

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55775; File No. SR-NYSEArca-2007-40)

May 16, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Closing Auctions for Securities Similar to Exchange-Traded Funds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 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”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 NYSE Arca Equities, proposes to amend NYSE Arca Equities Rule 7.35(e)(3)(E) relating to closing auctions for exchange-traded funds (“ETFs”). The text of the proposed rule change is available on the Exchange’s Web site

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

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

(<http://www.nysearca.com>), at the Exchange's principal office and at the Commission's Public Reference Room.

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 Exchange proposes to amend NYSE Arca Equities Rule 7.35(e)(3)(E) relating to closing auctions for ETFs. Currently, NYSE Arca Equities Rule 7.35(e)(3)(E) provides special closing auction rules for certain listed ETFs as defined in NYSE Arca Equities Rules 5.1(b)(13) (Unit Investment Trusts), 5.2(j)(3) (Investment Company Units), and 8.100 (Portfolio Depositary Receipts).<sup>5</sup> Since receiving Commission approval to include ETFs in its closing auction process in 2004, the Exchange has obtained approval from the Commission to list and trade the securities of additional derivative securities products that operate in a manner similar to ETFs. These derivative securities products are not currently included in NYSE Arca Equities Rule 7.35(e)(3)(E).

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<sup>5</sup> See Securities Exchange Act Release No. 50643 (November 5, 2004), 69 FR 65668 (November 15, 2004) (SR-PCX-2004-98) (approving amendments to NYSE Arca Equities Rule 7.35 to include certain ETFs in the closing auction process). NYSE Arca Equities Rule 7.35(e)(3)(E) applies only to securities that are listed on the Exchange and not to securities that are traded pursuant to unlisted trading privileges ("UTP").

The Exchange proposes to amend NYSE Arca Equities Rule 7.35(e)(3)(E) to include references to the rules governing these additional derivative securities products, rendering these types of products subject to the same closing auction rules as ETFs. Specifically, the Exchange proposes to amend NYSE Arca Equities Rule 7.35(e)(3)(E) to include references to NYSE Arca Equities Rules 5.2(j)(5) (Equity Gold Shares),<sup>6</sup> 8.200 (Trust Issued Receipts),<sup>7</sup> 8.201 (Commodity Based Trust Shares),<sup>8</sup> 8.202 (Currency Trust Shares),<sup>9</sup> 8.203 (Commodity Index Trust Shares),<sup>10</sup> 8.300 (Partnership Units),<sup>11</sup> and 8.400 (Paired Trust Shares).<sup>12</sup> In addition, the Exchange proposes to amend NYSE Arca

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<sup>6</sup> See Securities Exchange Act Release No. 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR-PCX-2004-117) (approving generic listing standards for Equity Gold Shares and trading, on a UTP basis, of the streetTRACKS® Gold Shares pursuant to NYSE Arca Equities Rule 5.2(j)(5)).

<sup>7</sup> See Securities Exchange Act Release No. 44182 (April 16, 2001), 66 FR 21798 (May 1, 2001) (SR-PCX-2001-01) (approving generic listing standards for Trust Issued Receipts pursuant to NYSE Arca Equities Rule 8.200).

<sup>8</sup> See Securities Exchange Act Release No. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR-PCX-2004-132) (approving generic listing standards for Commodity-Based Trust Shares and trading, on a UTP basis, of the iShares® COMEX Gold Trust pursuant to NYSE Arca Equities Rule 8.201).

<sup>9</sup> See Securities Exchange Act Release No. 53253 (February 8, 2006), 71 FR 8029 (February 15, 2006) (SR-PCX-2005-123) (approving generic listing standards for Currency Trust Shares and trading, on a UTP basis, of the Euro Currency Trust pursuant to NYSE Arca Equities Rule 8.202).

<sup>10</sup> See Securities Exchange Act Release No. 54025 (June 21, 2006), 71 FR 36856 (June 28, 2006) (SR-NYSEArca-2006-12) (approving generic listing standards for Commodity Index Trust Shares and trading, on a UTP basis, of the iShares® GSCI Commodity Indexed Trust pursuant to NYSE Arca Equities Rule 8.203).

<sup>11</sup> See Securities Exchange Act Release No. 53875 (May 25, 2006), 71 FR 32164 (June 2, 2006) (SR-NYSEArca-2006-11) (approving generic listing standards for Partnership Units and trading, on a UTP basis, of the United States Oil Fund, LP pursuant to NYSE Arca Equities Rule 8.300).

<sup>12</sup> See Securities Exchange Act Release No. 34-55033 (December 29, 2006), 72 FR 1253 (January 10, 2007) (SR-NYSEArca-2006-75) (approving generic listing standards for Paired Trust Shares and trading, on a UTP basis, of the Claymore MACRO Tradeable Shares pursuant to NYSE Arca Equities Rule 8.400).

Equities Rule 7.35(e)(3)(E) to include references to NYSE Arca Equities Rule 5.1(b)(18) which defines the term “Exchange-Traded Funds.”

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>13</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>14</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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### 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:

#### 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-2007-40 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.

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange satisfied the five-day pre-filing notice requirement.

All submissions should refer to File Number SR-NYSEArca-2007-40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro/shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also 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-2007-40 and should be submitted by or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

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