

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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-ISE-2007-80 and should be submitted on or before November 7, 2007.

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

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>5</sup> and, in particular, with the requirements of section 6(b) of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds that the Exchange's proposal is consistent with section 6(b)(5) of the Act,<sup>7</sup> which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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. The proposal addresses circumstances where an equity option class is ineligible for initial listing on the Exchange, even though it meets the Exchange's continued listing requirements and is trading on another options exchange. Therefore, the proposed rule change should help promote competition among the exchanges that list and trade options. The Commission notes, and the Exchange represents, that the procedures currently employed to determine whether a particular underlying security meets the initial

equity option listing criteria will similarly be applied by the Exchange when determining whether an underlying security meets the its continued listing criteria.

The Commission finds good cause, pursuant to Section 19(b)(2)(B) of the Act,<sup>8</sup> for approving the proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission notes that the proposed rule change is substantially identical to the proposed rule change submitted by the American Stock Exchange LLC,<sup>9</sup> which was previously approved by the Commission after notice and comment, and therefore does not raise any new regulatory issues.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>10</sup> that the proposed rule change (SR-ISE-2007-80), as modified by Amendment No. 1, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56637; File No. SR-NYSEArca-2007-92]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, Relating to Generic Listing and Trading Rules for Index-Linked Securities

October 10, 2007.

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 September 11, 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")

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>9</sup> See Securities Exchange Act Release No. 56598 (October 2, 2007) (SR-Amex-2007-48).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

the proposed rule change as described in Items I and II below, which items have been substantially prepared by the Exchange. On September 25, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On October 3, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. On October 5, 2007, the Exchange filed Amendment No. 3 to the proposed rule change. This order provides notice of, and approves, the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 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)(6) to: (i) Include generic listing and trading rules for commodity-linked securities ("Commodity-Linked Securities") and currency-linked securities ("Currency-Linked Securities" and, together with Equity Index-Linked Securities<sup>3</sup> and Commodity-Linked Securities, collectively, "Index-Linked Securities"); (ii) make conforming changes to Commentary .01 of NYSE Arca Equities Rule 5.2(j)(6) and extend its application to Currency-Linked Securities; and (iii) make minor changes to the existing provisions of NYSE Arca Equities Rule 5.2(j)(6) to conform the rule with changes to defined terms, changes to certain internal cross-references, and the generic listing and trading standards for Index-Linked Securities of the New York Stock Exchange LLC ("NYSE").<sup>4</sup> The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://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 in Item III below. The

<sup>3</sup> Currently, NYSE Arca Equities Rule 5.2(j)(6) relates only to the listing and trading of securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities, also known as "Index-Linked Securities." See NYSE Arca Equities Rule 5.2(j)(6). For purposes of the proposed rule change, however, the Exchange seeks to modify the name of such securities to be "Equity Index-Linked Securities," among other proposed changes described herein.

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

<sup>5</sup> In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

NYSE Arca proposes to amend NYSE Arca Equities Rule 5.2(j)(6) to: (i) Include provisions for the listing and trading of Commodity-Linked Securities and Currency-Linked Securities pursuant to Rule 19b-4(e) under the Act;<sup>5</sup> (ii) make conforming changes to Commentary .01 of NYSE Arca Equities Rule 5.2(j)(6) and extend its application to Currency-Linked Securities; and (iii) make minor changes to the existing provisions of NYSE Arca Equities Rule 5.2(j)(6) to conform the rule with changes to defined terms, changes to certain internal cross references, and NYSE's generic listing and trading rules for Index-Linked Securities.

*Generic Listing Standards:* Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to Rule 19b-4(c)(1),<sup>6</sup> if the Commission has approved, pursuant to section 19(b) of the Act,<sup>7</sup> the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. As a result, the Exchange seeks Commission approval to adopt generic listing standards under amended NYSE Arca Equities Rule 5.2(j)(6), pursuant to which it would be able to continue to list and trade Equity Index-Linked Securities and list and trade Commodity-Linked Securities and Currency-Linked Securities, in each case, without individual Commission approval of each such product. The Exchange represents that any securities it lists and/or trades pursuant to new NYSE Arca Equities Rule 5.2(j)(6), as amended, will satisfy the standards set forth therein. The Exchange states that, within five business days after commencement of trading of an Index-Linked Security pursuant to proposed NYSE Arca Equities Rule 5.2(j)(6), the Exchange will file a Form 19b-4(e), in accordance with Rule 19b-4(e)(2)(ii) under the Act.<sup>8</sup>

*Index-Linked Securities:* Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments, or market indexes of the foregoing. Equity 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 of equity securities ("Equity Reference Asset"). Commodity-Linked Securities are proposed to be defined as securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in NYSE Arca Equities Rule 8.201) or a basket or index of any of the foregoing ("Commodity Reference Asset"). Finally, Currency-Linked Securities are proposed to be defined as securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in NYSE Arca Equities Rule 8.202) or a basket or index of any of the foregoing ("Currency Reference Asset," and together with Equity Reference Asset and Commodity Reference Asset, collectively, "Reference Asset").<sup>9</sup>

Index-Linked Securities are the non-convertible debt of an issuer with a term of at least one year, but not greater than thirty years. Index-Linked Securities may or may not make interest payments based on dividends or other cash distributions paid on the components comprising the Reference Asset to the holder during the term. In addition, each Index-Linked Security will trade as a single, Exchange-listed security.

The Exchange represents that the proposed generic listing standards to list and trade Index-Linked Securities pursuant to Rule 19b-4(e) under the Act will not apply if the payment at maturity is based on a multiple of the negative performance of the applicable Reference Asset. In addition, an Index-Linked Security may or may not provide "principal protection," *i.e.*, a minimum

guaranteed amount to be repaid.<sup>10</sup> The Exchange further states that Index-Linked Securities do not give the holder any right to receive a portfolio component(s), dividend payments, or any other ownership right or interest in the portfolio or component(s) comprising the applicable Reference Asset. Pursuant to amended NYSE Arca Equities Rule 5.2(j)(6), the current or composite value of a Reference Asset, as applicable, will be widely disseminated at least every 15 seconds during the trading day.<sup>11</sup>

*Proposed Standards for All Index-Linked Securities:* With respect to the current requirements applicable to all Index-Linked Securities, the Exchange proposes to amend the provision related to the required minimum tangible net worth<sup>12</sup> of an issuer of Index-Linked Securities such that, if the Index-Linked Securities are fully and unconditionally guaranteed by an affiliate of the issuer, the Exchange would rely on such affiliate's tangible net worth for purposes of this requirement and include in its calculation all Index-Linked Securities that are fully and unconditionally guaranteed by such affiliate. In addition, for purposes of this requirement, government issuers and supranational entities would be evaluated on a case-by-case basis.

If the Reference Asset of an Index-Linked Security listed pursuant to proposed NYSE Arca Equities 5.2(j)(6) is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer is required to erect a "firewall" around the personnel responsible for the maintenance of such index or who have access to information concerning changes and adjustments to such index, and a third party who is not a broker-dealer would be required to calculate the value of such index. In addition, any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator, or that makes decisions regarding the index or portfolio composition, methodology, and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information

<sup>10</sup> Some Index-Linked Securities may provide for "contingent" protection of the principal amount, whereby principal protection may not apply if the Reference Asset at any point in time during the term of such securities reaches a certain pre-determined level.

<sup>11</sup> See *infra* note 15.

<sup>12</sup> See proposed NYSE Arca Equities Rule 5.2(j)(6)(A)(e). The Exchange defines "tangible net worth" as total assets, Less intangible assets and total liabilities. Intangibles include non-material benefits, such as goodwill, patents, copyrights, and trademarks.

<sup>5</sup> 17 CFR 240.19b-4(e).

<sup>6</sup> 17 CFR 240.19b-4(c)(1).

<sup>7</sup> 15 U.S.C. 78s(b).

<sup>8</sup> See 17 CFR 240.19b-4(e)(2)(ii); 17 CFR 249.820.

<sup>9</sup> The Exchange understands that the holder of an Index-Linked Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying component assets of a Reference Asset. For example, an Index-Linked Security may be subject to a "cap" on the maximum principal amount to be repaid to holders, or a "floor" on the minimum principal amount to be repaid to holders, at maturity.

regarding the applicable index or portfolio.<sup>13</sup>

Index-Linked Securities and transactions therein will be subject to all Exchange rules governing the trading of equity securities, including its equity margin rules.<sup>14</sup> The Exchange represents that Index-Linked Securities will trade during all three trading sessions pursuant to NYSE Arca Equities Rule 7.34(a).<sup>15</sup>

With respect to trading halts,<sup>16</sup> in the case of Commodity-or Currency-Linked Securities, if the indicative value or the Commodity Reference Asset value or Currency Reference Asset value, as the case may be, applicable to a series of such securities is not being disseminated as required, or, in the case of Equity Index-Linked Securities, if the value of the underlying index is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The Exchange will implement written surveillance procedures for Index-Linked Securities, including adequate comprehensive surveillance sharing agreements with markets trading in non-U.S. components, as applicable.<sup>17</sup> The Exchange states that it intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in Index-Linked Securities. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of such securities in all trading sessions and to deter and detect violations of Exchange rules. The Exchange's current trading surveillance focuses on detecting when securities trade 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 states that it may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliate members of ISG. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

*Equity Index-Linked Securities:* Equity Index-Linked Securities would be subject to the criteria in amended NYSE Arca Equities Rule 5.2(j)(6)(B)(I) for initial and continued listing. The Exchange proposes to make certain revisions to this section to conform to NYSE's current generic listing and trading standards for Index-Linked Securities and changes with respect to certain defined terms and internal cross references. Specifically, the Exchange proposes to make the following notable modifications:

- The minimum of ten component securities comprising the Equity Reference Asset must include different issuers.<sup>18</sup>
- The index or indexes to which the security is linked shall have been reviewed and approved for the trading of investment company units or options or other derivatives by the Commission under section 19(b)(2) of the Act and rules thereunder.<sup>19</sup>
- All component securities shall be either (A) securities (other than foreign country securities and American Depositary Receipts ("ADRs")) that are (i) Issued by an Act reporting company that is listed on a national securities exchange and (ii) an "NMS stock" (as defined in Rule 600 of Regulation NMS)<sup>20</sup> or (B) foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not ISG members or parties to comprehensive surveillance sharing agreements with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the index.<sup>21</sup>

*Commodity-Linked Securities:* The Exchange proposes to incorporate generic listing and trading standards for Commodity-Linked Securities.

Commodity-Linked Securities will be subject to the criteria in proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(II) for initial and continued listing. Each issue of Commodity-Linked Securities must meet one of the initial listing standards set forth below:

- The Commodity Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Based Trust Shares or options or other derivatives by the Commission under section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- The pricing information for components of a Commodity Reference Asset must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. A Commodity Reference Asset may include components representing not more than 10% of the dollar weight of such Commodity Reference Asset for which the pricing information is derived from markets that do not meet the foregoing requirements; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Commodity Reference Asset.<sup>22</sup>

In addition, the issue must meet both of the following initial listing criteria:

- The value of the Commodity Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34);<sup>23</sup> and
- In the case of Commodity-Linked Securities that are periodically redeemable, the indicative value of such securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

The Exchange will commence delisting or removal proceedings if any of the foregoing initial listing criteria are not continuously maintained. The

<sup>13</sup> See proposed NYSE Arca Equities Rule 5.2(j)(6)(C). The Exchange states that NYSE Arca Equities Rule 7.26 (Limitations on Dealings), which imposes certain restrictions on ETP Holders, would apply to the trading of Commodity-Linked and Currency-Linked Securities. See NYSE Arca Equities Rule 7.26; NYSE Arca Equities Rule 1.1 (defining ETP Holder).

<sup>14</sup> See proposed NYSE Arca Equities Rule 5.2(j)(6)(D).

<sup>15</sup> Pursuant to NYSE Arca Rule 7.34(a), NYSE Arca Marketplace, which is the equities trading facility of NYSE Arca Equities, generally has three trading sessions each day the Exchange is open for business: (1) an Opening Session (4 a.m. to 9:30 a.m. Eastern Time or "ET"), during which the Opening Auction and the Market Order Auction occur; (2) a Core Trading Session (9:30 a.m. to 4:00 p.m. ET); and (3) a Late Trading Session (4 p.m. to 8 p.m. ET).

<sup>16</sup> See proposed NYSE Arca Equities Rule 5.2(j)(6)(E).

<sup>17</sup> See proposed NYSE Arca Equities Rule 5.2(j)(6)(F).

<sup>18</sup> See proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(a).

<sup>19</sup> See proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(1).

<sup>20</sup> See 17 CFR 242.600(b)(47).

<sup>21</sup> See proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(vii).

<sup>22</sup> See Securities Exchange Act Release No. 56525 (September 25, 2007), 72 FR 56114 (October 2, 2007) (SR-NYSE-2007-76) (approving the adoption of certain exceptions to the pricing information requirements with respect to components underlying Commodity-Linked Securities and Currency-Linked Securities).

<sup>23</sup> See *supra* note 15.

Exchange will also commence delisting or removal proceedings:

- If the aggregate market value or the principal amount of the Commodity-Linked Securities publicly held is less than \$400,000;

- If the value of the Commodity Reference Asset is no longer calculated or available and a new Commodity Reference Asset is substituted, unless the new Commodity Reference Asset meets the requirements of proposed NYSE Arca Equities Rule 5.2(j)(6); or

- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

*Currency-Linked Securities:* The Exchange also proposes to incorporate generic listing and trading standards for Currency-Linked Securities. Currency-Linked Securities will be subject to the criteria in proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(III) for initial and continued listing. Currency-Linked Securities must meet one of the initial listing standards set forth below:

- The Currency Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Currency Trust Shares or options or other derivatives by the Commission under section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or

- The pricing information for each component of a Currency Reference Asset must be (x) the generally accepted spot price for the currency exchange rate in question or (y) derived from a market which (i) is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement and (ii) is the pricing source for components of a Currency Reference Asset that has previously been approved by the Commission. A Currency Reference Asset may include components representing not more than 10% the dollar weight of such Currency Reference Asset for which the pricing information is derived from markets that do not meet the requirements of either (x) or (y) above; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Currency Reference Asset.<sup>24</sup>

In addition, the issue must meet both of the following initial listing criteria:

- The value of the Currency Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a

15-second basis during the Core Trading Session;<sup>25</sup> and

- In the case of Currency-Linked Securities that are periodically redeemable, the indicative value of such securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

The Exchange will commence delisting or removal proceedings if any of the foregoing initial listing criteria are not continuously maintained. The Exchange will also commence delisting or removal proceedings under any of the following circumstances:

- If the aggregate market value or the principal amount of the Currency-Linked Securities publicly held is less than \$400,000;

- If the value of the Currency Reference Asset is no longer calculated or available and a new Currency Reference Asset is substituted, unless the new Currency Reference Asset meets the requirements of proposed NYSE Arca Equities Rule 5.2(j)(6); or

- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

*Information Circular:* Upon evaluating the nature and complexity of each Index-Linked Security, the Exchange represents that it will prepare and distribute, if appropriate, an Information Circular to ETP Holders describing the Index-Linked Securities. Accordingly, the particular structure and corresponding risks of an Index-Linked Security traded on the Exchange will be highlighted and disclosed. In particular, the Information Circular will discuss the risks involved in trading Index-Linked Securities during the Opening and Late Trading Sessions when an updated indicative value, if required, is not calculated or publicly disseminated.<sup>26</sup> The Information Circular will also set forth the Exchange's suitability rule that requires ETP Holders recommending a transaction in Index-Linked Securities:

<sup>25</sup> See *supra* note 15.

<sup>26</sup> Specifically, the Exchange requires ETP Holders to disclose to their non-ETP Holder customers that an updated Reference Asset value or indicative value may not be calculated or publicly disseminated during extended trading hours. Because the indicative value is not calculated or widely disseminated during the Opening and Late Trading Sessions, an investor who is unable to calculate an implied value for a derivative securities product in those sessions may be at a disadvantage to market professionals. The Exchange believes that requiring ETP Holders to disclose this risk to non-ETP Holders will facilitate informed participation in extended hours trading. See Securities Exchange Act Release No. 56270 (August 15, 2007), 72 FR 47109 (August 22, 2007) (SR-NYSEArca-2007-74).

(1) To determine that such transaction is suitable for the customer (NYSE Arca Equities Rule 9.2(a)); and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such transaction. In addition, the Information Circular will reference the requirement that ETP Holders must deliver a prospectus to investors purchasing newly issued Index-Linked Securities prior to or concurrently with the confirmation of a transaction. The Information Circular will note that all of the Exchange's equity trading rules will be applicable to trading in Index-Linked Securities.

*Commentary .01:* The Exchange also proposes to make conforming changes to Commentary .01 of NYSE Arca Equities Rule 5.2(j)(6) to extend the application of Currency-Linked Securities therein.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>27</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>28</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a 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.

## 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:

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

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> See *supra* note 22.

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-92 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-2007-92. 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 a.m. and 3 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-2007-92 and should be submitted on or before November 6, 2007.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>29</sup> and, in

particular, the requirements of section 6 of the Act.<sup>30</sup> Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>31</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and 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.

*Generic Listing Standards for Commodity-Linked and Currency-Linked Securities:* To list and trade Commodity-Linked and Currency-Linked Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act<sup>32</sup> and Rule 19b-4 thereunder.<sup>33</sup> However, Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) under the Act if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of Commodity-Linked Securities and Currency-Linked Securities pursuant to Rule 19b-4(e) fulfill these requirements.

The Exchange's ability to rely on Rule 19b-4(e) to list and trade Commodity-Linked and Currency-Linked Securities that meet the applicable requirements of proposed NYSE Arca Equities Rule 5.2(j)(6) should reduce the time frame for bringing these securities to the market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly.

The Commission has previously approved generic listing standards for such securities that are substantially similar to the Exchange's current proposal.<sup>34</sup> The Commission believes

that the proposed generic listing standards for Commodity-Linked and Currency-Linked Securities, in addition to the proposed changes to the generic listing standards applicable to all Index-Linked Securities and Equity Index-Linked Securities, should fulfill the intended objective of Rule 19b-4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.<sup>35</sup>

*Listing and Trading Index-Linked Securities:* Taken together, the Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Index-Linked Securities listed pursuant to Rule 19b-4(e). All such securities listed under their respective generic standards will be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities, including the equity margin rules, on the Exchange.

As set forth more fully above, the Exchange seeks to conform the minimum tangible net worth requirements for each issuer of Index-Linked Securities and the specific listing and trading requirements related to Equity Index-Linked Securities to the standards similarly adopted by other national securities exchanges.<sup>36</sup> In addition, with respect to Commodity-Linked and Currency-Linked Securities, the Exchange's proposal requires that: (1) The applicable Reference Assets underlying such securities must have been reviewed and approved for trading by the Commission; or (2) the pricing information with respect to the underlying components representing at least 90% of the dollar weight of the applicable Reference Asset must have been derived from (a) A market which is an ISG member or affiliate or with which the Exchange has in place a comprehensive surveillance sharing agreement, or (b) certain other required sources. An underlying component for which the pricing information does not comply with the foregoing requirements cannot exceed 7% of the dollar weight

Linked Securities and Currency-Linked Securities); and 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR-NYSE-2007-27) (approving generic listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities).

<sup>35</sup> The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular index-linked product.

<sup>36</sup> See *supra* note 34.

<sup>30</sup> 15 U.S.C. 78f.

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

<sup>32</sup> 15 U.S.C. 78s(b)(1).

<sup>33</sup> 17 CFR 240.19b-4.

<sup>34</sup> See Securities Exchange Act Release Nos. 55794 (May 22, 2007), 72 FR 29558 (May 29, 2007) (SR-Amex-2007-45) (approving, among other things, generic listing standards for Commodity-

<sup>29</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

of the applicable Reference Asset. The Commission believes that these requirements are designed to ensure that the trading markets for the underlying components are adequately capitalized and sufficiently liquid and should minimize the potential for manipulation and permit the Exchange to identify potential trading and other violations of its rules. The Commission notes that such requirements should also contribute to the transparency of the Commodity Reference Asset or Currency Reference Asset, as the case may be. By requiring at least 90% of the pricing information for the relevant components to be readily available, the proposed listing standards of NYSE Arca Equities 5.2(j)(6) should help ensure a fair and orderly market for Commodity-Linked and Currency-Linked Securities listed and traded pursuant to Rule 19b-4(e).

The Exchange has also developed delisting criteria that would permit it to suspend trading in Index-Linked Securities in circumstances that make further dealings in such products inadvisable. The Commission believes that the delisting criteria should help ensure that a minimum level of liquidity exists for each such security to allow for the maintenance of fair and orderly markets. Also, in the event that the value of the underlying index for Equity Index-Linked Securities, or the applicable Commodity Reference Asset or Currency Reference Asset or, in the case of Commodity-Linked and Currency-Linked Securities that are periodically redeemable, the corresponding indicative value, is no longer calculated and widely disseminated on at least a 15-second basis, the Exchange may halt trading during the day on which the interruption first occurs; however, if the interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption and will commence delisting proceedings.

*Surveillance:* The Commission notes that any Index-Linked Securities approved for listing and trading would be subject to the Exchange's existing surveillance procedures governing derivative products, as well as procedures the Exchange represents are adequate to properly monitor the trading in such securities during all Exchange trading sessions. The Exchange also has represented that it will be able to obtain information from other exchanges that are members or

affiliate members of ISG and has a general policy prohibiting the distribution of material, non-public information by its employees.

*Information Memorandum:* The Exchange has represented that it will distribute, as appropriate, an Information Circular to members describing the product, the particular structure of the product, and the corresponding risks of trading Index-Linked Securities, including the risks involved in trading such securities during the Opening and Late Trading Sessions when an updated indicative value, if required, is not calculated or publicly disseminated.<sup>37</sup> In addition, the Information Circular will set forth the Exchange's suitability requirements with respect to recommendations in transactions in Index-Linked Securities to customers, the prospectus delivery requirements of ETP Holders. The Information Circular will also note that all of the Exchange's equity trading rules will be applicable to the trading of Index-Linked Securities.

*Firewall Procedures:* The Exchange has further represented that if the Reference Asset is an underlying index that is maintained by a broker-dealer, such broker-dealer will establish a "firewall" around personnel responsible for the maintenance of such underlying index or who have access to information concerning changes and adjustments to the underlying index. As an added measure, a third-party who is not a broker-dealer will be required to calculate the value of the index. In addition, the Exchange has stated that any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the underlying index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable underlying index or portfolio. With respect to trading on the Exchange, NYSE Arca has stated that, with respect to any issue of Commodity-Linked or Currency-Linked Securities, ETP Holders acting as a registered market maker will be restricted, among others, from making markets in and trading the components underlying the Commodity Reference Asset or Currency Reference Asset, as the case may be, or any derivative instruments thereof, pursuant to

Commentary .01 of NYSE Arca Equities Rules 5.2(j)(6) and 7.26 (Limitations on Dealings).

*Acceleration:* The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Exchange requested accelerated approval of the proposal to facilitate the prompt listing and trading of Index-Linked Securities and, in particular, Commodity-Linked Securities and Currency-Linked Securities, based on the specified criteria of proposed NYSE Arca Equities Rule 5.2(j)(6). The Commission notes that the Exchange's proposed changes to the generic listing standards that apply to all Index-Linked Securities, proposed changes to the generic listing standards for Equity Index-Linked Securities, and the proposed generic listing standards for Commodity-Linked and Currency-Linked Securities are based on previously approved listing standards for such securities.<sup>38</sup> The Commission is presently not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of such securities on the Exchange. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Index-Linked Securities, subject to the standards and representations discussed herein. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>39</sup> to approve the proposed rule change on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change (SR-NYSEArca-2007-92), as modified by Amendment Nos. 1, 2, and 3 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>41</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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<sup>38</sup> See *supra* note 34.

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

<sup>40</sup> *Id.*

<sup>41</sup> 17 CFR 200.30-3(a)(12).

<sup>37</sup> See *supra* note 26.