

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58518; File No. SR-NYSEArca-2008-94)

September 11, 2008

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Amending NYSE Arca Equities Rules 5.1(b)(14) and 5.2(j)(2) to Permit the Listing of ELNs that are Linked to Securities Issued by Companies Registered Under the Investment Company Act of 1940

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ (the “Exchange Act”) and Rule 19b-4 thereunder,² notice is hereby given that on August 25, 2008, 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”) 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 proposes to amend NYSE Arca Equities Rule 5.1(b)(14), the Exchange’s definition of Equity-Linked Notes (“ELNs”), and NYSE Arca Equities Rule 5.2(j)(2), the Exchange’s listing standards for ELNs, to permit the listing of ELNs that are linked to securities that are issued by companies registered under the Investment Company Act of 1940 (“1940 Act”)³ and are listed on a national securities exchange. The text of the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 80a-1.

change is available on the Exchange's Web site at www.nyse.com, at the Exchange's principal office, and at the Commission's Public Reference Room.⁴

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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 5.1(b)(14), the Exchange's definition of ELNs, and NYSE Arca Equities Rule 5.2(j)(2), the Exchange's listing standards for ELNs, to permit the listing of ELNs that are linked to securities that are issued by companies registered under the 1940 Act and are listed on a national securities exchange, as set forth below. This proposal is based upon the Exchanges listing rules for Equity Index-Linked Securities which allow underlying indexes to be based in whole or in part upon companies registered under the 1940 Act and are listed on a national securities exchange.⁵

Definition of ELN

⁴ Email from Tim Malinowski, Director, NYSE Euronext, to Arisa Tinaves, Division of Trading and Markets, Commission, dated September 3, 2008.

⁵ See NYSE Arca Equities Rule 5.2(j)(6)(B)(I). See also Securities Exchange Act Release No. 56879 (December 3, 2007), 72 FR 69271 (December 7, 2007) (SR-NYSEArca-2007-110) (approving Equity Index-Linked Securities underlying indexes to be based in whole or in part upon companies registered under the 1940 Act and are listed on a national securities exchange).

NYSE Arca Equities Rule 5.1(b)(14) currently defines ELNs as notes that are linked, in whole or in part, to the market performance of up to thirty (30) common stocks or non-convertible preferred stocks. The Exchange proposes to amend the Rule to define ELNs as notes that are linked, in whole or in part, to the market performance of up to thirty (30) underlying equity securities that meet the criteria in NYSE Arca Equities Rule 5.2(j)(2). The Exchange believes that it is more appropriate to set forth the criteria for the underlying securities in the listing criteria for ELNs rather than in the definitions section. Further, the Exchange believes that the cross-reference serves a useful purpose in that it alerts readers to the fact that the Exchange has listing criteria for ELNs and where it can be found. In addition, the Exchange proposes this change in order to avoid the administrative burden of amending the definition each time that the Exchange proposes to amend the ELN listing criteria.

The Linked Securities

NYSE Arca Equities Rule 5.2(j)(2)(C) currently provides minimum standards applicable to the linked securities and the issuers of such securities. Under NYSE Arca Equities Rule 5.2(j)(2)(C)(ii), each issuer of an underlying security to which an ELN is to be linked must be a reporting company pursuant to the Exchange Act that is listed on a national securities exchange. The Exchange proposes to expand this provision to provide that an issuer of an underlying security to which an ELN is to be linked may also be a 1940 Act registered investment company. In addition, the Exchange proposes to further clarify the Rule to state that, in either case, any underlying security to which the ELN is to be linked must be listed on a national securities exchange.

The Exchange believes that expanding the listing criteria for ELNs to encompass notes that are linked to the securities of investment companies will provide investors with enhanced

investment options and flexibility. The Exchange also believes that there would be no investor protection concerns with this expansion because each linked security is required to individually satisfy the applicable listing standards set forth in Rule 5.2(j)(2), including that the investment company be registered under the 1940 Act and that the underlying securities be listed on a national securities exchange. The Exchange also believes that the availability of financial information for the underlying securities of 1940 Act registered investment companies, like the Exchange Act reporting companies, have disclosure obligations under the federal securities laws. The Exchange believes that such information serves to protect investors and the public interest.

The Exchange notes that 1940 Act registered investment company securities trade on the same exchange platforms as equity securities registered under the Exchange Act and are subject to the same exchange trading rules as equity securities. As such, the Exchange believes that it is appropriate to permit 1940 Act registered investment companies to be an underlying security for ELNs.

In NYSE Arca Equities Rule 5.2(j)(2)(C)(ii)(2), the Exchange proposes to replace the term “common stock” with the term “shares” in order to take into account that certain underlying securities, particularly those that are securities issued by 1940 Act registered investment companies, are not labeled “common stock.” Similarly, in NYSE Arca Equities Rule 5.2(j)(2)(D)(i), the Exchange proposes to eliminate the term “common” when it qualifies “shares” in order to take into account that certain underlying securities, particularly those that are securities issued by 1940 Act registered investment companies, are not labeled “common shares.”

As revised, the term “shares” shall encompass common stock, non-convertible preferred stock and securities issued by 1940 Act registered investment companies as eligible underlying

securities. Therefore, with respect to NYSE Arca Equities Rule 5.2(j)(2)(C)(ii)(2), the combined trading volume of each non-U.S. security (a security issued by a non-U.S. company) and other related non-U.S. securities occurring in the U.S. market or in markets with which the Exchange has in place a comprehensive surveillance sharing agreement must represent (on a share equivalent basis for any American Depositary Shares (“ADSs”)) at least 50% of the combined world-wide trading volume in each such non-U.S. security, other related non-U.S. securities, and other classes of common stock, non-convertible preferred stock or securities of 1940 Act registered investment companies related to each such non-U.S. security, as the case may be, over the six month period preceding the date of listing. In addition, with respect to NYSE Arca Equities Rule 5.2(j)(2)(D)(i): (1) an issuance of ELNs relating to any U.S. security may not exceed five percent of the total outstanding common stock, non-convertible preferred stock, or securities of 1940 Act registered investment companies for each such underlying security, as the case may be; and (2) the issuance of ELNs relating to any underlying non-U.S. security represented by ADSs, common stock, non-convertible preferred stock, or securities of 1940 Act registered investment companies, or otherwise, may not exceed: (a) two percent of the total shares outstanding of the relevant underlying security worldwide if at least 20 percent of the worldwide trading volume in each non-U.S. security and related non-U.S. security occurs in the U.S. market during the six-month period preceding the date of listing; or (b) three percent of the total shares outstanding of the relevant underlying security worldwide if at least 50 percent of the worldwide trading volume in each non-U.S. security and related non-U.S. security occurs in the U.S. market during the six-month period preceding the date of listing; and (c) five percent of the total shares outstanding of the relevant underlying security worldwide if at least 70 percent of the

worldwide trading volume in each non-U.S. security and related non-U.S. security occurs in the U.S. market during the six-month period preceding the date of listing.⁶

Additional Technical Changes

The Exchange proposes to correct the numbering of NYSE Arca Equities Rule 5.2(j)(2)(C)(iv) to NYSE Arca Equities Rule 5.2(j)(2)(C)(iii). The Exchange also proposes to change the reference to the Division of Market Regulation to the Division of Trading and Markets in NYSE Arca Equities Rule 5.2(j)(2)(D)(i).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁷ of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5),⁸ 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, and 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 expanding the listing criteria for ELNs to encompass notes that are linked to the securities of investment companies will provide investors with enhanced investment options and flexibility. The Exchange also believes that the availability of financial information for the underlying securities of 1940 Act registered investment companies, like the Exchange Act reporting companies, have disclosure obligations under the federal securities laws.

⁶ Email from Tim Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated September 9, 2008.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 Exchange Act.

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.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the Federal Register.⁹

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 Exchange Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

⁹ E-mail from Tim Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated August 27, 2008.

- 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 Number SR-NYSEArca 2008-94 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-94. 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 10:00 a.m. and 3:00 p.m. Copies of the 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-2008-94 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Acting Secretary

¹⁰ 17 CFR 200.30-3(a)(12).