

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58484; File No. SR-NYSEAcra-2008-89)

September 8, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 5.2(j)(3) in Connection with Generic Listing Standards for Multiple Fund Shares and Inverse Fund Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 25, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), proposes to amend its rules governing NYSE Arca, LLC (also referred to as the “NYSE Arca Marketplace”), the equities trading facility of NYSE Arca Equities. The Exchange is proposing to amend NYSE Arca Equities Rule 5.2(j)(3), the Exchange’s initial listing standards for Investment Company Units (“ICUs”), to include generic listing standards for series of ICUs that seek to provide investment results that either exceed the performance of a specified index by a specified multiple (“Multiple Fund Shares”) or that correspond to the inverse (opposite) of the performance of a specified index by a specified multiple (“Inverse Fund Shares”) (collectively, “Fund Shares”). The text of the proposed rule change is available on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Exchange's Web site at www.nyse.com, at the Exchange's principal office, and at the Commission's Public Reference Room.³

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

In its filing with the Commission, NYSE Arca 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 IV below. NYSE Arca has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is proposing to amend NYSE Arca Equities Rule 5.2(j)(3), the Exchange's initial listing standards for ICUs, to include generic listing standards for series of Multiple Fund Shares and Inverse Fund Shares.⁴ The Exchange notes that the Commission has previously approved the listing and trading of various Multiple Fund Shares and Inverse Fund

³ E-mail from Tim Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated September 3, 2008.

⁴ Fund Shares differ from traditional exchange-traded fund ("ETF") shares in that they do not merely correspond to the performance of a given securities index, but rather attempt to match a multiple or inverse of such underlying index performance. Multiple Fund Shares seek to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign or domestic equities index or Fixed Income Securities (as described below) index or a combination thereof. Inverse Fund Shares seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic equities index or Fixed Income Securities index or a combination thereof, by a specified multiple. Fixed Income Securities are described in NYSE Arca Equities Rule 5.2(j)(3) as debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities, government-sponsored entity securities, municipal

Shares.⁵ Multiple Fund Shares and Inverse Fund Shares currently trading on the Exchange include the Short Funds and UltraShort Funds of the ProShares Trust and the Inverse Funds and Leveraged Inverse Funds of the Rydex ETF Trust, which trade on the Exchange pursuant to unlisted trading privileges (“UTP”) under NYSE Arca Equities Rule 5.2(j)(3).⁶

This rule proposal is similar to a proposed rule change by American Stock Exchange LLC (“Amex”) in which the Commission approved generic listing standards for Multiple Fund

securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof.

⁵ See Securities Exchange Act Release Nos. 56713 (October 29, 2007), 72 FR 61915 (November 1, 2007) (SR-Amex-2007-74) (approving the listing and trading of Rydex Leveraged Funds, Inverse Funds and Leveraged Inverse Funds); 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR-Amex-2004-62) (approving the listing and trading of the ProShares Ultra Funds and Short Funds); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR-Amex-2006-41) (approving the listing and trading of the ProShares UltraShort Funds); 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR-Amex-2006-101) (approving the listing and trading of Ultra, Short and UltraShort Funds based on various indexes); 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR-Amex-2007-60) (approving the listing and trading of ProShares Ultra, Short and UltraShort Funds based on various international indexes); and 56998 (December 19, 2007), 72 FR 73404 (December 27, 2007) (SR-Amex-2007-104) (approving the listing and trading of ProShares Ultra, Short and UltraShort Funds based on several fixed income indexes, among others).

⁶ The Short Funds and Inverse Funds seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (-100%) of the underlying indexes, and the Ultra Short Funds and Leveraged Inverse Funds seek daily investment results, before fees and expenses, that correspond to twice the inverse or opposite of the daily performance (-200%) of the underlying indexes. See Securities Exchange Act Release Nos. 56763 (November 7, 2007), 72 FR 64103 (November 14, 2007) (SR-NYSEArca-2007-81) (approving UTP trading of shares of funds of Rydex ETF Trust); 56601 (October 2, 2007), 72 FR 57625 (October 10, 2007) (SR-NYSEArca-2007-79) (approving UTP trading of shares of eight funds of the ProShares Trust); 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR-NYSEArca-2006-87) (approving UTP trading of shares of 81 funds of the ProShares Trust); 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR-PCX-2005-115) (approving UTP trading of shares of funds of the ProShares Trust).

Shares and Inverse Fund Shares.⁷ In addition, the Exchange notes that the Commission has approved generic listing standards in NYSE Arca Equities Rule 5.2(j)(6), the Exchange's initial listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and MultiFactor Index-Linked Securities, permitting the loss or negative payment at maturity with respect to such securities to be accelerated by up to twice the performance of the underlying Reference Asset (as defined in Rule 5.2(j)(6)).⁸

The Exchange proposes to amend Commentaries .01, .02 and .03 and add new Commentary .04 to Rule 5.2(j)(3) to permit the listing and trading of Multiple Fund Shares and certain Inverse Fund Shares pursuant to the Exchange's generic listing standards for ICUs. Specifically, the investment objective associated with the Fund Shares must be expected to achieve investment results, before fees and expenses, that correspond to a specific multiple of the percentage performance on a given day (Multiple Fund Shares) or inversely up to minus or negative 300% (-300%) (Inverse Fund Shares) of the percentage performance of the underlying benchmark domestic, international or global equity and/or Fixed Income Securities index or a combination thereof, as applicable. Specifically, the Exchange is proposing to remove the current limitation to listing Multiple Fund Shares and Inverse Fund Shares. The Exchange proposes to add to Commentary .01, .02. and .03 of NYSE Arca Equities Rule 5.2(j)(3) to provide initial listing standards for ICUs to prohibit listing on the Exchange of a series of ICUs

⁷ See Securities Exchange Act Release No. 57660 (April 14, 2008), 73 FR 21391 (April 21, 2008) (SR-Amex-2007-131) (order approving generic listing standards for Multiple Fund Shares and Inverse Fund Shares) ("Amex Proposal").

⁸ See NYSE Arca Equities Rule 5.2(j)(6)(A)(d); see also Securities Exchange Act Release No. 56907 (December 5, 2007), 72 FR 70640 (December 12, 2007) (SR-NYSEArca-2007-122) (order approving generic listing standards under NYSE Arca Equities Rule 5.2(j)(6)).

issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of a particular domestic, international or global equity, or Fixed Income Securities index or combination thereof.

Accordingly, the proposed rule change will enable the Exchange to list and trade Multiple Fund Shares and Inverse Fund Shares pursuant to Rule 19b-4(e)⁹ of the Act if each of the conditions set forth in Commentaries .01 or .02, or .03, as applicable, and Commentary .04 are satisfied.

In addition, the Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(ii) to make a grammatical correction, replacing the words “are satisfied” with “satisfy”.

Limitation on Leverage

In connection with Inverse Fund Shares that seek to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance of the underlying benchmark index, the Exchange’s proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.¹⁰ In particular, Commentary .01, .02 and .03 of NYSE Arca Equities Rule 5.2(j)(3) would expressly prohibit Inverse Fund Shares that seek to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance of the underlying benchmark index, from being approved by the Exchange for listing and trading pursuant to Rule 19b-4(e) under the Act.¹¹

⁹ 17 CFR 240.19b-4(e).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 240.19b-4(e).

In connection with Multiple Fund Shares, proposed Commentary .01, .02 and .03 of NYSE Arca Equities Rule 5.2(j)(3) does not provide a similar limitation on leverage. Instead, the proposal would permit the fund to seek to provide investment results, before fees and expenses, that correspond to any multiple, without limitation, of the percentage performance on a given day of a particular domestic, international or global equity, or Fixed Income Securities index or a combination thereof.

The Exchange believes that a -300% limitation is appropriate for funds listed pursuant to the proposed criteria. Daily public Web site disclosure of portfolio holdings as required by proposed new Commentary .04 to Rule 5.2(j)(3), as discussed below, will ensure that investors are aware of the equity securities, Fixed Income Securities, Financial Instruments (as described below) and any cash and cash equivalents in a fund's portfolio that a fund utilizes to seek to provide investment results corresponding to up to -300% of the underlying benchmark index. As noted above, the Commission has previously approved the listing of Inverse Fund Shares with a -200% limitation, as well as generic listing standards to accommodate such listings.¹² The Exchange believes that a -300% limitation will permit funds to provide investors with an incremental additional degree of leverage similar to instruments available to professional investors to manage risk, but with the additional transparency associated with portfolio disclosure, last sale reporting, and Intraday Indicative Value ("IIV") dissemination, as discussed below. In addition, recommendations to investors of transactions in Fund Shares are subject to the customer suitability requirements of NYSE Arca Equities Rule 9.2, as discussed below.

Availability of Information about Fund Shares and Underlying Indexes

¹² See notes 5 and 6, supra.

Proposed new Commentary .04 to Rule 5.2(j)(3) provides that the portfolio composition of a fund will be disclosed on its Web site. Web site disclosure of portfolio holdings will be made daily and will include, as applicable: (1) the identity and number of shares held of each specific equity security; (2) the identity and amount held of each specific fixed income security; (3) the specific types of financial instruments, which include, but are not limited to: stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars, and floors; swap agreements; forward contracts; and repurchase agreements (“Financial Instruments”), as well as the characteristics of such Financial Instruments; and (4) the cash equivalents and amount of cash held in the portfolio of a fund. This public Web site disclosure of the portfolio composition of a fund will coincide with the disclosure of the “IIV File”¹³ and the “PCF File”.¹⁴ Therefore, the same portfolio information (including accrued expenses and dividends) will be provided on the public Web site as well as in the IIV File and PCF File provided to “Authorized Participants”.¹⁵ The format of the public Web site disclosure and the

¹³ Because the National Securities Clearing Corporation’s (“NSCC”) system for the receipt and dissemination to its participants of the portfolio composition file (“PCF File”) is not currently capable of processing information with respect to Financial Instruments, an “IIV File” has been developed which is used to disclose a fund’s holdings of Financial Instruments. The IIV File is posted to a password-protected Web site before the opening of business on each business day, and all NSCC participants and the Exchange have access to a password and the Web site containing the IIV File.

¹⁴ The PCF File for a fund includes the list of names and the required number of shares of each deposit security, as well as any cash information to be included in the next trading day’s Creation Unit (the minimum aggregation size of shares required to effect a creation or redemption of shares). The information in the PCF File will be available to all participating in the NSCC system.

¹⁵ Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are exempt from registration as broker-dealers to engage in securities transactions, who are Depository Trust Company participants.

IIV File and PCF File may differ because the public Web site will list all portfolio holdings while the IIV File and PCF File will similarly provide the portfolio holdings but in a format appropriate for Authorized Participants, i.e., the exact components of a Creation Unit.

Accordingly, investors will have access to the current portfolio composition of a fund through the fund's Web site.

Specifically, proposed new Commentary .04 to NYSE Arca Equities Rule 5.2(j)(3) would provide that the provisions of Commentary .04 would apply only to series of ICUs that are issued by an open-end management investment company that (i) seeks to provide investment results, before fees and expenses, that correspond to a specific multiple of the percentage performance on a given day of a particular domestic equity, international or global equity securities index, or Fixed Income Securities index, or a combination thereof (“Multiple Fund Shares”), or (ii) seeks to provide investment results, before fees and expenses, that correspond inversely up to -300% of the percentage performance on a given day of a particular domestic equity, international or global equity securities index, or Fixed Income Securities index, or a combination thereof (“Inverse Fund Shares”). For the initial and continued listing of Multiple Fund Shares and/or Inverse Fund Shares, the following requirements must be adhered to: Daily public Web site disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of a series of Multiple Fund Shares or Inverse Fund Shares, including, as applicable, the following instruments: (i) the identity and number of shares held of each specific equity security; (ii) the identity and amount held of each specific Fixed Income Security; (iii) the specific types of Financial Instruments and characteristics of such Financial Instruments; and (iv) cash equivalents and the amount of cash held in the portfolio.

Trading Halts

Existing trading halt requirements for ICUs will apply to Multiple Fund Shares and Inverse Fund Shares. In particular, Commentary .01(c) and .02(c) of NYSE Arca Equities Rule 5.2(j)(3) provides that, if the IIV or the index value applicable to that series of ICUs is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the index value occurs. If the interruption to the dissemination of the IIV or the index value 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.¹⁶

In addition, proposed Commentary .04(b) to NYSE Arca Equities Rule 5.2(j)(3) requires the Exchange to halt trading of Fund Shares if the Exchange becomes aware that the open-end management investment company fails to properly disseminate the appropriate net asset value (“NAV”) to market participants at the same time and/or fails to provide daily public Web site disclosure of its portfolio holdings. Commentary .04(b) to NYSE Arca Equities Rule 5.2(j)(3) further provides that the Exchange may resume trading in such Fund Shares only when the NAV is disseminated to all market participants at the same time or the daily public Web site disclosure of portfolio holdings occurs, as appropriate.

In addition to other factors that may be relevant, the Exchange may consider factors in exercising its discretion to halt or suspend trading in Multiple and/or Inverse Fund Shares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments relating to Fund Shares, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In the case of the Financial Instruments held by a

¹⁶ If an ICU is traded on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading if the primary listing market halts trading in such ICU. See NYSE Arca Equities Rule 7.34(a).

Multiple or Inverse Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the investment adviser of such Multiple or Inverse Fund is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. Notification from the investment adviser will be made by phone, facsimile or e-mail. The Exchange will then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Multiple and/or Inverse Fund Shares. Trading in Multiple and/or Inverse Fund Shares will also be halted if the circuit breaker parameters pursuant to NYSE Arca Equities 7.12 are reached.

The Exchange believes that adopting generic listing standards for Multiple Fund Shares and Inverse Fund Shares based on domestic equity, international equity, and Fixed Income Securities indexes, or a combination thereof, and applying Rule 19b-4(e)¹⁷ should fulfill the intended objective of that Rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for separate Commission approval. The proposed rules have the potential to reduce the timeframe for bringing Multiple Fund Shares and Inverse Fund Shares to market, thereby reducing the burdens on issuers and other market participants. The Exchange submits that the failure of a particular Multiple Fund Share or Inverse Fund Share portfolio to comply with the proposed generic listing standards under Rule 19b-4(e)¹⁸ would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) of the Act¹⁹ requesting Commission approval to list and trade a particular series of Multiple Fund Shares or Inverse Fund Shares.

Continued Listing and Trading Criteria

¹⁷ 17 CFR 240.19b-4(e).

¹⁸ Id.

¹⁹ 15 U.S.C. 78s(b)(2).

The continued listing and trading requirements for existing ICUs included in NYSE Arca Equities Rule 5.5(g)(2) will similarly apply to Multiple Fund Shares and Inverse Fund Shares.

Suitability

Currently, NYSE Arca Equities Rule 9.2(a) (Diligence As to Accounts) provides that an ETP Holder, before recommending a transaction in ICUs, must have reasonable grounds to believe that the recommendation is suitable for their customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the suitability requirement of NYSE Arca Equities Rule 9.2(a) (Diligence As to Accounts). Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in these securities, they must have a reasonable basis to believe that the customer can evaluate the special characteristics of Multiple Fund Shares and Inverse Fund Shares and is able to bear the financial risks of such investment.

This Information Bulletin will set forth the requirements relating to NYSE Arca Equities Rule 9.2(a)(2). Specifically, the Information Bulletin will remind ETP Holders of their obligations in recommending transactions in the Fund Shares so that members have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special

characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)²⁰ of the Act, in general, and furthers the objectives of Section 6(b)(5),²¹ 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 mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 5.2(j)(3) as proposed to be amended are intended 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.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. 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. Please include File No. SR-NYSEArca-2008-89 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-89. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-89 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

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

Florence E. Harmon
Acting Secretary

²² 17 CFR 200.30-3(a)(12).