

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56906; File No. SR-NYSEArca-2007-103)

December 5, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Initial Listing Standards for Other 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 October 3, 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. On November 29, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of and approves the proposed rule change, as modified by Amendment No. 1 thereto, 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)(1), the Exchange’s initial listing standards for “Other Securities.” The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and 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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(1), the Exchange’s initial listing standards for “Other Securities,”³ to provide for greater flexibility in the listing criteria for such securities, as set forth below. Under NYSE Arca Equities Rule 5.2(j)(1), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, warrants, contingent value rights, and unit investment trusts.⁴ The Exchange, like certain other national securities exchanges, refers to such securities as “Other Securities.” This proposed rule change is designed to generally conform to the rules of the American Stock Exchange LLC (“Amex”) relating to “Other Securities.”⁵

The introductory paragraph in NYSE Arca Equities Rule 5.2(j)(1) states that the Exchange will consider listing any security not otherwise covered by the requirements of NYSE

³ See Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998 (August 1, 1994) (SR-PSE-93-12) (approving, among other things, the initial listing standards for “Other Securities”).

⁴ NYSE Arca Equities Rule 5.2(j)(1) currently states that the Exchange will consider listing any security not otherwise covered by the requirements of NYSE Arca Equities Rules 5.2(c) through (h). See NYSE Arca Equities Rule 5.2(j)(1); see, e.g., NYSE Arca Equities Rules 5.2(c) (listing criteria for common stock); 5.2(d) (listing criteria for preferred stock and similar issues and secondary classes of common stock); 5.2(e) (listing criteria for bonds and debentures); 5.2(f) (listing criteria for warrants); 5.2(g) (listing criteria for contingent value rights); and 5.2(h) (listing criteria for unit investment trusts).

⁵ Amex’s initial listing standards for “Other Securities” are set forth in Section 107A of the Amex Company Guide. See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR-Amex-89-29) (approving the initial listing criteria for “Other Securities”).

Arca Equities Rules 5.2(c) through (h), provided the issue is suited for auction market trading.⁶ The Exchange proposes to delete the reference to the specific subsections ((c) through (h)) of NYSE Arca Equities Rule 5.2 to include all products with listing standards under such rule. The Exchange proposes this change to avoid the administrative burden of updating NYSE Arca Equities Rule 5.2(j)(1) each time a new subsection is added to NYSE Arca Equities Rule 5.2. In addition, the Exchange proposes to delete the reference to “auction market” trading to provide that an issue of “Other Securities” must simply be suited for listing and trading on the Exchange. The Exchange believes that this change would allow greater flexibility in the listing of “Other Securities,” without impacting the protection of investors.

NYSE Arca Equities Rule 5.2(j)(1)(A) currently provides that an issue of “Other Securities” must have at least one million publicly held trading units and a principal amount/market value of at least \$20 million. The Exchange proposes to add exceptions to this standard such that, if the issue is traded in \$1,000 denominations or is redeemable at the option of the holders thereof on at least a weekly basis, then no minimum number of publicly held trading units will be required. This proposed change comports to Section 107A(b) of the Amex Company Guide.⁷ The Exchange notes that, without the exception to the one million publicly held trading unit requirement, the Exchange would be unable to list issues in \$1,000 dollar denominations having a market value of less than \$1 billion. The Exchange believes that the proposed exception is a reasonable accommodation for those issuances in \$1,000 denominations.

⁶ See supra note 4.

⁷ See Section 107A(b) of the Amex Company Guide; see also Securities Exchange Act Release Nos. 56629 (October 9, 2007), 72 FR 58689 (October 16, 2007) (SR-Amex-2007-87) (approving an exception to the initial minimum public distribution listing requirement of one million trading units for certain derivative products) and 55733 (May 10, 2007), 72 FR 27602 (May 16, 2007) (SR-Amex-2007-34) (approving certain other exceptions to the initial distribution requirements for “Other Securities”).

The Exchange also proposes to reduce the minimum principal amount/market value requirement from at least \$20 million to at least \$4 million. This change corresponds to current NYSE Arca Equities Rule 5.2(j)(2)(B)(i)(c) (Equity Linked Notes) and current NYSE Arca Equities Rule 8.3(a)(3) (Listing of Currency and Index Warrants), as well as Section 107A(c) of the Amex Company Guide.⁸ The Exchange proposes this change in order conform NYSE Arca Equities Rule 5.2(j)(1) with other NYSE Arca Equities rules and similar rules of other exchanges for the same type of securities, while still protecting the interests of investors.

NYSE Arca Equities Rule 5.2(j)(1)(B) currently provides that an issue of “Other Securities” have at least 400 public beneficial holders, or if traded in \$1,000 denominations, a minimum of 100 public beneficial holders. The Exchange proposes to amend this standard to provide that: (a) if an issue is traded in \$1,000 denominations, then no minimum public holder number will be required;⁹ and (b) if the securities are redeemable at the option of the holders thereof on at least a weekly basis, then no minimum public holder number will be required.¹⁰ These proposed changes correspond to Section 107A(b) of the Amex Company Guide and are similar to the minimum distribution requirements for Index-Linked Securities of the Exchange and other national securities exchanges.¹¹ Although the 100 minimum public beneficial holder

⁸ See Section 107A(c) of the Amex Company Guide; see also Securities Exchange Act Release No. 34765 (September 30, 1994), 59 FR 51220 (October 7, 1994) (SR-Amex-94-36) (approving, among other changes, the proposal to reduce the minimum principal amount/aggregate market value requirement from \$20 million to \$4 million and to eliminate the minimum public holder requirement if the issue of “Other Securities” are traded in \$1,000 denominations).

⁹ See id.

¹⁰ See supra note 7.

¹¹ See NYSE Arca Equities Rule 5.2(j)(6)(A)(a); see also Securities Exchange Act Release No. 56593 (October 1, 2007), 72 FR 57362 (October 9, 2007) (SR-NYSEArca-2007-96) (approving amendments to the initial distribution requirements for Index-Linked

requirement would be eliminated as a result of this proposal, the Exchange would continue to require that the issue of the security have a minimum market value of \$4 million. The Exchange believes that the overall rule should ensure that issuances in \$1,000 denominations are large enough to support a sufficiently liquid market.

The Exchange believes that a weekly redemption right will ensure a strong correlation between the market price of “Other Securities” and the performance of the underlying asset, such as a single security or basket of securities and/or securities index, as holders will be unlikely to sell their securities for less than their redemption value if they have a weekly right to redeem such securities for their full value. In addition, in the case of certain “Other Securities” with a weekly redemption feature, the issuer may have the ability to issue new “Other Securities” from time to time at market prices prevailing at the time of sale, at prices related to market prices, or at negotiated prices. This feature provides a ready supply of new “Other Securities,” thereby lessening the possibility that the market price of such securities will be affected by a scarcity of available “Other Securities” for sale. The Exchange believes that it also assists in maintaining a strong correlation between the market price and the indicative value, as investors will be unlikely to pay more than the indicative value in the open market if they can acquire “Other Securities” from the issuer at that price.

The Exchange further believes that the ability to list “Other Securities” without a minimum number of publicly held trading units or public beneficial holders, subject to certain conditions, is important to the successful listing of such securities. Issuers issuing these types of “Other Securities” generally do not intend to do so by way of an underwritten offering. Rather, the distribution arrangement is analogous to that of an exchange-traded fund issuance, in that the

Securities, which are designated as “Other Securities,” and other conforming changes); see, e.g., Rule 2130 of the International Securities Exchange, LLC.

issue is launched without any significant distribution event, and the float increases over time as investors purchase additional securities from the issuer at the then indicative value. The Exchange states that investors would generally seek to purchase such securities at a point when the underlying index is at a level that they perceive as providing an attractive growth opportunity. In the context of such a distribution arrangement, it would be difficult for an issuer to guarantee its ability to sell a specific number of units on the listing date. However, the Exchange believes that this difficulty in ensuring the sale of at least one million trading units to at least 400 public holders on the listing date is not indicative of a likely long-term lack of liquidity in such securities or, for the reasons set forth herein, of a difficulty in establishing a pricing equilibrium in the securities or a successful two-sided market.

In addition, the Exchange proposes to amend the language in NYSE Arca Equities Rule 5.2(j)(1)(C) to clarify that it is the issuer of “Other Securities” that is subject to the financial requirements set forth therein. Finally, the Exchange proposes to delete NYSE Arca Equities Rule 5.2(j)(1)(D), which provides that settlements must be made in U.S. dollars for those issues with cash settlement provisions, and NYSE Arca Equities Rule 5.2(j)(1)(E), which provides that the redemption price must be at least \$3.00 per unit for those issues that contain redemption provisions. The Exchange proposes to delete these provisions in order to bring the NYSE Arca Equities rules in line with those of other exchanges and, therefore, to remain competitive in the marketplace.¹²

The Exchange believes that the proposed revisions would provide the Exchange with the flexibility necessary to evaluate the suitability of “Other Securities” for listing and trading. The

¹² See Securities Exchange Act Release No. 37165 (May 3, 1996), 61 FR 21215 (May 9, 1996) (SR-Amex-96-15) (eliminating the U.S. dollar cash settlement and minimum redemption price requirements for “Hybrid Securities” in Section 107A of the Amex Company Guide).

Exchange states that such securities have special appeal for various investors, including institutions, in particular, and believes that securities admitted to listing under NYSE Arca Equities Rule 5.2(j)(1) benefit investors by providing important investment, hedging, and market timing opportunities, as well as benefiting those issuers that offer such securities as a means of raising capital at an advantageous cost.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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 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

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

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

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. Please include File Number SR-NYSEArca-2007-103 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-2007-103. 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-2007-103 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 exchange¹⁵ and, in particular, the requirements of Section 6 of the Act.¹⁶ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁷ 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 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 believes that the proposal is reasonable and should benefit issuers and investors by allowing for the listing and trading of certain “Other Securities” that would otherwise not be able to be listed and traded on the Exchange, particularly

¹⁵ 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).

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(5).

in light of the manner in which such rule, as proposed, comports with the rules of other national securities exchanges that govern the initial listing standards for such securities.¹⁸

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the Federal Register. The Commission notes that it has approved similar proposals amend the initial distribution requirements of other national securities exchanges for “Other Securities.”¹⁹ The Commission does not believe that this proposal raises any novel regulatory issues. Accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for “Other Securities.” Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,²⁰ 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,²¹ that the

¹⁸ See supra notes 5, 7, 8, 11, and 12.

¹⁹ Id.

²⁰ 15 U.S.C. 78s(b)(2).

²¹ Id.

proposed rule change (SR-NYSEArca-2007-103), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).