

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61639; File No. SR-NYSEArca-2010-09)

March 3, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing of Wilshire 5000 Total Market ETF and the Wilshire 4500 Completion ETF

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 25, 2010, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade the shares of the Wilshire 5000 Total Market ETF and the Wilshire 4500 Completion ETF under NYSE Arca Equities Rule 5.2(j)(3). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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 received on the proposed rule change. The text of those statements may be examined at the places

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

specified in Item IV 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the shares (“Shares”) of the Wilshire 5000 Total Market ETF and the Wilshire 4500 Completion ETF (each, a “Fund”, and, collectively, “Funds”) under NYSE Arca Equities Rule 5.2(j)(3), the Exchange’s listing standards for Investment Company Units (“ICUs”)<sup>4</sup>. Each of the Funds is a series of the Claymore Exchange-Traded Fund Trust.

The Wilshire 5000 Total Market ETF seeks investment results that correspond generally to the performance, before the Fund's fees and expenses of the Wilshire 5000 Total Market Index (“Wilshire 5000”).<sup>5</sup> The Wilshire 4500 Completion ETF seeks investment results that correspond generally to the performance, before the Fund's fees and expenses of the Wilshire 4500 Completion Index (“Wilshire 4500”, and, together with the Wilshire 5000, the “Underlying Indexes”).<sup>6</sup>

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<sup>4</sup> An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

<sup>5</sup> The Wilshire 5000 Index is designed to represent the total U.S. equity market. The Wilshire 5000 Index includes all U.S. equity securities that have readily available prices.

<sup>6</sup> The Wilshire 4500 Index is a subset of the Wilshire 5000 Total Market Index. Designed to represent the extended market, the Wilshire 4500 Index is the Wilshire 5000 Index with the components of the S&P 500 Index excluded.

The Exchange is submitting this proposed rule change because the Underlying Indexes for the Funds do not meet all of the “generic” listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on US indexes. The Underlying Indexes meets all such requirements except for that set forth in Commentary .01(a)(A)(5).<sup>7</sup> Specifically, as of January 21, 2010, stocks comprising 99.952% of the weight of the Wilshire 5000 were NMS stocks and stocks comprising 99.734% of the weight of the Wilshire 4500 were NMS stocks.<sup>8</sup>

The Exchange represents that: (1) except for Commentary .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A-3<sup>9</sup> under the Act for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the value of the Underlying Indexes and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading

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<sup>7</sup> Commentary .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3) provides that all securities in the index or portfolio shall be US Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934 (17 U.S.C. 78a) (“Act”). NYSE Arca Equities Rule 5.2(j)(3) defines the term “US Component Stock” as an equity security that is registered under Sections 12(b) or 12(g) of the Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

<sup>8</sup> As of January 21, 2010, the Wilshire 5000 and Wilshire 4500 each included 197 non-NMS stocks. Such stocks are traded either on the OTC Bulletin Board or the Pink OTC Markets.

<sup>9</sup> 17 CFR 240.10A-3.

halts, surveillance, and Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to ICUs and prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.<sup>10</sup>

Detailed descriptions of the Funds, the Underlying Indexes, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement<sup>11</sup> or on the Web site for the Funds ([www.claymore.com](http://www.claymore.com)), as applicable.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>12</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>13</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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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<sup>10</sup> See, e.g., Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (order approving generic listing standards for ICUs and Portfolio Depositary Receipts); Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (order approving rules for listing and trading of ICUs).

<sup>11</sup> See the Claymore Exchange-Traded Fund Trust Registration Statement on Form N-1A, dated December 18, 2009 (File Nos. 333-134551; 811-21906) (“Registration Statement”).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>17</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>18</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),<sup>19</sup> the Commission may designate a shorter time if such action is consistent with

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. In addition, the Exchange believes that it has developed adequate trading rules, procedures, surveillance programs, and listing standards for the continued listing and trading of the Shares.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the Underlying Indexes for the Funds fail to meet the requirements set forth in Commentary .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3) by only a small amount and that Exchange has represented that the Shares of the Funds currently satisfy all of the other generic listing standards under NYSE Arca Equities Rule 5.2(j)(3) and all other requirements applicable to ICUs, as set forth in Exchange rules and prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs. Therefore, the Commission believes that the listing and trading of the Shares do not present any novel or significant issues or impose any significant burden on competition, and that waiving the 30-day operative delay will benefit the market and investors by providing market participants with additional investing choices. For these reasons, the Commission designates the proposed rule change as operative under upon filing.<sup>20</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

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<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. 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-2010-09 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR- NYSEArca-2010-09. 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 Web site viewing and printing 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 available publicly. All submissions should refer to File Number SR- NYSEArca-2010-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

Florence E. Harmon,  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).