

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58948; File No. SR-NYSEArca-2008-105)

November 14, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Relating to Listing Certain Derivative Products Pursuant to Continued Listing Criteria

I. Introduction

On October 1, 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 relating to listing certain Derivative Products (as defined in proposed Commentary .01 to NYSE Arca Equities Rule 5.2(b)) pursuant to continued listing criteria. The proposed rule change was published for comment in the Federal Register on October 10, 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 proposes to adopt new Commentary .01 to NYSE Arca Equities Rule 5.2(b) to permit the listing of a Derivative Product⁴ that (1) was originally listed on another

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58734 (October 6, 2008), 73 FR 60388.

⁴ Commentary .01 to NYSE Arca Equities Rule 5.2(b) defines “Derivative Product” to include securities described in NYSE Arca Equities Rule 5.2(j)(2) (Equity Linked Notes); NYSE Arca Equities Rule 5.2(j)(3) (Investment Company Units); NYSE Arca Equities Rule 5.2(j)(4) (Index-Linked Exchangeable Notes); NYSE Arca Equities Rule 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities); NYSE Arca Equities Rule 8.100 (Portfolio Depositary Receipts); and Commentary .01 to NYSE Arca Equities Rule 8.200 (Trust Issued Receipts). Exchange rules relating to the listing and trading, including trading

registered national securities exchange (“Other SRO”) and continues to be listed on such Other SRO, and (2) satisfies the Exchange’s continued listing criteria applicable to the relevant product class that would include such Derivative Product.

For example, in the case of an Index-Linked Security that is listed on an Other SRO, the staff of the Exchange would determine whether the Index-Linked Security meets the Exchange’s continued listing criteria. If the Index-Linked Security satisfies the Exchange’s continued listing criteria, then NYSE Arca could proceed to list such security on the Exchange. If the Index-Linked Security does not meet the continued listing criteria, the staff of the Exchange would then, in its sole discretion, either file a separate rule filing pursuant to Rule 19b-4 under the Act proposing that the Index-Linked Security be listed on the Exchange pursuant to the criteria set forth in the rule filing or decline to list the Index-Linked Security on the Exchange.

Prior to listing on the Exchange, the issuer of a Derivative Product would be required to properly delist from the Other SRO and satisfy the applicable listing procedures of the Exchange and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Act,⁵ relating to listing such Derivative Product on the Exchange. In addition, the Exchange represents that, for any Derivative Product listed pursuant to proposed Commentary .01 to NYSE Arca Equities Rule 5.2(b), other than the initial listing standards, the shares or other units of such

pursuant to unlisted trading privileges, of “Derivative Products,” as described above, permit the listing and trading of such products pursuant to Rule 19b-4(e) under the Act. Rule 19b-4(e) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO’s trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. See 17 CFR 240.19b-4(e)(1).

⁵ 15 U.S.C. 78(l).

Derivative Product will comply with all other pertinent requirements applicable to the product class that would include such Derivative Product, including, but not limited to, requirements relating to the dissemination of key information, such as an index value, reference asset value, and intraday indicative value, and rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins to ETP Holders, as set forth in Exchange rules applicable to such Derivative Product and prior Commission orders approving the generic listing rules applicable to the listing and trading of such Derivative Product.

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 of the Act⁶ and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, 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 proposal would permit the Exchange to list and trade any Derivative Product that (1) was originally listed on an Other SRO and continues to be listed on such Other SRO, and (2) satisfies the Exchange's continued listing criteria applicable to the product class that would include such Derivative Product. The Commission believes that the proposal reasonably balances the removal of impediments to a free and open market with the protection of investors

⁶ 15 U.S.C. 78f.

⁷ 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).

⁸ 15 U.S.C. 78f(b)(5).

and the public interest, two principles set forth in Section 6(b)(5) of the Act. The Commission notes that (1) it has previously approved the generic listing standards, including the continued listing criteria, applicable to each product class that would include such Derivative Product, and (2) the continued listing criteria applicable to a Derivative Product are substantially similar to those of Other SROs that list such Derivative Product.⁹ The Commission also notes that, for any Derivative Product listed on the Exchange pursuant to proposed Commentary .01 to NYSE Arca Equities Rule 5.2(b), the shares of such Derivative Product must comply with all of the other pertinent requirements applicable to the product class that would include such Derivative Product including, without limitation, requirements relating to the dissemination of key values and the rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins to ETP Holders, as set forth in the applicable Exchange rules and prior Commission orders approving the generic listing rules applicable to the listing and trading of such Derivative Product. In addition, prior to listing on the Exchange, the issuer of a Derivative Product must properly delist from the Other SRO and satisfy all relevant Exchange listing procedures and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Act. If the Exchange seeks to list a Derivative Product that does not satisfy the Exchange's continued listing standards applicable to such product, it may not do so

⁹ For example, the following are NYSE Alternext US LLC ("NYSE Alternext") listing standards for Derivative Products having similar or identical continued listing standards to those of the Exchange: Index Fund Shares (NYSE Alternext Equities Rule 1000A et seq.); Portfolio Depositary Receipts (Rules 1000 et seq.); Trust Issued Receipts (Rules 1200 et seq.); and securities listed under Section 107 of the NYSE Alternext Company Guide, including Equity-Linked Term Notes; Index-Linked Exchangeable Notes; Index-Linked Securities; Commodity-Linked Securities; Currency-Linked Securities; Fixed Income-Linked Securities; Futures-Linked Securities; and Combination-Linked Securities.

pursuant to proposed Commentary .01 to NYSE Arca Equities Rule 5.2(b). Instead, the Exchange must obtain prior Commission approval pursuant to Section 19(b)(2) of the Act.

The Commission believes that the Exchange's proposal would facilitate the timely and efficient listing and continuous trading of a Derivative Product should an issuer of such Derivative Product, originally listed on an Other SRO, choose to delist from such Other SRO and list such Derivative Product on the Exchange, provided that all of the requirements with respect to the Derivative Product referenced herein, including all of the applicable requirements governing the trading of such Derivative Product, as set forth in Exchange rules and prior applicable Commission orders, are satisfied. For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and finds good cause for approving the proposed rule change.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSEArca-2008-105) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Acting Secretary

¹⁰ 15 U.S.C. 78s(b)(1).

¹¹ 17 CFR 200.30-3(a)(12).