

the issuer of an ETF must represent that it will calculate the NAV and make it available daily to all market participants at the same time.<sup>28</sup>

The Commission believes that the proposal is reasonably designed to preclude trading of ETFs when transparency is impaired. Proposed ISE Rules 2123(e) and 2131(e)(2)(ii) provide that, when ISE is the listing market, ISE may halt trading when an interruption occurs in the calculation or dissemination of the IIV or index value applicable to an ETF. If the interruption continues, ISE would halt trading no later than the beginning of the next trading day. In addition, proposed ISE Rules 2123(e) and 2131(e)(2)(ii) set forth trading halt procedures when ISE trades the ETF pursuant to UTP. This rule is substantially similar to those recently adopted by other exchanges and found by the Commission to be consistent with the Act.<sup>29</sup>

In approving this proposal, the Commission relied on ISE's representation that its surveillance procedures are adequate to properly monitor the trading of the ETFs listed pursuant to the proposed new listing standards or traded on a UTP basis.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that ISE's proposal is substantially similar to other proposals that have been approved by the Commission.<sup>30</sup> The Commission does not believe that ISE's proposal raises any novel regulatory issues and, therefore, that good cause exists for approving the filing before the conclusion of a notice-and-comment period. Accelerated approval of the proposal will expedite the listing and trading of additional ETFs by ISE, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>31</sup> to approve the proposed rule change, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the

proposed rule change (SR-ISE-2007-60), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56647; File No. SR-ISE-2007-80]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Options Listing Criteria for Underlying Securities

October 11, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 4, 2007, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change, as described in Items I, II, and III below, which items have been substantially prepared by the Exchange. On October 5, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The ISE proposes to amend ISE Rule 502(b)(5) and add subparagraph (6) to ISE Rule 502(b) for the purpose of permitting the Exchange to list and trade individual equity options that are otherwise ineligible for listing and trading if such option is listed and traded on another national securities exchange. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.ise.com/webform/homeDefault.aspx>.

#### 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

The purpose of this proposed rule change is to revise the Exchange's options listing standards so that, as long as the options maintenance listing standards set forth in ISE Rule 503 are met and the option is listed and traded on another national securities exchange, the ISE would be able to list and trade the option. ISE Rule 502 sets forth the requirements that an underlying equity security must meet before the Exchange may initially list options on that security. The ISE notes that these requirements are uniform among the options exchanges.

ISE Rule 502(b)(5) relates to the minimum market price that an underlying security must trade at for an option to be listed on it and applies to the listing of individual equity options on both "covered" and "uncovered" underlying securities.<sup>3</sup> In the case of an underlying security that is a "covered security," as defined under section 18(b)(1)(A) of the 1933 Act, the closing market price of the underlying security must be at least \$3 per share for the five (5) previous consecutive business days prior to the date on which the ISE submits an option class certification to The Options Clearing Corporation. In connection with underlying securities deemed to be "uncovered," Exchange rules require that such underlying security be at least \$7.50 for the majority of business days during the three (3) calendar months preceding the date of selection for such listing. In addition, an

<sup>3</sup> Section 18(b)(1)(A) of the Securities Act of 1933 ("1933 Act") provides that, "[a] security is a covered security if such security is listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities)." See 15 U.S.C. 77r(b)(1)(A).

<sup>28</sup> See proposed ISE Rules 2123(a)(6) and 2131(e)(1)(ii).

<sup>29</sup> See NYSE Arca Equities Rule 7.34; NYSE Rule 1100(f)(2); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101); Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR-NYSEArca-2006-77).

<sup>30</sup> See *supra* notes 8 and 12.

<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</sup> *Id.*

<sup>33</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.

alternative listing procedure permits the listing of such options so long as: (1) The underlying security meets the guidelines for continued approval contained in ISE Rule 503; (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume ("ADTV") for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts. Subparagraphs (1) through (4) of ISE Rule 502(b) further sets forth minimum requirements for an underlying security, such as shares outstanding, number of holders, and trading volume.

When the ISE first commenced operations, if an option failed to meet the original listing requirements, the ISE could not list that option, even if the option met the continued listing requirements of one or more other exchanges and traded on those exchanges. In order to somewhat remedy this situation, in 2001, the Exchange proposed, and the Commission approved, amendments to the ISE's original listing criteria, which permitted the ISE to list options that (i) met the ISE's continued listing criteria, (ii) were traded on at least one other exchange, and (iii) had ADTV across all exchanges of at least 5,000 contracts.<sup>4</sup> The Exchange notes that the 2001 Filing, while permitting the ISE to list some of the more actively traded options, does not permit the listing of less active options that are currently trading at other options exchanges. The options exchange (or exchanges) that may be fortunate enough to list an option that at first met the original listing criteria, but subsequently fails to do so, is provided a trading monopoly inconsistent with the multiple trading of options, fostering competition, and the maintenance of a national market system. Under this proposed rule change, an option may be multiply listed and traded as long as one other options exchange is trading the particular option and such underlying security of the option meets the Exchange's continued listing requirements.

The ISE notes that the requirements for listing additional series of an existing listed option (*i.e.*, continued listing guidelines) are less stringent, largely because in total the Exchange's guidelines assure that options will be listed and traded on securities of companies that are financially sound

and subject to adequate minimum standards.

The ISE believes that, although the continued listing requirements are uniform among the options exchanges, the application of both the original and continued listing standards in the current market environment have had an anti-competitive effect. Specifically, the Exchange notes that on several occasions it has been unable to list and trade options classes that trade elsewhere because the underlying security of such option did not at that time meet original listing standards. However, the other options exchange(s) may continue to trade such options (and list additional series) based on the lower maintenance listing standards, while the ISE may not list any options on such underlying security. The Exchange believes this clearly is anti-competitive and inconsistent with the aims and goals of a national market system in options.

To address this situation, the Exchange proposes to add new ISE Rule 502(b)(6) and amend the current listing requirement adopted by the 2001 Filing. Specifically, proposed ISE Rule 502(b)(6) provides that, notwithstanding that a particular underlying security may not meet the requirements set forth in ISE Rule 502(b)(1), (2), (4), and (5), the Exchange nonetheless could list and trade an option on such underlying security if (i) the underlying security meets continued listing requirements under ISE Rule 503 and (ii) options on such underlying security are listed and traded on at least one other registered national securities exchange. ISE Rule 502(b)(5)(iii), which references an alternative original listing requirement, would be deleted. In connection with the proposed changes, the Exchange represents that the procedures currently employed to determine whether a particular underlying security meets the initial listing criteria will similarly be applied to the continued listing criteria.

The Exchange believes that this proposal is narrowly tailored to address the circumstances where an options class is currently ineligible for listing on the ISE, while at the same time such option is trading on another options exchange(s). The Exchange notes that when an underlying security meets the maintenance listing requirements, and at least one other exchange lists and trades options on the underlying security, the option is available to the investing public. Therefore, the ISE notes that the current proposal will not introduce any inappropriate additional listed options classes. The Exchange submits that the adoption of the proposal is essential for competitive

purposes and to promote a free and open market for the benefit of investors.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is found in section 6(b)(5), in that the proposed change will serve to remove impediments to and perfect the mechanisms 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 proposed rule change does not impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## II. 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 No. SR-ISE-2007-80 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-ISE-2007-80. 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

<sup>4</sup> See Securities Exchange Act Release No. 45220 (December 31, 2001), 67 FR 760 (January 7, 2002) (order approving a proposed rule change revising the original listing criteria for underlying securities in ISE Rule 502) (the "2001 Filing").

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).