

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59004; File No. SR-NYSEArca-2008-108)

November 24, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Revising NYSE Arca Rule 5.3 to Enable the Listing and Trading of Options on Managed Fund Shares

On October 9, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4² thereunder to amend NYSE Arca Rule to list and trade options on Managed Fund Shares. The proposed rule change was published for comment in the Federal Register on October 24, 2008 for a 21-day comment period.³ The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

Managed Fund Shares represent an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity. Unlike traditional exchange traded funds Managed Fund Shares are actively managed. Managed Fund Shares, although, based upon a publicly disclosed portfolio of securities, each trade as a single exchange-listed equity security. Accordingly, rules pertaining to the listing and trading of standard equity options would apply to Managed Fund Shares.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58799 (October 16, 2008), 73 FR 63534.

a national securities exchange⁴ and, in particular, the requirements of Section 6 of the Act.⁵ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of a national securities exchange be designed 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.

Listing and Trading of Options on Managed Fund Shares

As set out more fully in the Exchange's notice of its proposal, NYSE Arca's proposed rules include requirements regarding initial and continued listing standards, the creation/redemption process for Managed Fund Shares, and trading halts. Managed Fund Shares must be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.⁷

The Commission notes that, pursuant to NYSE Arca Rules 5.3(g)(1) and 5.4(k), Managed Fund Shares will be subject to the initial and continuing eligibility standards for underlying securities provided in NYSE Arca Rules 5.3 and 5.4, as applicable. In particular, to be options eligible, a Managed Fund Share must either meet the criteria and guidelines for underlying securities set forth in NYSE Arca Rule 5.3(a) and (b), or alternately, the Managed Fund Share must be must be available for creation or redemption each business day in cash or in kind from or through the issuing trust, investment company, commodity pool or other issuer at a price related to the net asset value. In addition, the issuing trust, investment company, commodity pool, or other issuer is obligated to issue Managed Fund Shares in a specified aggregate number

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 242.600(b)(47).

even though some or all of the investment assets needed to be deposited have not been received by the issuing trust, investment company, commodity pool, or other issuer, provided the authorized creation participant has undertaken to deliver the investment assets as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the Managed Fund Shares which underlie the option as described in the Managed Fund Shares' prospectus.

To continue to eligible to underlie options, the Managed Fund Share must remain an NMS stock listed on a national securities exchange. The Exchange will also consider the suspension of opening transactions in any series of options of the class covering Managed Fund Shares where the Managed Fund Share does not satisfy the requirements set out in NYSE Arca Rule 5.4(k). These include: (1) continued compliance with paragraphs 1 through 4 of NYSE Arca Rule 5.4(b) in the case of options on Managed Fund Shares approved pursuant to Rule 5.3(g)(1)(A); (2) in the case of options on Managed Fund Shares approved pursuant to Rule 5.3(g)(1)(B), following the initial twelve-month period, beginning upon the commencement of trading of the Managed Fund Shares on a national securities exchange and being defined as an "NMS stock", there are fewer than 50 record and/or beneficial holders of such Managed Fund Shares for 30 or more consecutive trading days; (3) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities and/or Financial Instruments and Money Market Instruments on which the Managed Fund Shares are based is no longer calculated or available. In addition, the Exchange retains discretion to suspend opening transactions in options on Managed Fund Shares where conditions make further dealings in such options inadvisable.

Furthermore, the Exchange represented that options on Managed Fund Shares will be subject to all Exchange rules governing the trading of equity options and that the rules pertaining to position and exercise limits⁸ or margin⁹ shall apply as well.

Surveillance

The Commission notes that the Exchange has represented that it will utilize its existing surveillance procedures applicable to options on exchange traded funds, which would include Managed Fund Shares, to monitor trading. In addition, the Exchange would implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Managed Fund Shares, including adequate comprehensive surveillance sharing agreements (“CSSA”) with markets trading in non-U.S. components,¹⁰ as applicable. Also, the Exchange may obtain trading information via the Intermarket Surveillance Group (“ISG”)¹¹ from other exchanges who are members or affiliates of the ISG. The Exchange represented that it believes that these procedures will be adequate to properly monitor Exchange trading of options on these the securities and to deter and detect violations of Exchange rules. This order is based on these representations.

⁸ Pursuant to NYSE Arca Rule 6.8, Commentary .05 and .06, Managed Fund Shares are subject to the same position limits applicable to options on stocks and Exchange-Traded Fund Shares. NYSE Arca Rule 6.9 stipulates that exercise limits for options on stocks and other securities, including Managed Fund Shares, shall be the same as the position limits applicable under NYSE Arca Rule 6.8.

⁹ See NYSE Arca Rules 4.15(a) – 4.16(d), the Exchange’s rules governing margin.

¹⁰ See NYSE Arca Rule 5.3(g)(2), the Exchange’s rule governing the applicable CSSA requirements for options on exchange-traded funds.

¹¹ A complete list of the current members of the ISG, is available at <http://www.isgportal.org>.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSEArca-2008-108) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Acting Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).