

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56328; File No. SR-NYSEArca-2007-73)

August 28, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units) and Rule 8.100 (Portfolio Depository Receipts) in Connection with the Dissemination of Information in Extended Hours Trading

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 July 26, 2007, 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 substantially 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)(3) (Investment Company Units) and Rule 8.100 (Portfolio Depository Receipts) relating to dissemination of the index value and Intraday Indicative Value (“IIV”) (as defined in Commentary .01(c) to NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01(c) to NYSE Arca Equities Rule 8.100) during the Core Trading Session.<sup>3</sup>

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

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

<sup>3</sup> NYSE Arca Equities Rule 7.34(a) defines the trading hours on the NYSE Arca Marketplace.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.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 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 Equities Rule 7.34(a) provides for three equities trading sessions on the Exchange: the Opening Session (4:00 a.m. to 9:30 a.m. Eastern Time ("E.T.")), the Core Trading Session (9:30 a.m. to 4:00 p.m. E.T.), and the Late Trading Session (4:00 p.m. to 8:00 p.m. E.T.).

Currently, NYSE Arca Equities Rules 5.2(j)(3)(E) and 8.100(f) provide that the Exchange may designate a series of Investment Company Units ("Units") and Portfolio Depository Receipts ("PDRs" together with Units, referred to herein as exchange-traded funds or "ETFs"), respectively, to trade during the Opening Session and Late Trading Session. For an ETF listed on NYSE Arca or traded on the Exchange pursuant to unlisted trading privileges ("UTP"), an updated current index value must be widely

disseminated during the time the ETF trades on the Exchange.<sup>4</sup> Current NYSE Arca Equities Rules 5.2(j)(3)(E) and 8.100(f) also require that, for an ETF listed or traded on the Exchange on a UTP basis, an updated IIV be disseminated during the Core Trading Session and, if applicable, the Opening Session. Similar provisions relating to the dissemination of index value and IIV apply to Units and PDRs based on indexes or portfolios consisting of fixed income securities<sup>5</sup> as well as indexes consisting of both equities and fixed income securities.<sup>6</sup>

The Exchange proposes to permit securities listed or traded on the Exchange (including on a UTP basis) pursuant to Rule 19b-4(e) to be traded in all three trading sessions without the requirement to disseminate an IIV or index value.<sup>7</sup> The Exchange, therefore, in this filing is proposing to delete as unnecessary NYSE Arca Equities Rule 5.2(j)(3)(E) and NYSE Arca Equities Rule 8.100(f), which set forth the requirements for the dissemination of such information if the Exchange designates a series of Units or PDRs for trading during the Opening and Late Trading Sessions, respectively. In addition, the Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(3), Commentaries .01(b)(2) and .03(a)(ii), and NYSE Arca Equities Rule 8.100, Commentaries .01(b)(3) and .03(a)(ii), to specify that the current index value for a Unit

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<sup>4</sup> See NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(b)(2); 8.100, Commentary .01(b)(3). See also e-mail from Tim Malinowski, Director, NYSE Group, Inc. to Mitra Mehr, Special Counsel, Division of Market Regulation, Securities and Exchange Commission on August 23, 2007 (“NYSEArca e-mail”).

<sup>5</sup> See NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(b)(ii) and (c); NYSE Arca Equities Rule 8.100, Commentary .02 (b)(ii) and (c).

<sup>6</sup> See NYSE Arca Equities Rules 5.2(j)(3), Commentary .03(a)(ii) and (b); NYSE Arca Equities Rule 8.100, Commentary .03(a)(ii) and (b).

<sup>7</sup> See NYSEArca e-mail. See also NYSEArca-2007-73 (proposing to trade securities listed and/or traded on the Exchange on a UTP basis other than pursuant to Rule 19b-4(e) in all three trading sessions).

or PDR listed or traded on the Exchange pursuant to UTP must be widely disseminated during the Core Trading Session, rather than any time the security trades on the Exchange (i.e., the Opening Session and Late Trading Session). The Exchange also proposes to amend NYSE Arca Equities Rule 5.2(j)(3), Commentaries .01(c) and .02(c), and NYSE Arca Equities Rule 8.100, Commentaries .01(c) and .02(c), to clarify that the IIV must be updated during the Core Trading Session, and not both the Core Trading Sessions and the Opening Session.

The Exchange intends to distribute to its ETP Holders and make available on its Web site at [www.nyse.com](http://www.nyse.com) a Regulatory Information Bulletin titled “Exchange-Traded Funds — Extended Trading Hours” that discloses, among other things that: (1) the current underlying index value and IIV may not be updated during the Opening Session and Late Trading Session; (2) the IIV may not be updated during the Opening Session and Late Trading Session; (3) lower liquidity in the Opening Session or Late Trading Session may impact pricing; (4) higher volatility in the Opening Session or Late Trading Session may impact pricing; (5) wider spreads may occur in the Opening Session and Late Trading Session; (6) the circumstances that trigger trading halts; (7) required customer disclosures; and (8) suitability requirements. In addition, the Exchange has amended NYSE Arca Equities Rule 7.34(e) (Customer Disclosures) to require ETP Holders to disclose to customers the additional risk associated with the lack of dissemination of the index value and the IIV during extended hours trading in ETFs.<sup>8</sup>

The Exchange believes that, with this additional disclosure, it is appropriate to permit trading during all Exchange trading sessions notwithstanding the absence of

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<sup>8</sup> See Securities Exchange Act Release No. 56270 (August 15, 2007), 72 FR 47109 (August 22, 2007) (NYSEArca-2007-74).

dissemination of an updated index value or IIV during all or part of the Opening and Late Trading Sessions. In addition, the Exchange notes that NYSE Arca Equities Rules 5.2(j)(3) and 8.100 would retain the requirement that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, because of time zone differences or holidays in countries where the index component stocks trade), then the last calculated official index value must remain available throughout Exchange trading hours. Similarly, if the IIV does not change during any portion of Exchange trading hours, then the last official calculated IIV must remain available throughout the Exchange's trading hours.<sup>9</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</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 mechanism of a free and open market and a national market system.

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

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

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<sup>9</sup> See NYSE Arca Equities Rules 5.2(j)(3), Commentary .01(b)(2) and (c); 8.100, Commentary .01(b)(3) and (c).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

Written comments on the proposed rule change were neither solicited nor received.

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 reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (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](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEArca-2007-73 on the subject line.

## Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2007-73. 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 am and 3:00 pm. 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-2007-73 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Nancy M. Morris  
Secretary

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