

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59861; File No. SR-NYSEArca-2009-33)

May 5, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Safety First Trust Certificates Linked to the Dow Jones Industrial Average

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> notice is hereby given that on April 22, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or the “Corporation”), proposes to list under NYSE Arca Equities Rule 5.2(j)(7) (“Trust Certificates”) Safety First Trust Series 2009-2, Principal-Protected Trust Certificates Linked to the Dow Jones Industrial Average. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyx.com](http://www.nyx.com), at the Exchange’s principal office and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

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

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

received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As provided in NYSE Arca Equities Rule 5.2(j)(7), Trust Certificates are certificates representing an interest in a special purpose trust created pursuant to a trust agreement. The trust only issues Trust Certificates, which may or may not provide for the repayment of the original principal investment amount. The sole purpose of the trust is to invest the proceeds from its initial public offering to provide for a return linked to the performance of specified assets and to engage only in activities incidental to these objectives. Trust Certificates pay an amount at maturity based upon the performance of an underlying index or indexes of equity securities an ("Equity Index Reference Asset"); instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the foreign or domestic index has declined below (for a put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index ("Index Warrants"); or a combination of two or more Equity Index Reference Assets or Index Warrants, as set forth in NYSE Arca Equities Rule 5.2(j)(7).

The Exchange proposes to list under NYSE Arca Equities Rule 5.2(j)(7) the Safety First Trust Series 2009-2, Principal-Protected Trust Certificates Linked to the Dow Jones Industrial

Average (“Certificates”).<sup>3</sup> According to the Registration Statement, the Certificates are preferred securities of Safety First Trust Series 2009-2 (“Trust”) and will mature on a specified date in 2014 (“Maturity Date”).<sup>4</sup> Investors will receive at maturity for each certificate held intact (that is, that has not been exchanged by the holder, as described below) an amount in cash equal to \$10 plus a “Supplemental Distribution Amount,” which may be positive or zero. The Supplemental Distribution Amount will be based on the percentage change of the value of the Dow Jones Industrial Average (“Index”) during the term of the Certificates. The Supplemental Distribution Amount for each Certificate will equal the product of (a) \$10, (b) the percentage change in the value of the Index and (c) the Participation Rate, which is 100%-110%,<sup>5</sup> provided that the Supplemental Distribution Amount will not be less than zero.<sup>6</sup>

A holder of the Certificates has an interest in two separate securities – equity index participation securities (“Securities”) and equity index warrants (“Warrants”) of Citigroup Funding Inc.<sup>7</sup> The assets of the Trust will consist of the Securities and the Warrants. Beginning on the date the Certificates are issued and ending one business day prior to the Valuation Date,<sup>8</sup> a holder can exercise an “exchange right.” A holder can exercise the exchange right by providing notice to his or her broker and instructing the broker to forward that notice to the institutional trustee for the

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<sup>3</sup> See the Registration Statement for Safety First Trust Series 2009-1, dated October 31, 2008 (Nos. 333-154914, 154914-07, 154914-11); Registration Statement for Safety First Trust Series 2009-2, dated March 31, 2009 (Nos. 333-157386 and 157386-01) (“Registration Statements”).

<sup>4</sup> The Certificates will be subject to acceleration to an earlier Maturity Date upon one of the acceleration events described in the Registration Statements.

<sup>5</sup> The Participation Rate will be determined at the time of issuance of the Certificates.

<sup>6</sup> The Trust payments will not be guaranteed pursuant to a financial guaranty insurance policy.

<sup>7</sup> The Securities and Warrants will not be exchange-listed and may trade over-the-counter.

<sup>8</sup> Capitalized terms used but not defined herein have the meanings set forth in the Registration Statements.

Certificates (U.S. Bank National Association), on any business day, to exchange the Certificates the investor holds for a pro rata portion of the assets of the Trust, which consist of the Securities and the Warrants. According to the Registration Statement, such holders will lose the benefit of principal protection at maturity, and this could result in their receiving substantially less than the amount of the original investment in the Certificates. In order to exercise the exchange right, the investor's account must be approved for options trading.<sup>9</sup>

The Securities will mature on the Maturity Date. At maturity, each Security will pay a "Security Payment" equal to \$10 plus a "Security Return Amount," which could be positive, zero or negative. If the value of the Index on the Valuation Date is greater than its value on the pricing date, the Security Return Amount for each Security will equal the product of (a) \$10, (b) the percentage increase in the Index and (c) the Participation Rate, which equals 100%-110% (e.g., assuming a Participation Rate of 100%, if the Index rises 30%, the Security Return Amount would be \$3.00 (\$10 times 0.30 times 1.00), and the Security Payment would be \$13.00 (\$10 plus \$3.00)).

If the value of the Index on the Valuation Date is less than or equal to its value on the pricing date, the Security Return Amount for each security will equal the product of (a) \$10 and (b) the percentage decrease in the Index. Thus, because the holder's participation in the depreciation of the Index is not limited by the Participation Rate, if the value of the Index on the Valuation Date is less than its value on the pricing date, investors will participate fully in the depreciation of the Index (e.g., if the Index falls 30%, the Security Return Amount would be -\$3.00 (\$10 times -0.30) and the Security Payment would be \$7.00 (\$10 minus \$3.00). The Security Return Amount will be used only for the purpose of determining the Security Payment for the Securities and is different

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<sup>9</sup> See NYSE Arca Equities Rule 5.2(j)(7), Commentary .08.

from the Supplemental Distribution Amount used in determining the maturity payment on the Certificates.

The Warrants will be automatically exercised on the Maturity Date. If the value of the Index increases or does not change, the Warrants will pay zero. If the value of the Index decreases, the warrants will pay a positive amount equal to the product of (a) \$10 and (b) the percentage decrease in the value of the Index.

The Certificates are similar to securities previously approved by the Commission for listing on the Exchange, including Trust Certificates issued by Citigroup Funding, Inc. based on the Index and other indexes.<sup>10</sup> At least one million publicly held trading units will be issued prior to listing and trading on the Exchange, with at least 400 public beneficial holders. The issuer of the Certificates, Citigroup Funding, Inc. has total assets of at least \$100 million and net worth of at least \$10 million. In addition, the issuer will be required to have a minimum tangible net worth of \$250,000,000, and, in the alternative, the issuer will be required to have a minimum tangible net worth of \$150,000,000 and the original issue price of the Certificates combined with all of the issuer's other Trust Certificates listed on a national securities exchange or otherwise publicly

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<sup>10</sup> See Securities Exchange Release No. 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR-NYSEArca-2008-123) (order approving Rule 5.2(j)(7) and listing on the Exchange of 14 issues thereunder). Two of the issues in SR-NYSEArca-2008-123 related to Trust Certificates based on the Index and other indexes: Safety First Trust Series 2007-3 linked to the Dow Jones Industrial Average, the Dow Jones EUROSTOXX 50 Index®, the Nikkei 225 Stock Average® and the S&P BRIC® Index; Safety First Trust Series 2006-1 Linked to the Dow Jones Industrial Average and the Nikkei 225 Stock Average®. The Certificates have similar characteristics and payout provisions to the Trust Certificates approved by the Commission in SR-NYSEArca-2008-123. In addition, the Commission has approved the listing and trading on the Exchange of Safety First Trust Series 2009-1, Principal-Protected Trust Certificates Linked to the S&P 500® Index, which have similar characteristics to the Certificates. See Securities Exchange Act Release No. 59747 (April 10, 2009), 74 FR 18012 (April 20, 2009) (SR-NYSEArca-2009-20).

traded in the United States, must not be greater than 25 percent of the issuer's tangible net worth at the time of issuance.<sup>11</sup> The Certificates also will be subject to the continued listing criteria of NYSE Arca Equities Rule 5.2(j)(7)<sup>12</sup> and will meet all other criteria of NYSE Arca Equities Rule 5.2(j)(7).

Additional information relating to Citigroup Funding, Inc., the Trust, Certificates, Securities, Warrants, exercise right, Security Return Amount, Supplemental Distribution Amount, and risks is included in the Registration Statements.

#### Exchange Rules Applicable to Trust Certificates

The Certificates will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules will apply to transactions in Trust Certificates.

The Certificates will trade during trading hours set forth in NYSE Arca Equities Rule 7.34(a).<sup>13</sup>

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<sup>11</sup> The parameters relating to number of units, number of public beneficial holders and issuer assets and net worth and minimum tangible net worth are similar to those in NYSE Arca Equities Rule 5.2(j)(6)(A).

<sup>12</sup> Commentary .01 provides criteria for continued listing and provides that the Corporation will commence delisting or removal proceedings with respect to an issue of Trust Certificates (unless the Commission has approved the continued trading of such issue) (i) if the aggregate market value or the principal amount of the securities publicly held is less than \$400,000; (ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities; or (iii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

<sup>13</sup> Pursuant to NYSE Arca Equities Rule 7.34(a), the NYSE Arca Marketplace will have three trading sessions each day the Corporation is open for business unless otherwise determined by the Corporation:

Opening Session - begins at 1:00:00 am (Pacific Time) and concludes at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction shall occur during the Opening Session.

Core Trading Session - begins for each security at 6:30:00 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and concludes at 1:00:00 pm (Pacific Time).

### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Trust Certificates. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Trust Certificates inadvisable. These may include: (1) the extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>14</sup>

### Information Dissemination

The value of the Index is calculated and disseminated on at least a 15-second basis. If the Index is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Quotation and last sale information will be disseminated by the Exchange via the Consolidated Tape. The value of the Index is widely disseminated by major market data vendors and financial publications.

### Firewalls

Dow Jones & Company (“Dow Jones”), which publishes the Index, is not a registered broker-dealer, and Citigroup Funding, Inc. is not affiliated with Dow Jones. With respect to any index upon which the value of an issue of Trust Certificates is based that is maintained by a broker-dealer, the Exchange would require that such broker-dealer erect a “firewall” around personnel

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Late Trading Session - begins following the conclusion of the Core Trading Session and concludes at 5:00:00 pm (Pacific Time).

<sup>14</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

responsible for the maintenance of such index or who have access to information concerning adjustments to the index, and the index would be required to be calculated by a third party who is not a broker-dealer.

### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which include Trust Certificates, to monitor trading in the securities. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the securities 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 when securities trade 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 may obtain information via ISG from other exchanges who are members of the ISG.<sup>15</sup>

In addition, the Exchange also has a generally policy prohibiting the distribution of material, non-public information by its employees.

### Information Bulletin

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 an issue of Trust Certificates and suitability recommendation requirements.

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<sup>15</sup> For a list of current members of the ISG, see [www.isgportal.org](http://www.isgportal.org).

Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and exchanges of Trust Certificates; (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Trust Certificates; (3) trading hours; and (4) trading information.

In addition, the Information Bulletin will reference that an issue of Trust Certificates is subject to various fees and expenses described in the applicable prospectus.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>16</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>17</sup> in particular 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The proposed rule change will permit listing on the Exchange in a timely manner of the Certificates. The Exchange believes that the provisions of NYSE Arca Equities Rule 5.2(j)(7), together with the Exchange's applicable surveillance, serves to foster investor protection and the public interest.<sup>18</sup>

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> E-mail from Tim Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated May 4, 2009.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2009-33 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00

p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSEArca-2009-33 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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.<sup>19</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>20</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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

The Commission believes that the proposal to list and trade the Certificates on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>21</sup> 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

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<sup>19</sup> 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).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

investors of information with respect to quotations for and transactions in securities. The Exchange will disseminate quotation and last-sale data information via the Consolidated Tape. In addition, the value of the Index is calculated on at least a 15-second basis and is widely disseminated by major market data vendors and financial publications.

The Commission further believes that the proposal to list and trade the Certificates is reasonably designed to promote fair disclosure of information that may be necessary to price the Certificates. The Exchange represents that, if the value of the Index is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Trust Certificates.<sup>22</sup> Dow Jones, which publishes the Index, is not a registered broker-dealer, and Citigroup Funding, Inc. is not affiliated with Dow Jones. With respect to any index upon which the value of an issue of Trust Certificates is based and that is maintained by a broker-dealer, the Exchange would require that such broker-dealer erect a “firewall” around personnel responsible for the maintenance of such index or who have access to information concerning adjustments to the index, and the index would be required to be calculated by a third party who is not a broker-dealer. In addition, the Exchange states that it has a generally policy prohibiting the distribution of material, non-public information by its employees.

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<sup>22</sup> Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Trust Certificates inadvisable. These may include: (1) the extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Commission also notes that the Trust Certificates will be subject to the requirements of NYSE Arca Equities Rule 5.2(j)(7), including the continued listing criteria thereunder.

Additionally, NYSE Arca states that: (1) at least one million publicly held trading units will be issued prior to listing and trading on the Exchange, with at least 400 public beneficial holders; (2) the issuer, Citigroup Funding, Inc., has total assets of at least \$100 million and a net worth of at least \$10 million; and (3) the issuer will be required to have either (a) a minimum tangible net worth of \$250,000,000, or (b) a minimum tangible net worth of \$150,000,000 and the original issue price of the Certificates, combined with all of the issuer's other Trust Certificates listed on a national securities exchange or otherwise publicly traded in the United States, must not be greater than 25% of the issuer's tangible net worth at the time of issuance.<sup>23</sup>

Further, the Exchange represents that the Certificates are equity securities subject to the Exchange's rules governing the trading of equity securities, including the Exchange's equity margin rules. In support of this proposal, the Exchange has made representations, including:

- (1) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Certificates in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.
- (2) 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 Certificates. Specifically, the Information Bulletin will discuss the

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<sup>23</sup> The Commission notes that the foregoing criteria relating to the issuance and the issuer are substantially similar to the requirements applicable to Index-Linked Securities. See NYSE Arca Equities Rule 5.2(j)(6)(A).

following: (a) the procedures for purchases and exchanges of Trust Certificates; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Trust Certificates; (c) trading hours; and (d) trading information. In addition, the Information Bulletin will reference that an issue of Trust Certificates is subject to various fees and expenses described in the applicable prospectus.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. The Commission notes that it has previously approved for listing and trading on the Exchange other issues of Trust Certificates issued by Citigroup Funding, Inc. based on the Index and other indexes that have similar characteristics and payout provisions to the Certificates.<sup>25</sup> The Commission believes that the Exchange's proposal to list and trade the Certificates does not present any novel or significant regulatory issues. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Trust Certificates.

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<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> See Securities Exchange Release Nos. 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR-NYSEArca-2008-123) (approving the listing and trading of 14 issues of Trust Certificates under NYSE Arca Equities Rule 5.2(j)(7)); and 59747 (April 10, 2009), 74 FR 18012 (April 20, 2009) (SR-NYSEArca-2009-20) (approving the listing and trading of Trust Certificates linked to the S&P 500 Index).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-NYSEArca-2009-33) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> 17 CFR 200.30-3(a)(12).