

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58142; File No. SR-NYSEArca-2008-70)

July 11, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Generic Listing Standard for Equity Index-Linked Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 27, 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”) the proposed rule change as described in Items I, II, and III 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.

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

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Exchange’s generic listing standard for equity index-linked securities (“Equity Index-Linked Securities”) to: (1) eliminate initial and continued listing capitalization weighted and modified capitalization weighted index requirements; and (2) to adjust certain equity index weighting criteria and adopt notional volume traded per month to both initial listing standards and continued listing standards. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange 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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

NYSE Arca proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Exchange's generic listing standard for Equity Index-Linked Securities. Specifically, the Exchange proposes to: (1) eliminate initial and continued listing capitalization weighted and modified capitalization weighted index requirements; and (2) to adjust certain equity index weighting criteria and adopt notional volume traded per month to both the initial listing standards and continued listing standards.

For Equity Index-Linked Securities, the Exchange proposes to eliminate NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(iii), the current initial listing requirement that, in the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest dollar weighted component securities in the index or the highest dollar weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, must have an average monthly trading volume of at least 2,000,000 shares over the previous six months. The Exchange also proposes to eliminate NYSE

Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(iii),³ the current continued listing requirement, that in the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest dollar weighted component securities in the index or the highest dollar weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have an average monthly trading volume of at least 1,000,000 shares over the previous six months.

The Exchange does not believe that it is consistent or justified to impose specific trading volume requirements applicable only to capitalization weighted or modified capitalization weighted indexes, since both of these index methodologies do not raise any unique characteristics that merit the application of the current initial and continued listing standard. Rather, the Exchange proposes that capitalization weighted index or modified capitalization weighted indexes comply with the initial and continued listing requirements currently applicable to all other equity indexes under NYSE Arca Equities Rule 5.2(j)(6)(B)(I) regardless of the index methodology.

The Exchange notes that the Exchange's exchange-traded fund ("ETF") listing standard⁴ does not impose equity index requirements on capitalization weighted and modified capitalization weighted indexes.

³ E-mail from Timothy J. Malinowski, Director, NYSE Euronext, to Michou H.M. Nguyen, Special Counsel, and Steve Varholik, Attorney-Advisor, Division of Trading and Markets, Commission, on July 10, 2008 (correcting the citations to NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(2)(a)(iii) and 5.2(j)(6)(B)(I)(2)(a)(ii), respectively.) ("July 10 e-mail").

⁴ See NYSE Arca Equities Rule 5.2(j)(3) Commentary .01.

Currently for initial listing, Rule 5.2(j)(6)(B)(I)(1)(b)(ii) provides that each component security of an equity index shall have trading volume in each of the last six months of not less than 1,000,000 shares per month, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume will be at least 500,000 shares per month in each of the last six months.

The Exchange is proposing to: (i) remove the requirement that each of the lowest weighted component securities in the index that in the aggregate account for 10% of the weight of the index have trading volume of at least 500,000 shares per month for each of the last six months; and (ii) adopt minimum global notional volume (“Global Notional Volume”)⁵ traded per month of \$25,000,000 averaged over of the last six months as an option for meeting the listing requirements. Proposed Rule 5.2(j)(6)(B)(I)(1)(b)(ii) sets forth:

Component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum global monthly trading volume of 1,000,000 shares, or minimum Global Notional Volume traded per month of \$25,000,000, averaged over the last six months.

With respect to the continued listing criteria, Rule 5.2(j)(6)(B)(I)(2)(a)(ii)⁶ currently sets forth that the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in

⁵ Global Notional Volume is defined as the total shares traded globally times the price per share.

⁶ See July 10 e-mail supra note 3.

the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months.

The Exchange is proposing to: (i) remove the requirement that the lowest weighted component securities in the index that in the aggregate accounting for no more than 10% of the weight of the index have trading volume of at least 400,000 shares for each of the last six months; and (ii) adopt minimum Global Notional Volume traded per month of \$12,500,000 averaged over the last six months as an option for satisfying the continued listing requirements. Proposed Rule 5.2(j)(6)(B)(I)(2)(ii) sets forth:

Component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum global monthly trading volume of 500,000 shares, or minimum Global Notional Volume traded per month of \$12,500,000, averaged over the last six months.

With respect to both the initial listing and continued listing standards, the Exchange believes that considering the weighting of the bottom 10% component securities is insignificant for determining the liquidity of the index. Rather, the Exchange proposes that focusing on 90% of the top weighted index component securities is a better indication as to whether the index or indexes has sufficient liquidity for listing and trading of the related Equity Index-Linked Security.

With respect to adopting, as an alternative to monthly trading volume, the minimum Global Notional Volume traded averaged over the last six months to both the initial and continued listing standards, the Exchange believes that averaged notional volume traded per month is a better measure of the liquidity of component stocks of the underlying index or indexes. Specifically, notional volume nullifies the volume discrepancies that generally occur

between low-priced and high-priced stocks.⁷ In addition, adopting an average of the trading volume and notional volume over six months eliminates seasonal volume fluctuations that may occur in the trading volume of a particular underlying security represented in the index or indexes.⁸

Further, investors, Equity Index-Linked Securities issuers, and third-party index sponsors would also benefit from NYSE Arca's ability to list -- without the delay associated with a stand-alone rule filing -- Equity Index-Linked Securities based on a broader group of indexes, promoting competition.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ 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, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures

⁷ For example, a stock priced at \$10 per share that trades 2,500,000 shares in a month has a notional volume of \$25,000,000. Conversely, a stock priced at \$100 per share that trades 250,000 shares in a month has a notional volume of \$25,000,000.

⁸ See July 10 e-mail supra note 3 (clarifying that the adoption of six month average applies to both trading volume and Global Notional Volume traded.)

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve such proposed rule change; or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-NYSEArca-2008-70 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-70. 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 the 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-2008-70 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.¹¹

Florence E. Harmon
Acting Secretary

¹¹ 17 CFR 200.30-3(a)(12).