

fees, and other charges among the exchange's members and issuers and other persons using its facilities. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of the exchange be designed 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 proposed rule change should help to increase transparency regarding the processes NYSE Regulation has in place to ensure that the power of the Exchange, through NYSE Regulation, to impose fines on its members for disciplinary violations is exercised appropriately, and particularly to guard against the possibility that fines may be assessed to respond to budgetary needs rather than to serve a disciplinary purpose.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NYSE-2006-109) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55214; File No. SR-NYSEArca-2006-50]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to Registration Rules of NYSE Arca Equities, Inc.

January 31, 2007.

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 November 14, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation"), 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 substantially prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on January 12, 2007. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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, proposes to amend certain NYSE Arca Equities Rules governing registration of employees of Equity Trading Permit ("ETP") Holders<sup>3</sup> in order to clarify registration procedures and make them consistent with the procedures of other self-regulatory organizations ("SROs"). The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and [www.nysearca.com/regulation/filings.asp](http://www.nysearca.com/regulation/filings.asp).

#### 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 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 Rules 2.4, 2.21, and 9.27 (referred to herein as Rules 2.4, 2.21 and 9.27) in order to clarify registration procedures and ongoing compliance obligations for ETP Holders and their registered persons. Further, the Exchange proposes to amend these rules so that they are consistent with industry practices and with the operation of the Central Registration Depository ("CRD") system maintained by the National Association of Securities Dealers, Inc. ("NASD"). The

proposed rule changes are similar to the rules of other SROs.<sup>4</sup>

##### Consideration of Requests for Waivers of Examination Requirements

The Exchange proposes to amend Rule 2.4(c), which governs requests from ETP Holder applicants to waive applicable examinations requirements prescribed by the Exchange. Specifically, the Exchange proposes to add new waiver standards under which the Corporation has discretion to grant waivers so that the Exchange's practices are generally consistent with the criterion set forth in NASD Rule 1070(d) and Supplementary Material .15(1)(b) to NYSE Rule 345.

##### Filing of Registration Documentation with the Exchange

The Exchange proposes to amend Rule 2.21, which governs registration procedures for employees of ETP Holders. Specifically, the Exchange proposes to amend the rule to provide manual registration procedures for registration categories (e.g., floor clerk) for which CRD does not provide electronic registration.<sup>5</sup>

##### Continuing Education Requirements

Currently, employees of ETP Holders who wish to initiate and maintain registration with the Corporation must follow two separate rules—Rules 2.21 and 9.27. Rule 2.21 sets forth initial registration requirements, whereas Rule 9.27 sets forth the continuing education requirements that must be satisfied to maintain registration with the Corporation.

In order to simplify compliance for employees of ETP Holders, the Exchange proposes to provide continuing registration requirements in the same rule as initial registration requirements. Specifically, the Exchange proposes to add continuing education requirements to new Rule 2.21(d) and certain definitions and clarifications with respect thereto to new Commentary .01-.06 to Rule 2.21.

The continuing education requirements in proposed new Rule 2.21(d) and related Commentary .01-.06

<sup>4</sup> See NASD Rules 1070(d) and 1120(a) and (b) and New York Stock Exchange LLC ("NYSE") Rule 345A and Supplementary Material .15(1)(b) to NYSE Rule 345.

<sup>5</sup> In 2005, NYSE Arca (formerly Pacific Exchange, Inc.) became a participant of the CRD system for maintenance of certain registration categories with the Exchange. As part of this implementation, applicable rules of the Exchange were amended to address filing appropriate registration documentation electronically with the CRD system for employees of ETP Holders. These amended rules, however, inadvertently omitted certain registration procedures for positions not available on the CRD system.

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

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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> See NYSE Arca Equities Rule 1.1(n).

to Rule 2.21 are substantially similar to those contained in current Rule 9.27(c) and (d) and related Commentary .01–.06 to Rule 9.27(c) and (d), except that the Exchange has made certain clarifications so that the continuing education requirements and related definitions and clarifications are more closely aligned with NASD Rule 1120 and NYSE Rule 345A and other clean-up changes, as set forth in detail below.

Specifically, the Exchange proposes in Rule 2.21(d)(1) that the content of the Regulatory Element of the program shall be consistent with the standards set forth by the Corporation and other SROs, rather than just determined by the Corporation as is set forth in the current Rule 9.27(c). In addition, the Exchange proposes to add language in Rule 2.21(d)(2)(B)(i) providing that if an ETP Holder's analysis establishes the need for supervisory training for persons with supervisory responsibilities, such training must be included in the ETP Holder's training plan. Such language is not included in the current Rule 9.27(d)(2)(A).

The Exchange has not proposed for inclusion NASD's continuing education requirements applicable to research analysts because the Corporation does not provide for research analyst registration. Additionally, unlike current NASD Rule 1120(a)(6), the Corporation is not proposing to permit ETP Holders to self-administer the Regulatory Element of continuing education, as the Corporation does not have the resources or capability to offer an approval process or monitoring of such self-administered programs. ETP Holders will be responsible for ensuring continuing education information related to their associated persons is received by the firm in a timely manner and, as such, shall designate a person or persons to receive applicable information via electronic mail directly from the CRD system. ETP Holders will not be required to submit to the Corporation the names of such designated persons, as is required by the current NASD rule. This is based on the fact that the Corporation does not have a contact management system comparable to that of NASD.

With respect to the proposed new Commentary to Rule 2.21, the Exchange proposes to add a definition of "registered person" to Commentary .01 to Rule 2.21 as is currently set forth in Commentary .01 to Rule 9.27(c) and (d), except that the definition that the Exchange is proposing does not include the carve-out for "any such person whose activities are limited solely to the transaction of business on the facilities of the Corporation with ETP Holders or

registered broker-dealers." In addition, the Exchange proposes in Commentary .04 to Rule 2.21 to correct a mistake in the language in Commentary .04 to Rule 9.27(c) and (d) to provide that reassociated registered persons shall participate in the Regulatory Element at intervals based on their initial base date, rather than their new base date. Lastly, the Exchange proposes in Commentary .06 to Rule 2.21 to change the reference of "any registered member who is an ETP Holder," which is currently in Commentary .06 to Rule 9.27(c) and (d), to "any registered person associated with an ETP Holder" in order to be consistent with the language of other SROs.

In connection with the addition of proposed new Rule 2.21(d) and Commentary .01–.06 to Rule 2.21 as set forth above, the Exchange proposes to delete the specific continuing education requirements in Rule 9.27(c) and (d) and the related Commentary .01–.06 to Rule 9.27(c) and (d). The purpose for deleting the continuing education requirements in Rule 9.27(c) and (d) is to avoid needless repetition and risk of inconsistencies. The Exchange proposes to include cross-reference language in Rule 9.27(c) that provides that registered persons shall follow the continuing education requirements set forth in Rule 2.21(d).

In addition, the Exchange proposes to delete current Rule 2.21(i) with respect to transition to the CRD system because registration with CRD is already provided for in Rule 2.21(a).

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>7</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

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 such 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2006-50 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.

All submissions should refer to File Number SR-NYSEArca-2006-50. 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

<sup>6</sup> 15 U.S.C. 78f(b).

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

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 also will be available for inspection and copying at the principal office of NYSE Arca. 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-2006-50 and should be submitted on or before February 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55194; File No. SR-NYSEArca-2007-11]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Arca Marketplace Trading Sessions

January 30, 2007.

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 January 26, 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 proposal 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 proposed rule change effective upon filing with the Commission.

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

The Exchange proposes to update the list in NYSE Arca Equities Rule 7.34 of securities eligible to trade in one or more, but not all three, of the Exchange's trading sessions. The securities to be added to the list are: (1) Ultra Russell 2000 ProShares; (2) Ultra SmallCap600 ProShares; (3) Short Russell 2000 ProShares; (4) Short SmallCap600 ProShares; (5) UltraShort Russell 2000 ProShares; (6) UltraShort SmallCap600 ProShares (each a "Fund"). The shares of each Fund ("Shares") are traded on NYSE Arca, L.L.C. ("NYSE Arca Marketplace"), the equities trading facility of NYSE Arca Equities, pursuant to unlisted trading privileges ("UTP").

The text of the proposed rule change is available on the Exchange's Web site (<http://www.nysearca.com>), at the principal office of the Exchange, 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. 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

NYSE Arca Equities Rule 7.34 currently provides, in part, that the NYSE Arca Marketplace shall have three trading sessions each day: An Opening Session (1 a.m. Pacific Time ("PT") to 6:30 a.m. PT), a Core Trading Session (6:30 a.m. PT to 1 p.m. PT), and a Late Trading Session (1 p.m. PT to 5 p.m. PT), and that the Core Trading Session for securities described in NYSE Arca Equities Rules 5.1(b)(13), 5.1(b)(18), 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, 8.300, and 8.400 (each, a "Derivative Securities Product") shall conclude at 1:15 pm PT.<sup>5</sup>

The Exchange also includes in NYSE Arca Equities Rule 7.34 a list of those securities which are eligible to trade in one or more, but not all three, of the Exchange's trading sessions and maintains on its Web site a list that identifies all securities traded on the NYSE Arca Marketplace that do not trade for the duration of each of the three sessions specified in NYSE Arca Equities Rule 7.34. The Exchange proposes to add the following securities to these lists: (1) Ultra Russell 2000 ProShares; (2) Ultra SmallCap600 ProShares; (3) Short Russell 2000 ProShares; (4) Short SmallCap600 ProShares; (5) UltraShort Russell 2000 ProShares; (6) UltraShort SmallCap600 ProShares.<sup>6</sup> These securities are traded on the NYSE Arca Marketplace pursuant to UTP and are Investment Company Units, described in Exchange Rule 5.2(j)(3).

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>8</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and 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.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

Shares, Currency Trust Shares, Commodity Index Trust Shares, Partnership Units, and Paired Trust Shares, respectively. See Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR-NYSEArca-2006-77) (relating to amendments to NYSE Arca Equities Rule 7.34); Securities Exchange Act Release No. 55178 (January 25, 2007) (SR-NYSEArca-2007-02) (relating to additional amendments to NYSE Arca Equities Rule 7.34).

<sup>6</sup> The Commission approved the trading of the Shares of the Funds on the NYSE Arca Marketplace pursuant to UTP in Securities Exchange Act Release No. 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR-NYSEArca-2006-87).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>8</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> 15 U.S.C. 78s(b)(3)(A).

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

<sup>5</sup> NYSE Arca Equities Rules 5.1(b)(13), 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, 8.300, and 8.400 relate to Unit Investment Trusts, Investment Company Units, Portfolio Depository Receipts, Trust Issued Receipts, Commodity-Based Trust