

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59493; File No. SR-NYSEArca-2009-18)

March 3, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Listing and Trading of Bear Market Strategic Accelerated Redemption Securities® Linked to the S&P Small Cap Regional Banks Index

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 March 2, 2009, 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. NYSE Arca 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 proposes to list and trade Bear Market Strategic Accelerated Redemption Securities® Linked to the S&P Small Cap Regional Banks Index (“Notes”) under NYSE Arca Equities Rule 5.2(j)(6). The text of the proposed rule change is available at [www.nyse.com](http://www.nyse.com), the Exchange and the Commission’s Public Reference Room.

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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).

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 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 proposes to list and trade the Notes<sup>5</sup> under NYSE Arca Equities Rule 5.2(j)(6), which includes the Exchange’s listing standards for Equity Index-Linked Securities.<sup>6</sup> According to the Registration Statement, the Notes are Bank of America Corporation (“BAC” or the “issuer”) senior unsecured debt securities and are not guaranteed or insured by the Federal Deposit Insurance Corporation or secured by collateral. The Notes will rank equally with all of the issuer’s other unsecured and unsubordinated debt, and any payments due on the Notes, including any repayment of principal, will be subject to the credit risk of BAC. The Notes are designed for, but not limited to, investors who anticipate that the Observation Level<sup>7</sup> of the S&P

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<sup>5</sup> See registration statement on Form S-3 filed with the Securities and Exchange Commission on May 5, 2006 (Registration No. 333-133852); Product Supplement No. STR-1, dated January 2, 2009 (“Product Supplement No. STR-1”); Series L Prospectus Supplement dated April 10, 2008; and Preliminary Term Sheet, subject to completion, dated January 29, 2009 (“Registration Statement”).

<sup>6</sup> Equity Index-Linked Securities are 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.

<sup>7</sup> Capitalized terms used but not defined herein have the meanings set forth in Product Supplement No. STR-1.

Small Cap Regional Banks Index (the “Index”) on any Observation Date will be less than or equal to the Call Level. The Notes provide for an automatic call if the Observation Level of the Index on any Observation Date is less than or equal to the Call Level.

The Notes will be called at an amount equal to the \$10 principal amount per unit plus the Call Premium of between 15% and 19% per annum if the closing level of the Index on any Observation Date is less than or equal to 100% of its starting value. The Notes have a maturity of approximately 18 months. There will be a one-to-one downside loss if the Notes are not called prior to maturity and the closing level of the Index increases above a Threshold Value, with up to 100% of the principal amount at risk. There are no periodic interest payments.

The Index is a capitalization weighted index. The Index is a sub-index of the S&P SmallCap 600 Index and is comprised of the regional banks included in the “Financials” sector of the S&P SmallCap 600 Index. Regional banks are defined as commercial banks whose businesses are derived primarily from commercial lending operations and have significant business activity in retail banking and small and medium corporate lending. Regional banks tend to operate in limited geographic regions. The Index excludes companies classified according to the Global Industry Classification Standard (“GICS”) in the Diversified Banks and Thrifts & Mortgage Banks sub-industries and also excludes investment banks classified in the Investment Banking & Brokerage Sub-Industry. The GICS methodology has been widely accepted as an industry analysis framework for investment research, portfolio management, and asset allocation. The Index was developed with a base value of 100 as of December 31, 1993. Of the companies included in the S&P SmallCap 600 Index, 41 were included in the Index as of January 15, 2009.

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the “generic” listing requirements of NYSE Arca Equities Rule 5.2(j)(6)

applicable to listing of all Equity Index-Linked Securities. The Index meets all such requirements except for those set forth in Rule 5.2(j)(6)(B)(I)(1)(b)(i).<sup>8</sup> The Exchange represents that: (1) except for the requirement under 5.2(j)(6)(B)(I)(1)(b)(i), the Notes currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(6); and (2) BAC is required to comply with Rule 10A-3 under the Act<sup>9</sup> for the initial and continued listing of the Notes. In addition, the Exchange represents that the Notes will comply with all other requirements applicable to Equity Index-Linked Securities, including, but not limited to, requirements relating to the dissemination of key information such as the Index value, rules governing the trading of equity securities, trading hours, trading halts, surveillance,<sup>10</sup> and Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to Equity Index-Linked Securities and in prior Commission orders approving the generic listing rules applicable

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<sup>8</sup> Rule 5.2(j)(6)(B)(I)(1)(b)(i) requires that each component security in the index to which the security is linked has a minimum market value of at least \$75 million, except that for each of the lowest dollar weighted component securities in the index that in the aggregate account for no more than 10% of the dollar weight of the index, the market value can be at least \$50 million. The Exchange states that, as of February 20, 2009, the Index fails to meet the requirement of Rule 5.2(j)(6)(B)(I)(1)(b)(i) in that, with respect to each of the lowest dollar weighted component securities in the Index that in the aggregate account for no more than 10% of the dollar weight of the Index, two securities, accounting for a total of 0.35% of the Index weight, have a market value of less than \$50 million. These two Index securities have a market value of approximately \$32 million and \$25 million, respectively. Index components comprising the top 90% of the Index weight have a market value of at least \$75 million. In addition, 99.65 % of the total Index weight is comprised of securities with a market value of at least \$50 million. The average and median market capitalization of Index stocks is \$406 million and \$349.7 million, respectively, as of February 20, 2009.

<sup>9</sup> 17 CFR 240.10A-3.

<sup>10</sup> The Exchange may obtain information for surveillance purposes via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members of ISG. For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

to the listing and trading of Equity Index-Linked Securities.<sup>11</sup> Detailed descriptions of the Notes, the Index (including the methodology used to determine the composition of the Index), fees, redemption procedures and payment at redemption, payment at maturity, taxes, and risk factors relating to the Notes are available in the Registration Statement.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>13</sup> in particular, in that it is designed to prevent fraudulent and manipulative 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. The proposed rule change will allow the listing and trading of the Notes on the Exchange, which the Exchange believes will enhance competition among market participants, to the benefit of investors and the marketplace.

### 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

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

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<sup>11</sup> See, e.g., Securities Exchange Act Release No. 56637 (October 10, 2007), 72 FR 58704 (October 16, 2007) (SR-NYSEArca-2007-92) (order approving generic listing standards under NYSE Arca Equities Rule 5.2(j)(6)).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>14</sup> of the Act and subparagraph (f)(6) of Rule 19b-4<sup>15</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii),<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. NYSE Arca believes that the proposed rule change is non-controversial in that the Index for the Notes fail to meet the requirements set forth in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(i) by only a small amount: two securities accounting for a total of .35% of the Index weight have a market value of less than 50 million and the top 90% of the Index weight have a market value of

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled the pre-filing requirement.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

\$75 million. The Notes currently satisfy all of the other applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(6) and all other requirements applicable to Index-Linked Securities and, in particular, Equity Index-Linked Securities, as set forth in Exchange rules and prior Commission orders approving the generic listing rules applicable to the listing and trading of Index-Linked Securities. In addition, the Exchange believes that it has developed adequate trading rules, procedures, surveillance programs, and listing standards for the continued listing and trading of the Notes.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>18</sup> Given that the Notes comply with all of the NYSE Arca Equities generic listing standards for Equity Index-Linked Securities (except for narrowly missing the requirement that lowest dollar weighted component securities in the Index have a market value of at least \$50 million), the listing and trading of the Notes by NYSE Arca does not appear to present any novel or significant regulatory issues or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change as operative upon filing.

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

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<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSEArca-2009-18 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2009-18. 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-2009-18 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).