

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53999; File No. SR-NYSEArca-2006-30)

June 15, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Trading of WisdomTree Exchange Traded Funds Pursuant to Unlisted Trading Privileges

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 June 15, 2006, NYSE Arca, Inc. (the “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or the “Corporation”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 and is approving the proposal on an accelerated basis.

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

Pursuant to NYSE Arca Equities Rule 5.2(j)(3), the Exchange proposes to trade, pursuant to unlisted trading privileges (“UTP”), shares (“Shares”) of the following thirty-four (34) exchange traded funds (“ETFs”), which are Investment Company Units under the Rule: (1) WisdomTree Europe Total Dividend Fund; (2) WisdomTree Europe High-Yielding Equity Fund; (3) WisdomTree Japan Total Dividend Fund; (4) WisdomTree Japan High-Yielding Equity Fund; (5) WisdomTree DIEFA Fund; (6) WisdomTree DIEFA High Yielding Equity Fund; (7) WisdomTree Pacific ex-Japan Total Dividend Fund; (8) WisdomTree Pacific ex-Japan High-Yielding Equity Fund; (9) WisdomTree International LargeCap Dividend Fund; (10)

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

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

WisdomTree International MidCap Dividend Fund; (11) WisdomTree International SmallCap Dividend Fund; (12) WisdomTree International Dividend Top 100 Fund; (13) WisdomTree Europe Dividend Top 100 Fund; (14) WisdomTree Europe SmallCap Dividend Fund; (15) WisdomTree Japan SmallCap Dividend Fund; (16) WisdomTree International Consumer Non-Cyclical Sector Fund; (17) WisdomTree International Basic Materials Sector Fund; (18) WisdomTree International Communications Sector Fund; (19) WisdomTree International Consumer Cyclical Sector Fund; (20) WisdomTree International Energy Sector Fund; (21) WisdomTree International Financial Sector Fund; (22) WisdomTree International Healthcare Sector Fund; (23) WisdomTree International Industrial Sector Fund; (24) WisdomTree International Technology Sector Fund; (25) WisdomTree International Utilities Sector Fund; (26) WisdomTree Emerging Markets Total Dividend Fund; (27) WisdomTree Emerging Markets High-Yielding Equity Fund; (28) WisdomTree Emerging Markets Dividend Top 100 Fund; (29) WisdomTree Latin America Dividend Fund; (30) WisdomTree Asia Emerging Markets Total Dividend Fund; (31) WisdomTree Asia Emerging Markets High-Yielding Equity Fund; (32) WisdomTree China Dividend Fund; (33) WisdomTree Hong Kong Dividend Fund; and (34) WisdomTree Singapore Dividend Fund (collectively, the “Funds”).<sup>3</sup>

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. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

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<sup>3</sup> “WisdomTree,” “High-Yielding Equity,” “Dividend Top 100,” “WisdomTree DIEFA,” “International Dividend Top 100,” and “Dividend Stream” are servicemarks of WisdomTree Investments, Inc.

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

1. Purpose

Pursuant to NYSE Arca Equities Rule 5.2(j)(3), the Exchange proposes to trade, pursuant to UTP, Shares of the Funds. The Funds are separate investment portfolios of the WisdomTree Trust (the “Trust”).<sup>4</sup> A rule proposal for the original listing and trading of the Shares was filed with the Commission by the New York Stock Exchange, LLC (“NYSE”)<sup>5</sup> and was approved on June 15, 2006.<sup>6</sup> The Shares are Investment Company Units under NYSE Arca Equities Rule 5.2(j)(3).

The Funds will hold certain securities (“Component Securities”) selected to correspond generally to the performance of the following indexes, respectively (the “Indexes,” “Underlying

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<sup>4</sup> The Trust will be registered under the Investment Company Act of 1940 (15 U.S.C. 80a), (the “Investment Company Act”). The Trust filed with the Commission a Registration Statement for certain Funds (specifically, numbers 1 to 15 of the Funds specified above) on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the Investment Company Act relating to the Funds (File Nos. 333-132380 and 811-21864) on March 13, 2006, and filed an amendment thereto on June 5, 2006, (“Registration Statement”). In the June 5, 2006, amendment to the Registration Statement, the Trust changed the names of the WisdomTree DIPR Fund and WisdomTree DIPR High-Yielding Equity Fund to the WisdomTree Pacific ex-Japan Total Dividend Fund and WisdomTree Pacific ex-Japan High-Yielding Equity Fund, respectively. In contrast to the Funds, which each invest in dividend-paying non-U.S. equity securities, the Trust also consists of six funds that invest in indexes comprised of dividend-paying U.S. equity securities, as described in the Registration Statement, that are not included in this rule proposal.

On April 19, 2006, the Trust filed with the Commission an Application for Orders under Sections 6(c) and 17(b) of the Investment Company Act for the purpose of exempting all of the Funds from various provisions of the Investment Company Act and the rules thereunder (“Application”).

<sup>5</sup> See File No. SR-NYSE-2006-41. (“NYSE Proposal”).

<sup>6</sup> See Securities Exchange Act Release No. 53998 (File No. SR-NYSE-2006-41) (“NYSE Order”).

Indexes” or “International Indexes”): (1) WisdomTree Europe Dividend Index; (2) WisdomTree Europe High-Yielding Equity Index; (3) WisdomTree Japan Dividend Index; (4) WisdomTree Japan High-Yielding Equity Index; (5) WisdomTree Dividend Index of Europe, Far East Asia and Australasia (referred to as the “WisdomTree DIEFA Index”); (6) WisdomTree DIEFA High-Yielding Equity Index; (7) WisdomTree Dividend Index of the Pacific Region (referred to as the “WisdomTree Pacific ex-Japan Index”); (8) WisdomTree Pacific ex-Japan High-Yielding Equity Index; (9) WisdomTree International LargeCap Dividend Index; (10) WisdomTree International MidCap Dividend Index; (11) WisdomTree International SmallCap Dividend Index; (12) WisdomTree International Dividend Top 100 Index; (13) WisdomTree Europe Dividend Top 100 Index; (14) WisdomTree Europe SmallCap Dividend Index; (15) WisdomTree Japan SmallCap Dividend Index; (16) WisdomTree International Consumer Non-Cyclical Sector Index; (17) WisdomTree International Basic Materials Sector Index; (18) WisdomTree International Communications Sector Index; (19) WisdomTree International Consumer Cyclical Sector Index; (20) WisdomTree International Energy Sector Index; (21) WisdomTree International Financial Sector Index; (22) WisdomTree International Healthcare Sector Index; (23) WisdomTree International Industrial Sector Index; (24) WisdomTree International Technology Sector Index; (25) WisdomTree International Utilities Sector Index; (26) WisdomTree Emerging Markets Dividend Index (“EMDI”); (27) WisdomTree Emerging Markets High-Yielding Equity Index (“EMDI HYE”); (28) WisdomTree Emerging Markets Dividend Top 100 Index (“EMDI Top 100”); (29) WisdomTree Latin America Dividend Index (“LDI”); (30) WisdomTree Asia Emerging Markets Dividend Index (“AEMDI”); (31) WisdomTree Asia Emerging Markets High-Yielding Equity Index (“AEMDI HYE”); (32)

WisdomTree China Dividend Index; (33) WisdomTree Hong Kong Dividend Index and (34) WisdomTree Singapore Dividend Index.

The investment objective of each Fund will be to provide investment returns that closely correspond to the price, dividend, and yield performance of its Underlying Index. In seeking to achieve the respective investment objective of each Fund, BNY Investment Advisors (the “Subadvisor”) may utilize a “replication” strategy, or a “representative sampling” strategy with respect to its Underlying Index. The Trust expects that a Fund using a replication strategy will invest in substantially all of the component securities in its portfolio in the same approximate proportions as in its Index. A Fund utilizing a representative sampling strategy generally will invest in a significant number of the component securities of its Underlying Index, but it may not invest in all of the component securities of its Underlying Index. Each Fund’s investment objectives, policies and investment strategies are fully disclosed in its relevant prospectus and statement of additional information (“SAI”).

### The Shares

A description of the operation of the Funds, the Indexes, and the Shares is set forth in the NYSE Proposal. To summarize, the Trust will issue, with respect to each Fund on a continuous offering basis, only specified large aggregations of Shares (each such aggregation a “Creation Unit”) currently expected to range from 25,000 to 200,000 Shares, as will be clearly stated in such Fund’s Prospectus.

The Funds will offer and sell Creation Units of Shares through ALPS Distributors, Inc. (the “Distributor”) on a continuous basis, by or through participants that have entered into

participant agreements (each, an “Authorized Participant”)<sup>7</sup> with the Distributor. The Funds will offer and sell Creation Units of Shares at the NAV per share next determined after receipt of an order in proper form. The NAV of the Shares will be determined as of the close of regular trading on the NYSE (the “NAV Calculation Time,” currently expected to be 4:00 p.m. Eastern Time (“ET”)) on each business day.<sup>8</sup>

Purchases and redemptions of Creation Units will be made generally by means of an in-kind tender of specified securities (“Deposit Securities”), with any cash portion of the purchase price (“Cash Requirement”) and redemption proceeds to be kept to a minimum, as described in the Registration Statement. The Deposit Securities and the Cash Requirement collectively are referred to as the “Creation Deposit.” The Cash Requirement is a cash payment designed to ensure that the NAV of a Creation Deposit is identical to the NAV of the Creation Unit it is used to purchase. The Cash Requirement will be the amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities. Authorized Participants that wish to purchase a Creation Unit must transfer the Creation Deposit to the accounts maintained at the applicable sub-custodians. Creation Units are then separable upon issuance into the Shares that will be traded on the NYSE Arca Marketplace on a UTP basis.<sup>9</sup>

The Shares will not be individually redeemable but will only be redeemable in Creation Units. To redeem, an Authorized Participant must accumulate enough Shares to constitute a

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<sup>7</sup> Authorized Participants are Depository Trust Company (“DTC”) participants that must be registered as broker-dealers under the Exchange Act (unless offering or selling shares outside the U.S. and not otherwise required to be registered).

<sup>8</sup> A “business day” with respect to each Fund is any day on which the NYSE is open for business.

<sup>9</sup> Shares are separate and distinct from the underlying securities comprising the portfolio of a Fund. The Exchange expects that the number of outstanding Shares will increase and decrease as a result of in-kind deposits and withdrawals of the underlying securities.

Creation Unit. Redemption requests must be placed by or through an Authorized Participant. Redemption requests in good order will receive the NAV next determined after the request is received. Procedures for redemptions are analogous (in reverse) to those for purchase of Creation Units, except that redemption requests are made directly to the Fund and are not made through the Distributor.

More information regarding the creation and redemption process is provided in the Funds' Registration Statement, SAI, and the NYSE Proposal.

#### Availability of Information Regarding Shares and the Underlying Indexes

In addition to the list of names and amount of each security constituting the current Deposit Securities, on each business day, the Cash Requirement effective as of the previous business day, per outstanding share of each Fund, will be made available. Every 15 seconds during the NYSE's regular trading hours (normally 9:30 a.m. to 4:15 p.m., ET), there will be disseminated through a major market vendor or on the Consolidated Tape an amount per share representing the sum of the estimated Cash Requirement effective through and including the previous business day, plus the current value of the Deposit Securities, on a per-Share basis. This amount represents the estimated NAV of a Share (sometimes referred to as the Indicative Optimized Portfolio Value ("IOPV")), and reflects changes in the currency rates between the U.S. dollar and the applicable home foreign currency. The IOPV for the Funds will be calculated by the Calculation Agent (Bloomberg L.P.).

While the IOPV is expected to be generally very close to the most recently calculated Fund NAV on a per-Fund-share basis, it is possible that the value of the portfolio of securities held by each Fund may diverge from the Deposit Securities values during the trading day. In such case, the IOPV will not precisely reflect the value of each Fund's portfolio. However,

during the trading day, the IOPV can be expected to closely approximate the value per Fund share of the portfolio of securities for each Fund, except under unusual circumstances (e.g., in the case of extensive rebalancing of multiple securities in a Fund at the same time by WisdomTree Asset Management, Inc. (the “Advisor”)).

According to the NYSE Proposal, where there is an overlap in trading hours between the foreign and U.S. markets with respect to the Funds, the Calculation Agent will update the applicable IOPV at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET to reflect price changes in the applicable foreign market or markets and convert such prices into U.S. dollars, based on the applicable currency exchange rate. At times when the foreign market or markets are closed during the hours of 9:30 a.m. to 4:15 p.m. ET, the IOPV will be updated at least every 15 seconds during these hours to reflect changes in currency exchange rates after the foreign markets close. Where there is no overlap in trading hours between the foreign and U.S. markets, then the IOPV will be updated at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET to reflect changes in currency exchange rates after the foreign markets close.

In addition, the following information will be disseminated: (i) continuously from 9:30 a.m. to 4:15 p.m. ET, last sale prices of Shares over the Consolidated Tape, and (ii) at least every 15 seconds throughout such hours, the IOPV. Comparing these two figures allows an investor to determine whether, and to what extent, Shares are selling at a premium or a discount to the NAV. The intra-day value of each Index, based on the market price of its component securities, will be updated and disseminated every 15 seconds over the Consolidated Tape or through organizations



authorized by the Calculation Agent each business day.<sup>10</sup>

Information on the Indexes will be available on the Funds' Web site ([www.wisdomtree.com](http://www.wisdomtree.com)), as will a description of the rules-based methodology. Each business day, the Web site will publish free of charge (or provide a link to another Web site that will publish free of charge) the securities in each Fund's portfolio and their respective weightings, each Fund's per share NAV and last-traded price and midpoint of the bid/ask spread as of the NAV calculation time, all as of the prior business day. The components and weightings of the Indexes, as well as each Fund's portfolio, will also be available through unaffiliated third-party major market data vendors, such as Bloomberg L.P.

All the securities included in the International Indexes will be listed on major stock exchanges in their respective countries. A Web address exists for every international exchange where the international component securities trade and "quotations" (which may be disseminated on a delayed basis or may not be updated during NYSE trading hours) can be accessed for each of such securities through such Web address. In addition, U.S. retail investors with access to the Internet can access "quotations" with respect to these foreign securities through Yahoo Finance! (<http://finance.yahoo.com>), as well as other financial Web sites. Investors with access to a Bloomberg machine can directly access "quotations" and fundamental data on these foreign securities. In addition, according to the NYSE Proposal, issuers of all component securities of

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<sup>10</sup> All Index values will be disseminated only from 9:30 a.m. to 4:15 p.m. ET. As with international indexes underlying existing ETFs, the value of each Index will be updated and disseminated every 15 seconds during these hours each business day to reflect (i) changing market prices if there is any overlap between the normal market hours in the U.S. and the market(s) covered by such Index (otherwise closing or last-sale prices in the applicable non-U.S. market are used), and (ii) changing currency exchange rates. Index values will not be disseminated from 4:15 p.m. to 8:00 p.m. ET because the all relevant international markets are closed during this time. Telephone conversation between David Strandberg, Director, Issuer Services, NYSE Arca, Inc. and Ronesha Butler, Special Counsel, Division of Market Regulation ("Divison"), Commission, on June 15, 2006.

any International Index file disclosure documents, such as prospectuses, with their respective regulators.

The Funds' Web site will be publicly accessible and free of charge to all investors and will provide a link to the Web address for every exchange on which the securities of each Index are listed. The Exchange's Web site will include a hyperlink to the Funds' Web site.

According to the NYSE Proposal, the Calculation Agent will disseminate Index information through the Bloomberg Professional Service, which is available to subscribers. Index values on a total return basis will be disseminated on an end-of-day basis through the Bloomberg Professional Service. Price index values will be calculated by the Calculation Agent and disseminated every 15 seconds from 9:30 a.m. to 4:15 p.m. ET to the Securities Industry Automation Corporation ("SIAC") so that such Index values can print to the Consolidated Tape. A "total return Index value" reflects price appreciation (or depreciation) of the underlying securities, plus reinvestment of dividends. A "price Index value" reflects only price appreciation (or depreciation) of the underlying securities.

According to the NYSE Proposal, the Calculation Agent will disseminate over the Consolidated Tape values for each Underlying Index once each trading day, based on closing prices of the securities in each such Index. Each Fund will make available on a daily basis through National Securities Clearing Corporation (the "NSCC") the names and required number of Shares of each of the Deposit Securities in a Creation Unit, as well as information regarding the Cash Requirement. The NAV for each Fund will be calculated and disseminated daily. The Funds' Web site, accessible to all investors at no charge, will publish the current version of the Prospectus and SAI, the Underlying Index for each Fund, as well as additional quantitative information that is updated on a daily basis, including daily trading volume, closing price and

closing NAV for each Fund. The NYSE will disseminate a variety of data with respect to each Fund on a daily basis. Information with respect to recent NAV, net accumulated dividend, final dividend amount to be paid, Shares outstanding, estimated cash amount, and total cash amount per Creation Unit will be made available each day, prior to 9:30 a.m. ET.

The closing prices of the Funds' Deposit Securities are readily available from, as applicable, the relevant markets, automated quotation systems, published or other public sources or on-line information services, such as Bloomberg or Reuters.

#### UTP Trading Criteria

The Exchange represents that it will cease trading the Shares of a Fund during the listing market's trading hours if: (a) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the IOPV and/or the Index value of a Fund is no longer calculated or disseminated; or (b) the listing market delists the Shares; or (c) the NAV per share is not disseminated to all market participants.<sup>11</sup> Additionally, the Exchange may cease trading the Shares of a Fund if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. ET until 8:00 p.m. ET. The Exchange

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<sup>11</sup> Telephone conversation between Glenn H. Gsell, Director, Regulation, NYSE Arca, Inc. and Ronsha Butler, Special Counsel, and Angela Muehr, Attorney, Division, Commission, on June 15, 2006.

has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be \$0.01.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities comprising an Underlying Index of a Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule<sup>12</sup> or by the halt or suspension of trading of the underlying securities. See "UTP Trading Criteria" above for specific instances when the Exchange will cease trading the Shares.

Shares will be deemed "Eligible Listed Securities," as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System ("ITS") Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

Unless exemptive or no-action relief is available, the Shares will be subject to the short sale rule, Rule 10a-1 and Regulation SHO under the Act. If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief.

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<sup>12</sup> See NYSE Arca Equities Rule 7.12.

## Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares in all trading sessions.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange is able to obtain information regarding trading in the Shares and the securities comprising the Underlying Indexes through ETP Holders in connection with such ETP Holders' proprietary or customer trades. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

## Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) Funds' calculation of NAV; (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to

every customer prior to trading the Shares;<sup>13</sup> (4) how information regarding the IOPV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

The Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds.<sup>14</sup> The Information Bulletin will also discuss any relief, if granted by the Commission or the staff, from any rules under the Securities Exchange Act of 1934.<sup>15</sup>

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also disclose that the NAV for the Shares will be calculated shortly after 4:00 p.m. ET each trading day.

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<sup>13</sup> The Exchange has proposed to amend NYSE Arca Equities Rule 9.2(a) (“Diligence as to Accounts”) to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides that ETP Holders should make reasonable efforts to obtain the customer’s financial status, tax status, investment objectives and any other information that they believe would be useful to make a recommendation. See Amendment No. 2 to SR-PCX-2005-115 (May 5, 2006).

<sup>14</sup> The Application included a request that the exemptive order also grant relief from Section 24(d) of the 1940 Act, which would permit dealers to sell Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Any Product Description used in reliance on Section 24(d) exemptive relief will comply with all representations and conditions set forth in the order.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>16</sup> in general and furthers the objectives of Section 6(b)(5),<sup>17</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Act<sup>18</sup> because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's existing rules governing the trading of equity securities.

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.

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

<sup>17</sup> 15 U.S.C. 78s(b)(5).

<sup>18</sup> 17 CFR 240.12f-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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2006-30 on the subject line.

#### Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2006-30. 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. 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-2006-30 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission’s Findings and Order Granting Accelerated Approval of Proposed Rule Change

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>19</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>20</sup> which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, 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.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,<sup>21</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>22</sup> The Commission notes that it previously approved the listing and trading

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<sup>19</sup> In approving this rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> 15 U.S.C. 78l(f).

<sup>22</sup> Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange “extends UTP.” When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

of the Shares on the NYSE.<sup>23</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>24</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. NYSEArca rules deem the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>25</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In support of the portion of the proposed rule change regarding UTP of the Shares, the Exchange has made the following representations:

1. The Exchange has appropriate rules to facilitate transactions in this type of security in all trading sessions.
2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.
3. The Exchange will distribute an Information Bulletin to its members prior to the commencement of trading of the Shares on the Exchange that explains the special characteristics and risks of trading the Shares.

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<sup>23</sup> See NYSE Order, *supra* note 6.

<sup>24</sup> 17 CFR 240.12f-5.

<sup>25</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

4. The Exchange will require a member with a customer who purchases newly issued Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading in the Shares if (i) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the IOPV and/or the Index value of a Fund is no longer calculated or disseminated, or (ii) the listing market delists the Shares, or (iii) the NAV per share is not disseminated to all market participants. Additionally, the Exchange may cease trading the Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the Federal Register. As noted previously, the Commission previously found that the listing and trading of these Shares on the NYSE is consistent with the Act.<sup>26</sup> The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

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<sup>26</sup> See NYSE Order, supra note 6.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEArca-2006-30), is hereby approved on an accelerated basis.<sup>27</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

Nancy M. Morris  
Secretary

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<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> 17 CFR 200.30-3(a)(12).