

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56838; File No. SR-NYSEArca-2007-118)

November 26, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Amend Certain Requirements Relating to Indexes Underlying Equity Index-Linked Securities

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 November 13, 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 and II below, which items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

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) to amend certain requirements relating to indexes underlying Equity Index-Linked Securities.<sup>3</sup> 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).

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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> The Exchange defines Equity Index-Linked Securities as securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (each such index, an “Equity Reference Asset”). See NYSE Arca Equities Rule 5.2(j)(6).

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 III 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 5.2(j)(6)(B)(I)(2)(d) currently provides that each Equity Reference Asset (i) must be calculated based on either a capitalization, modified capitalization, price, equal-dollar, or modified equal-dollar weighting methodology, and (ii) if based upon the equal-dollar or modified equal-dollar weighting method, must be rebalanced at least quarterly. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(d) to delete the requirement that the Equity Reference Asset used in connection with an issuance of Equity Index-Linked Securities must be calculated based on either a capitalization, modified capitalization, price, equal-dollar, or modified equal-dollar weighting methodology. In addition, the Exchange proposes to provide that Equity Reference Assets based upon the equal-dollar or modified equal-dollar weighting method must be rebalanced at least semiannually, rather than quarterly, as is currently the case.

The Exchange states that the elimination of the limitations as to weighting methodologies permitted for Equity Reference Assets underlying Equity Index-Linked Securities would make NYSE Arca Equities Rule 5.2(j)(6) consistent with the Equity Index-Linked Securities listing standards of other national securities exchanges, such as the New York Stock Exchange LLC

(“NYSE”),<sup>4</sup> which has no such requirements. The Exchange further states that a significant number of currently existing equity indexes that utilize the equal-dollar or modified equal-dollar weighting methodology are rebalanced semiannually rather than quarterly. Because the issuer of Equity Index-Linked Securities generally licenses the right to utilize the underlying index from a third-party index sponsor, it is often not within the issuer’s control to have the index rebalanced more frequently. As such, it is not possible currently to list Equity Index-Linked Securities under NYSE Arca Equities Rule 5.2(j)(6) based on such indexes. The Exchange believes, however, that, because these types of indexes are relatively common and detailed information concerning the procedures governing the construction of the underlying index will be available to investors either in the issuer’s prospectus or on the index sponsor’s Internet Web site, it would be appropriate to allow investors to make their own decisions as to the sufficiency of a semiannual rebalancing of an equal-dollar or modified equal-dollar index underlying an issuance of Equity Index-Linked Securities. The Exchange further states that investors and issuers would benefit from NYSE Arca’s ability to list, without delay, Equity Index-Linked Securities based on a broader group of such indexes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</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, to remove impediments to and perfect the mechanism of a

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<sup>4</sup> See Section 703.22 of the NYSE Listed Company Manual.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange has neither solicited nor received written comments on 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-118 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-2007-118. 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 available publicly. All submissions should refer to File number SR-NYSEArca-2007-118 and should be submitted on or before [insert date 21 days from date of 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>7</sup> and, in particular, the requirements of Section 6 of the Act.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and

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<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

The Commission notes that the proposal to delete the requirement that the Equity Reference Asset be calculated based on certain specified methodologies would conform the Exchange's requirements to the current listing standards for Equity Index-Linked Securities of another national securities exchange.<sup>10</sup> The Commission further believes that the proposal to require Equity Reference Assets that are based on the equal-dollar or modified equal-dollar weighting methods to be rebalanced at least semiannually should benefit investors by providing a wider selection of derivative products based on such Equity Reference Assets. The Commission believes that the proposal to adjust the minimum rebalancing frequency requirement is reasonable, given the increasing number of equal-dollar or modified equal-dollar weighted indexes that are rebalanced on a semiannual-basis, and should allow for the listing and trading of certain Equity Index-Linked Securities that would otherwise not be able to be listed and traded on the Exchange.

The Commission finds good cause for approving the proposed rule change prior to the 30<sup>th</sup> day after the date of publication of the notice of filing thereof in the Federal Register. With respect to the deletion of the provision requiring Equity Reference Assets to be based on certain specified calculation methodologies, the Commission notes that it has approved the deletion of a similar requirement under NYSE listing standards for Equity Index-Linked Securities<sup>11</sup> and does not believe that this proposal raises any novel regulatory issues. With respect to the Exchange's

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<sup>10</sup> See supra note 4.

<sup>11</sup> Id.

proposal to adjust the minimum rebalancing frequency for certain Equity Reference Assets, accelerating approval of this proposal should benefit investors by providing, without undue delay, additional Equity Index-Linked Securities products for investors and fostering competition in the market for such products. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>12</sup> to approve the proposed rule change on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSEArca-2007-118) 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>14</sup>

Nancy M. Morris  
Secretary

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<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> Id.

<sup>14</sup> 17 CFR 200.30-3(a)(12).