

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54231; File No. SR-NYSEArca-2006-19)

July 27, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Trading of the Index-Linked Securities of Barclays Bank PLC Linked to the Performance of the GSCI<sup>®</sup> Total Return Index 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 May 16, 2006, NYSE Arca, Inc. (“Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or “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. On July 20, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and is approving the proposal, as amended, on an accelerated basis.

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

Through NYSE Arca Equities, the Exchange proposes to amend its rules governing NYSE Arca, L.L.C. (also referred to as the “NYSE Arca Marketplace”), the equities trading facility of NYSE Arca Equities. Pursuant to NYSE Arca Equities Rule 5.2(j)(6), the Exchange proposes to trade pursuant to unlisted trading privileges (“UTP”)

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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> In Amendment No. 1, the Exchange clarified certain aspects of its proposal regarding trading rules and surveillance.

the Index-Linked Securities (“Securities”) of Barclays Bank PLC (“Barclays”), which are linked to the performance of the GSCI<sup>®</sup> Total Return Index (“Index”).

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

Pursuant to NYSE Arca Equities Rule 5.2(j)(6), the Exchange proposes to trade pursuant to UTP the Securities of Barclays, which are linked to the performance of the Index. Barclays intends to issue the Securities under the name “iPath<sup>SM</sup> Exchange-Traded Notes.” A rule proposal for the original listing and trading of the Securities was filed with the Commission by the New York Stock Exchange LLC (“NYSE”)<sup>4</sup> and approved by the Commission.<sup>5</sup> In SR-NYSEArca-2006-17, the Exchange proposed new Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) to accommodate trading in the Securities.<sup>6</sup>

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<sup>4</sup> See Securities Exchange Act Release No. 53658 (April 14, 2006), 71 FR 21064 (April 24, 2006) (SR-NYSE-2006-20) (the “NYSE Proposal”).

<sup>5</sup> See Securities Exchange Act Release No. 53849 (May 22, 2006), 71 FR 30706 (May 30, 2006) (SR-NYSE-2006-20) (the “NYSE Order”).

<sup>6</sup> See Securities Exchange Act Release No. 54189 (July 21, 2006) (SR-NYSEArca-2006-17).

(a) The Securities and the Index

(i) The Securities

In August 2005, the Commission approved NYSE Arca Equities Rule 5.2(j)(6), which provides general standards for the listing and trading of “Index-Linked Securities.”<sup>7</sup> Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. As permitted in NYSE Arca Equities Rule 5.2(j)(6), the Exchange is submitting this rule proposal to the Commission pursuant to Section 19(b)(2) of the Act, to obtain Commission approval to trade the Securities pursuant to UTP.

A description of the Securities and the Index is set forth in the NYSE Proposal.<sup>8</sup> The Securities are a series of medium-term debt securities of Barclays that provide for a cash payment at maturity or upon earlier exchange at the holder’s option, based on the performance of the Index subject to the adjustments described below.

The Securities will not have a minimum principal amount that will be repaid and, accordingly, payment on the Securities prior to or at maturity may be less than the original issue price of the Securities. In fact, the value of the Index must increase for the investor to receive at least the \$50 principal amount per Security at maturity or upon exchange or redemption. If the value of the Index decreases or does not increase sufficiently to offset the investor fee,<sup>9</sup> the investor will receive less, and possibly

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<sup>7</sup> See Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63).

<sup>8</sup> See supra note 4.

<sup>9</sup> The investor fee is equal to 0.75% per year times the principal amount of a holder’s Securities times the index factor, calculated on a daily basis in the

significantly less, than the \$50 principal amount per Security. In addition, holders of the Securities will not receive any interest payments from the Securities. The Securities will have a term of 30 years.

Holders who have not previously redeemed their Securities will receive a cash payment at maturity equal to the principal amount of their Securities times the index factor<sup>10</sup> on the Final Valuation Date<sup>11</sup> minus the investor fee on the Final Valuation Date.

Prior to maturity, holders may, subject to certain restrictions,<sup>12</sup> redeem their Securities on any Redemption Date<sup>13</sup> during the term of the Securities provided that they present at least 50,000 Securities for redemption, or they act through a broker or other financial intermediaries (such as a bank or other financial institution not required to

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following manner. The investor fee on the date of issuance of the Securities will equal zero. On each subsequent calendar day until maturity or early redemption, the investor fee will increase by an amount equal to 0.75% times the principal amount of a holder's Securities times the index factor on that day (or, if such day is not a trading day, the index factor on the immediately preceding trading day) divided by 365. The investor fee is the only fee holders will be charged in connection with their ownership of the Securities.

<sup>10</sup> The "index factor" on any given day will be equal to the closing value of the Index on that day divided by the initial index level. The index factor on the Final Valuation Date will be equal to the final index level divided by the initial index level. The "initial index level" is the closing value of the Index on the date of issuance of the Securities (the "Trade Date") and the "final index level" is the closing value of the Index on the Final Valuation Date. Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 14, 2006.

<sup>11</sup> The "Final Valuation Date" is the last Thursday before maturity of the Securities.

<sup>12</sup> Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on July 13, 2006.

<sup>13</sup> A "Redemption Date" is the third business day following a Valuation Date (other than the Final Valuation Date). A "Valuation Date" is each Thursday from the first Thursday after issuance of the Securities until the last Thursday before the Final Valuation Date inclusive (or, if such date is not a trading day, the next succeeding trading day).

register as a broker-dealer to engage in securities transactions) that are willing to bundle their Securities for redemption with other investors' Securities. If a holder chooses to redeem such holder's Securities, the holder will receive a cash payment on the applicable Redemption Date equal to the principal amount of such holder's Securities times the index factor on the applicable Valuation Date minus the investor fee on the applicable Valuation Date. To redeem their Securities, holders must instruct their broker or other person through whom they hold their Securities to follow certain procedures as described in the NYSE Proposal.<sup>14</sup>

If an event of default occurs and the maturity of the Securities is accelerated, Barclays will pay the default amount in respect of the principal of the Securities at maturity. More information regarding default procedures, including a quotation period and an objection period, is set forth in the NYSE Proposal.

(ii) The Index

The Index was established in May 1991 and is designed to be a diversified benchmark for physical commodities as an asset class. The Index reflects the excess returns that are potentially available through an unleveraged investment in the contracts comprising the GSCI<sup>®</sup> plus the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.<sup>15</sup> The value of the Index, on

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<sup>14</sup> If holders elect to redeem their Securities, Barclays may request that Barclays Capital Inc. (a broker-dealer) purchase the Securities for the cash amount that would otherwise have been payable by Barclays upon redemption. In this case, Barclays will remain obligated to redeem the Securities if Barclays Capital Inc. fails to purchase the Securities. Any Securities purchased by Barclays Capital Inc. may remain outstanding.

<sup>15</sup> The Treasury Bill rate of interest used for purposes of calculating the index on any day is the 91-day auction high rate for U.S. Treasury Bills, as reported on

any given day, reflects: (i) the price levels of the contracts included in the GSCI<sup>®</sup> (which represents the value of the GSCI<sup>®</sup>); (ii) the “contract daily return,” which is the percentage change in the total dollar weight of the GSCI<sup>®</sup> from the previous day to the current day; and (iii) the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.

The GSCI,<sup>®</sup> upon which the Index is based, is a proprietary index on a production-weighted basket of futures contracts on physical commodities traded on trading facilities in major industrialized countries. The value of the GSCI<sup>®</sup> has been normalized such that its hypothetical level on January 2, 1970 was 100. Futures contracts on the GSCI<sup>®</sup>, and options on such futures contracts, are currently listed for trading on the Chicago Mercantile Exchange. More information regarding the operation, calculation methodology, weighting, and historical performance of the Index is set forth in the NYSE Proposal.

(b) Dissemination and Availability of Information

(i) The Intraday Indicative Value

According to the NYSE Proposal, an “Intraday Indicative Value” (or “IIV”) meant to approximate the intrinsic economic value of the Securities will be calculated and published via the facilities of the Consolidated Tape Association (“CTA”) at least every 15 seconds from 9:30 a.m. to 4:00 p.m. Eastern Time (“ET”) on each day on which the Securities are traded on the NYSE.<sup>16</sup> Additionally, Barclays or an affiliate will calculate and publish the closing IIV of the Securities on each trading day at

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Telerate page 56, or any successor page, on the most recent of the weekly auction dates prior to such day.

<sup>16</sup> The IIV calculation will be provided for reference purposes only.

[www.ipathetn.com](http://www.ipathetn.com). In connection with the Securities, the term “IIV” refers to the value at a given time determined based on the following equation:  $IIV = \text{Principal Amount per Unit } (\$50) \text{ multiplied by } (\text{Current Index Level divided by Initial Index Level})^{17} \text{ minus Current Investor Fee.}^{18}$

The IIV will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and 4:00 p.m. ET. The value of the Securities may accordingly be influenced by non-concurrent trading hours between the Exchange and the various futures exchanges on which the futures contracts based on the Index commodities are traded.

While the market for futures trading for each of the Index commodities is open, the IIV can be expected to closely approximate the redemption value of the Securities. However, during NYSE Arca Marketplace trading hours when the futures contracts have ceased trading, spreads and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Securities and their redemption value. The IIV should not be viewed as a real time update of the redemption value.

(ii) The Index

According to the NYSE Proposal, the Index Sponsor makes the official calculations of the GSCI<sup>®</sup>. At present, this calculation is performed continuously and is reported on Reuters page GSCI<sup>®</sup> (or any successor or replacement page) and is updated

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<sup>17</sup> The Current Index Level is the most recent published level of the Index as reported by the Index Sponsor, whereas the Initial Index Level is the Index level on the initial trade date for the Securities.

<sup>18</sup> The Current Investor Fee is the most recent daily calculation of the investor fee with respect to the Securities, determined as described above (which, during any trading day, will be the investor fee determined on the preceding calendar day).

on Reuters<sup>19</sup> at least every 15 seconds<sup>20</sup> during business hours on each day on which the offices of the Index Sponsor in New York City are open for business (a “GSCI Business Day”).<sup>21</sup> The settlement price for the Index is also reported on Reuters page GSCI® (or any successor or replacement page) on each GSCI Business Day between 4:00 p.m. and 6:00 p.m., New York time.

(c) UTP Trading Criteria

The Exchange will cease trading in the Securities if: (1) the listing market stops trading the Securities because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the IIV or the value of the underlying Index is no longer available on at least a 15 second delayed basis; or (2) the listing market delists the

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<sup>19</sup> The intraday information with respect to the Index reported on Reuters is derived solely from trading prices on the principal trading markets for the various Index components. For example, the Index currently includes contracts traded on the Intercontinental Exchange (formerly known as the International Petroleum Exchange, which now operates its futures business through ICE Futures) and the London Metal Exchange (“LME”), both of which are located in London and consequently have trading days that end several hours before those of the U.S.-based markets on which the rest of the Index components are traded. During the portion of the New York trading day when ICE Futures and LME are closed, the last reported prices for Index Components traded on ICE Futures or LME are used to calculate the intraday Index information disseminated on Reuters.

<sup>20</sup> Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 27, 2006 (clarifying that the Index value will be disseminated at least every 15 seconds, not every 3 minutes, during the time the Securities trade on the Exchange).

<sup>21</sup> NYSE, as the listing exchange, will not permit trading in the Securities if certain information about the Index value is not disseminated on, for example, a date that is not a GSCI Business Day. In such event, NYSE Arca would not permit trading in the Securities. See supra.



Securities.<sup>22</sup> In the event that the Exchange is open for business on a day that is not a GSCI Business Day, the Exchange will not permit trading of the Securities on that day. Additionally, the Exchange may cease trading the Securities if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(d) Trading Rules

The Exchange deems the Securities to be equity securities, thus rendering trading in the Securities subject to the Exchange's rules governing the trading of equity securities. Trading in the Securities on the NYSE Arca Marketplace will occur from 4:00 a.m. to 8:00 p.m. ET in accordance with NYSE Arca Equities Rule 7.34(a).<sup>23</sup> The Exchange has appropriate rules to facilitate transactions in the Securities during all trading sessions. The minimum trading increment for Securities on the Exchange will be \$0.01.

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<sup>22</sup> Email between Janet Kissane, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, dated July 31, 2006 (clarifying that the Securities will cease trading during all trading hours).

<sup>23</sup> During all NYSE Arca Equities trading sessions, the Exchange represents that if the official Index Sponsor calculates an updated Index value, then such value will be updated and disseminated at least every 15 seconds during such trading session, and always will be so during the Exchange's core trading session (although during this session, the Exchange may rely on the listing exchange to monitor such calculation and dissemination). The Exchange represents that the official Index Sponsor calculates and disseminates the Index value from 8:00 a.m. to 4:00 p.m. ET. Because this product is not in continuous distribution, an IIV is not required to be disseminated at least every 15 seconds in all trading sessions; however, because of the weekly redemption process for this product, such dissemination of the IIV is required during the Exchange's core trading session. The Exchange may rely on the listing market to monitor such dissemination of the IIV during the Exchange's core trading session. Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2006.

Further, Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Securities to facilitate surveillance.<sup>24</sup> Commentary .01(b)-(c) to NYSE Arca Equities Rule 5.2(j)(6) will require that the ETP Holder acting as a registered Market Maker in the Securities provide the Exchange with necessary information relating to its trading in the Index components, the commodities underlying the Index components, or options, futures or options on futures on the Index, or any other derivatives (collectively, “derivative instruments”) based on the Index or based on any Index component or any physical commodity underlying an Index component. Commentary .01(d) to NYSE Arca Equities Rule 5.2(j)(6) will prohibit the ETP Holder acting as a registered Market Maker in the Securities from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component (including the Securities). In addition, Commentary .01(a) to NYSE Arca Equities Rule 5.2(j)(6) will prohibit the ETP Holder acting as a registered Market Maker in the Securities from being affiliated with a market maker in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

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<sup>24</sup> See Securities Exchange Act Release No. 54189 (July 21, 2006) (SR-NYSEArca-2006-17).

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Securities. Trading in the Securities may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Securities inadvisable. These may include: (1) the extent to which trading is not occurring in the Index components or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Securities will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange’s “circuit breaker” rule<sup>25</sup> or by the halt or suspension of the trading of the Index components.<sup>26</sup>

The Securities 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.

(e) Surveillance

The Exchange’s surveillance procedures will incorporate and rely upon existing Exchange surveillance procedures governing equities. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Securities in all trading sessions and to detect violations of Exchange rules, thereby deterring manipulation.

The Exchange’s current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance

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<sup>25</sup> See NYSE Arca Equities Rule 7.12.

<sup>26</sup> See “UTP Trading Criteria” above for specific instances when the Exchange will cease trading the Securities.

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 Securities and the Index components through ETP Holders in connection with such ETP Holders' proprietary or customer trades which they affect on any relevant market. In addition, with regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange ("NYMEX"), the Kansas City Board of Trade, ICE Futures, and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components are traded are members of the Intermarket Surveillance Group ("ISG"), and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange.

(f) 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 Securities. Specifically, the Information Bulletin will discuss the following: (1) the procedures for redemptions of Securities (and that Securities are not individually redeemable but are redeemable only in aggregations of at least 50,000 Securities); (2) NYSE Arca Equities Rule 9.2(a),<sup>27</sup> which imposes a duty of due diligence on its ETP

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<sup>27</sup> The Exchange recently amended 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

Holders to learn the essential facts relating to every customer prior to trading the Securities; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Securities prior to or concurrently with the confirmation of a transaction; and (5) trading information.

The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, and that the Commission has no jurisdiction over the trading of physical commodities such as aluminum, gold, crude oil, heating oil, corn, and wheat, or the futures contracts on which the value of the Securities is based.

The Information Bulletin will also discuss terms of no-action or exemptive relief by the Commission staff in connection with the Securities under the Act.

## 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the consistent with the requirements under Section 6(b)(5)<sup>28</sup> that an exchange have rules that are 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 transaction in securities, to remove impediments and

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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 prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders should make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives and any other information that they believe would be useful to make a recommendation. See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR-PCX-2005-115).

<sup>28</sup>

15 U.S.C. 78s(b)(5).

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>29</sup> because it deems the Securities to be equity securities, thus rendering the Securities subject to the Exchange's rules governing the trading of equity securities.<sup>30</sup>

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.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

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<sup>29</sup> 17 CFR 240.12f-5.

<sup>30</sup> Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2006 (the Exchange requested that the Commission delete the word "existing" to clarify that the Securities will be subject to all applicable Exchange rules governing the trading of equity securities for the Securities).

- 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-2006-19 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-2006-19. 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 offices 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-2006-19 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, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>31</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>32</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>33</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>34</sup> The Commission notes that it previously approved the listing and trading of the Securities on the NYSE.<sup>35</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>36</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or

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<sup>31</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>32</sup> 15 U.S.C. 78f(b)(5).

<sup>33</sup> 15 U.S.C. 78l(f).

<sup>34</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.

<sup>35</sup> See NYSE Order, supra note 5.

<sup>36</sup> 17 CFR 240.12f-5.



rules providing for transactions in the class or type of security to which the exchange extends UTP. NYSE Arca Equities rules deem the Securities to be equity securities, thus trading in the Securities will be subject to the Exchange's rules governing the trading of equity securities and the specific rules set forth herein for this product class.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>37</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 Securities, the Exchange has made the following representations:

1. NYSE Arca Equities has appropriate rules to facilitate transactions in this type of security in all trading sessions.
2. NYSE Arca Equities surveillance procedures are adequate to properly monitor the trading of the Securities on the Exchange.
3. NYSE Arca Equities will distribute an Information Bulletin to its members prior to the commencement of trading of the Securities on the Exchange that explains the terms, characteristics, and risks of trading such securities.
4. NYSE Arca Equities will require a member with a customer who purchases newly issued Securities on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.

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<sup>37</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

5. The Exchange will cease trading in the Securities if: (1) the primary market stops trading the securities because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the updated IIV or Index value are not disseminated at least every 15 seconds; or (2) if such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable; or (3) the primary market delists the Securities.

This approval order is conditioned on NYSE Arca Equities' adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, 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 Securities on the NYSE is consistent with the Act.<sup>38</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 Securities.

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<sup>38</sup> See NYSE Order, supra note 5.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (NYSEArca-2006-19), as amended, is hereby approved on an accelerated basis.<sup>39</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>40</sup>

Nancy M. Morris  
Secretary

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<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> 17 CFR 200.30-3(a)(12).