

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58925; File No. SR-NYSEArca-2008-104)

November 10, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Continued Listing Criteria Applicable to Equity Linked Notes and “Other Securities”

I. Introduction

On September 30, 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”) 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 adopt NYSE Arca Equities Rules 5.5(i) and 5.5(j) to specify continued listing criteria applicable to securities listed on the Exchange pursuant to NYSE Arca Equities Rules 5.2(j)(1) and 5.2(j)(2), respectively. The proposed rule change was published in the Federal Register on October 10, 2008.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description

The Exchange proposes to adopt NYSE Arca Equities Rules 5.5(i) and 5.5(j) to specify continued listing criteria applicable to securities listed on the Exchange pursuant to NYSE Arca Equities Rules 5.2(j)(1) (“Other Securities”) and 5.2(j)(2) (“Equity Linked Notes” or “ELNs”), respectively.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58720 (October 2, 2008), 73 FR 60385.

NYSE Arca Equities Rule 5.2(j)(1) provides that the Exchange will consider listing any security not otherwise covered by the requirements of NYSE Arca Equities Rule 5.2 subject to specified initial listing requirements, including minimum number of publicly held trading units and minimum principal amount/market value, the required minimum number of public beneficial holders, and required issuer's total assets and net worth. NYSE Arca Equities Rule 5.2(j)(2) sets forth initial listing requirements applicable to ELNs, including numerical listing standards applicable to the ELN's issuer, the issue itself, and the underlying security for the ELN.

Securities listed under NYSE Arca Equities Rules 5.2(j)(1) and 5.2(j)(2) are subject to trading suspension or delisting pursuant to standards set forth in NYSE Arca Equities Rule 5.5(1) ("Other Reasons for Suspending or Delisting"). Proposed NYSE Arca Equities Rules 5.5(i) and 5.5(j) would provide that NYSE Arca Equities will commence delisting or removal proceedings (unless the Commission has approved the continued trading of an issue of securities listed pursuant to Rule 5.2(j)(1) or Rule 5.2(j)(2), respectively), if the aggregate market value or the principal amount of the securities publicly held is less than \$400,000, or if such other event shall occur or condition exists which in the opinion of the NYSE Arca Equities makes further dealings on NYSE Arca Equities inadvisable.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6(b)⁴ of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that

⁴ 15 U.S.C. 78f(b).

⁵ 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).

the proposed rule change is consistent with Section 6(b)(5)⁶ of the Act, which requires, among other things, that the Exchange's rules be 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 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 \$400,000 dollar threshold should help to ensure a minimum level of liquidity for products listed under NYSE Arca Equities Rules 5.2(j)(1) and 5.2(j)(2), respectively. The Commission also believes that the proposed rule change should provide the Exchange the flexibility to commence delisting proceedings for these securities should other events or conditions exist that call for such action. The Exchange has represented that securities listed under NYSE Arca Equities Rules 5.2(j)(1) and 5.2(j)(2) are subject to trading suspension or delisting pursuant to standards set forth in Rule 5.5(l). Taken together, the Commission believes that such criteria should help ensure the maintenance of fair and orderly markets for such securities. Additionally, the Commission notes that the proposed criteria are similar to those continued listing standards currently applicable to certain classes of securities listed pursuant to NYSE Arca Equities Rule 5.2(j).⁷

⁶ 15 U.S.C. 78f(b)(5).

⁷ See, e.g., NYSE Arca Equities Rule 5.2(j)(4).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NYSEArca-2008-104) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Acting Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).