

*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**

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>11</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.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEALTR-2008-16 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-NYSEALTR-2008-16. 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 NYSEALTR. 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-NYSEALTR-2008-16 and should be submitted on or before January 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59180; File No. SR-NYSEArca-2008-121]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending Rule 5.2(j)(6) To Increase the Permissible Aggregate Weight of Underlying Foreign Country Securities**

December 30, 2008.

**I. Introduction**

On October 29, 2008, NYSE Arca, Inc. ("Exchange" or "NYSE Arca"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") 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> a proposed rule change amending NYSE Arca Equities Rule 5.2(j)(6) relating to the listing of Equity Index-Linked Securities.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on November 28,

<sup>12</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.

<sup>3</sup> Equity Index-Linked Securities are securities, the payment at maturity of which is based on the performance of an underlying index or indexes of equity securities ("Equity Reference Asset").

2008.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

**II. Description of the Proposed Rule Change**

The Exchange's listing standards for Equity Index-Linked Securities, among other criteria, currently limit the permissible aggregate weight of underlying foreign country securities and American Depositary Receipts ("ADRs") that can be included in the Equity Reference Asset to 20% of the overall index where the primary trading markets of such foreign country securities or foreign country securities underlying such ADRs are not members of the Intermarket Surveillance Group ("ISG") or parties to comprehensive surveillance sharing agreements ("CSSAs") with the Exchange. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(I)(1)(b)(v) to increase the permissible aggregate weight of such underlying foreign country securities and ADRs up to 50% of the overall index, subject to certain other limitations.

Specifically, the proposal would permit the listing and trading of Equity Index-Linked Securities where the underlying foreign country securities and/or foreign country securities underlying ADRs primarily trading on non-U.S. markets that are not ISG members or otherwise subject to a CSSA agreement with the Exchange account for up to 50% of the aggregate dollar weight of the index, provided that: (1) The securities of any one primary foreign market which is not an ISG member or does not have a CSSA with the Exchange ("Non-Reciprocal Foreign Markets") do not represent more than 20% of the dollar weight of the index; and (2) the securities of any two Non-Reciprocal Foreign Markets do not represent more than 33% of the dollar weight of the index. The Exchange also seeks to make technical and non-substantive modifications to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v).

**III. Discussion and Commission's Findings**

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the

<sup>4</sup> See Securities Exchange Act Release No. 58984 (November 20, 2008), 73 FR 72546.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which requires that the rules of the Exchange be designed, among other things, 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 Commission believes that the proposal reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in Section 6(b)(5) of the Act. As a result of the proposal, the permissible percentage of underlying foreign country securities and/or foreign country securities underlying ADRs trading on foreign markets that are not ISG members or parties to a CSSA with the Exchange would be limited to 50% of the overall dollar weight of the index. The Commission believes that this portion of the proposal would permit increased flexibility with respect to listing and trading Equity Index-Linked Securities. At the same time, the proposed amendment also provides that the securities trading on: (1) Any one Non-Reciprocal Foreign Market must not constitute more than 20% of the overall dollar weight of the index; and (2) any two Non-Reciprocal Foreign Markets must not constitute more than 33% of the overall dollar weight of the index. These conditions establish concentration limits designed to ensure that a significant percentage of an underlying index is not composed of securities trading on any one or two Non-Reciprocal Foreign Markets. Additionally, in light of its proposed revision to the listing criteria for Equity Index-Linked Securities, the Exchange has renewed its representation that its surveillance procedures applicable to Equity Index-Linked Securities are adequate to detect and deter violations of its Rules and all applicable federal securities laws.<sup>8</sup>

The Commission also believes that the technical and non-substantive changes to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) clarify the format and application of the proposed amendment related to Equity Index-Linked Securities.

impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See e-mail from Tim Malinowski, Director, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated December 23, 2008. See also Securities Exchange Act Release No. 56637 (October 10, 2007), 72 FR 58704, 58709 (October 16, 2007).

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSEArca-2008-121) be, and it hereby is, approved.

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

**Florence E. Harmon,**

*Acting Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59184; File No. SR-NYSEArca-2008-143]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Extend the Pilot Program for NYSE Arca Realtime Reference Prices Service

December 30, 2008.

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 December 30, 2008, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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, and is approving the proposal on an accelerated basis.

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

The Exchange proposes to extend the expiration date of its pilot program for the NYSE Arca Realtime Reference Prices service until March 31, 2009. There is no new rule text.

#### 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 self-regulatory organization 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

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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.

of those 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 parts of such statements.

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

##### 1. Purpose

In File No. SR-NYSEArca-2008-96, the Exchange established a pilot program that allows the Exchange to test the viability of a new NYSE Arca-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange ("NYSE Arca Realtime Reference Prices") and to establish a flat monthly fee for that service. The Commission approved that pilot program on August 29, 2008.<sup>3</sup>

The Exchange intends for the NYSE Arca Realtime Reference Prices service to accomplish three goals:

1. To provide a low-cost service that will make real-time prices widely available to millions of casual investors;
2. To provide vendors with a real-time substitute for delayed prices; and
3. To relieve vendors of administrative burdens.

This pilot program is similar to pilot programs that the Nasdaq Stock Market, Inc. ("Nasdaq")<sup>4</sup> and the New York Stock Exchange, LLC ("NYSE")<sup>5</sup> have established.

The pilot program allows internet service providers, traditional market data vendors, and others ("NYSE Arca-Only Vendors") to make available NYSE Arca Realtime Reference Prices on a real-time basis.<sup>6</sup> The NYSE Arca Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange. It includes only prices, and not the size of each trade and not bid/asked quotations.

It features a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

<sup>3</sup> See Securities Exchange Act Release No. 58444 (August 29, 2008), 73 FR 51872 (September 5, 2008) (SR-NYSEArca-2008-96).

<sup>4</sup> See Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR-NASDAQ-2006-060); 57973 (June 16, 2008), 73 FR 35430 (June 23, 2008) (SR-NASDAQ-2008-050).

<sup>5</sup> See Securities Exchange Act Release No. 57966 (June 16, 2008), 73 FR 35182 (June 20, 2008) (SR-NYSE-2007-04).

<sup>6</sup> The Exchange notes that it will make the NYSE Arca Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.