the Shares to be listed and traded on the Exchange, such Shares must be in compliance with the initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

¹⁹ 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).

²⁰ 15 U.S.C. 78f(b)(5).

The Commission believes that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act²¹ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be disseminated by means of the facilities of the Consolidated Tape Association. In addition, the Portfolio Indicative Value will be updated and disseminated at least every 15 seconds during the Core Trading Session on the Exchange through the facilities of the Consolidated Tape Association, and, on each business day before commencement of the Core Trading Session, the Trust will disseminate the Disclosed Portfolio on its Web site. The Commission also notes that information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day through electronic means, and the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Additionally, the following information will be available on the Funds' Web site (www.wisdomtree.com), which will be publicly accessible at no charge: (1) the prior business day's reported NAV, the Bid/Ask Price, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be

²¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

assured. The Commission notes that the Exchange is required to obtain a representation from the Trust, prior to listing, that the NAV per Share will be calculated daily, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.²² The Exchange may consider the suspension of trading in, or removal from listing of, the Shares if the value of the Portfolio Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.²³ In addition, NYSE Arca Equities Rule 8.600(d)(2)(B)(ii) requires that the Reporting Authority²⁴ that provides the Disclosed Portfolio implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio. Lastly, the Commission notes that the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D) and that, if WisdomTree Asset Management becomes affiliated with a broker-dealer, WisdomTree Asset Management must erect a firewall between it and such broker-dealer with respect to access to information concerning the composition and/or changes to the investment portfolio of the Funds, in accordance with Commentary .07 to NYSE Arca Equities Rule 8.600.

Though the Exchange has stated that the Fund's investment objective may be changed without a vote of shareholders, an Exchange's obligations under Section 19(b) of the Act and Rule 19b-4 thereunder are independent of any requirements that may apply to the Fund's issuer. Thus, the Exchange must monitor changes to the Shares, including any change to the Fund's investment objective. The Exchange must assess whether any changes to the Shares would require it to submit a proposed rule change in accordance with Section 19(b)(1) of the Act and

²² See supra note 15 and accompanying text.

²³ See NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

²⁴ See NYSE Arca Equities Rule 8.600(c)(4) (defining Reporting Authority).

Rule 19b-4 thereunder or take any other action as appropriate, including halting trading of the Shares.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Exchange's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

1. The Shares will be subject to the initial and continued listing criteria applicable to Managed Fund Shares. In addition, for initial and/or continued listing, the Shares must comply with Rule 10A-3 under the Act,²⁵ as provided by NYSE Arca Equities Rule 5.3.
2. The Exchange will rely on its existing surveillance procedures applicable to derivative products, which will include Managed Fund Shares.²⁶ The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

²⁵ 17 CFR 240.10A-3.

²⁶ The Commission notes that the Fund will not invest in non-U.S. equity securities and believes that the Exchange's rules and procedures are adequate with respect to the trading of the Shares. The Commission, however, notes that other proposed series of Managed Fund Shares may require additional Exchange rules and procedures to govern their listing and trading on the Exchange. For example, in the case of a proposed series of Managed Fund Shares that are based on a portfolio, at least in part, of non-U.S. equity securities, rules relating to comprehensive surveillance sharing agreements and quantitative initial and continued listing standards may be required.

3. Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares, prospectus delivery requirements, and other information, as described in more detail herein.

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

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the Federal Register. The Commission notes that the investment objective of the Fund is similar to those applicable to other Managed Fund Shares, the listing and trading of which the Commission has previously approved for the Exchange.²⁷ The Commission further notes that the Fund will invest in instruments that provide exposure to currencies selected only from the top 42 currencies in the chart included in the BIS Survey (Currency distribution of foreign exchange turnover), reflecting the highest percentage shares of average daily turnover for the applicable month and year. Accelerated approval of the proposed rule change should provide additional choices for investors in, and promote additional competition in the market for, Managed Fund Shares. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,²⁸ to approve the proposed rule change on an accelerated basis.

²⁷ See, e.g., Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (approving the listing and trading of 12 actively managed exchange-traded funds of the WisdomTree Trust, including 11 international currency funds and one U.S. current income fund, pursuant to NYSE Arca Equities Rule 8.600).

²⁸ 15 U.S.C. 78s(b)(2).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-NYSEArca-2008-86) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Florence E. Harmon
Acting Secretary

²⁹ Id.

³⁰ 17 CFR 200.30-3(a)(12).