

liquidity, and allow Users to control costs by establishing pricing clarity

#### *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.

### **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 (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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>10</sup> However, Rule 19b-4(f)(6)(iii)<sup>11</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 has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing to allow use of the ALO order type to market participants on NYSE Arca prior to the end of the 30-day period. The Exchange stated that waiver of the 30-day delayed operative date would allow the Exchange to immediately offer the ALO order to market participants on NYSE Arca, providing them with greater discretion and flexibility to post liquidity on NYSE Arca. The Commission believes that waiving the

30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.<sup>12</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 No. SR-NYSEArca-2008-132 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2008-132. 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, 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 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-2008-132 and should be submitted on or before December 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-29153 Filed 12-9-08; 8:45 am]

BILLING CODE 8011-01-P

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59051; File No. SR-NYSEArca-2008-123]

#### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Trust Certificates**

December 4, 2008.

On November 4, 2008, 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the listing and trading of Trust Certificates. On November 6, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1 thereto, was published in the **Federal Register** on November 18, 2008 for a 15-day comment period.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto, on an accelerated basis.

#### **I. Description of the Proposal**

The Exchange proposes to adopt new NYSE Arca Equities Rule 5.2(j)(7) to permit the listing and trading of Trust

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

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 complied with this requirement.

<sup>11</sup> *Id.*

<sup>12</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</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 Securities Exchange Act Release No. 58920 (November 7, 2008), 73 FR 68479 ("Notice").

Certificates and amend its Schedule of Fees and Charges for Exchange Services ("Fee Schedule") to incorporate Trust Certificates for purposes of such schedule. In addition, pursuant to proposed NYSE Arca Equities Rule 5.2(j)(7), the Exchange proposes to list 14 issues of Trust Certificates ("Amex Trust Certificates"), which are currently listed and traded on NYSE Alternext US LLC (formerly known as the American Stock Exchange LLC) ("NYSE Alternext US").<sup>4</sup>

#### A. Proposed NYSE Arca Equities Rule 5.2(j)(7) and Amendment to Fee Schedule

Trust Certificates are certificates representing an interest in a special purpose trust ("Trust") created pursuant to a trust agreement. The Trust will only issue Trust Certificates, which may or may not provide for the repayment of the original principal investment amount. The sole purpose of the Trust will be to invest the proceeds from its initial public offering to provide for a return linked to the performance of specified assets and to engage only in activities incidental to these objectives. Trust Certificates pay an amount at maturity based upon the performance of specified assets, as described below.

Proposed NYSE Arca Equities Rule 5.2(j)(7) provides that the Exchange will consider the trading, whether by listing or pursuant to unlisted trading privileges, of Trust Certificates based on the following: (1) An underlying index or indexes of equity securities (an "Equity Index Reference Asset"); (2) instruments that are direct obligations of the issuing company, either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the

foreign or domestic index has declined below (for put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index ("Index Warrants"); or (3) a combination of two or more Equity Index Reference Assets or Index Warrants.

Proposed Commentary .01 to new NYSE Arca Equities Rule 5.2(j)(7) sets forth criteria for continued listing and provides that the Corporation will commence delisting or removal proceedings with respect to an issue of Trust Certificates (unless the Commission has approved the continued trading of such issue): (1) If the aggregate market value or the principal amount of the securities publicly held is less than \$400,000; (2) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities;<sup>5</sup> or (3) if such other event shall occur or condition exists which, in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.

Proposed Commentary .02 provides that the term of the Trust, which may terminate early under certain circumstances, shall be as stated in the Trust prospectus. In addition, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus. Proposed Commentary .03 sets forth requirements applicable to the trustee of a Trust, including that the trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling a corporate trust business.<sup>6</sup> Proposed Commentary .04 provides that voting rights shall be as set forth in the applicable Trust prospectus.

Proposed Commentary .05 provides that the Exchange will implement

<sup>5</sup> If the official index value does not change during some or all of the period when trading is occurring on NYSE Arca Marketplace (for example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last calculated official index value must remain available throughout NYSE Arca Marketplace trading hours. See Proposed Commentary .01(ii) to new NYSE Arca Equities Rule 5.2(j)(7).

<sup>6</sup> In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee. See Proposed Commentary .03(i) to new NYSE Arca Equities Rule 5.2(j)(7). In addition, no change is to be made in the trustee of a listed issue without prior notice to, and approval of, the Corporation. See Proposed Commentary .03(ii) to new NYSE Arca Equities Rule 5.2(j)(7).

written surveillance procedures for Trust Certificates. Proposed Commentary .06 states that Trust Certificates will be subject to the Exchange's equity trading rules. Proposed Commentary .07 provides that, prior to the commencement of trading of a particular issue of Trust Certificates listed pursuant to new NYSE Arca Equities Rule 5.2(j)(7), the Corporation will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to ETP Holders providing guidance regarding compliance responsibilities (including suitability recommendations and account approval) when handling transactions in Trust Certificates.

Proposed Commentary .08 provides that Trust Certificates may be exchangeable at the option of the holder into securities that participate in the return of the applicable underlying asset. In the event that the Trust Certificates are exchangeable at the option of the holder and contains an Index Warrant, then, the ETP Holder must ensure that the holder's account is approved for options trading in accordance with NYSE Arca Rule 9.2 to exercise such rights. Proposed Commentary .09 provides that Trust Certificates may pass-through periodic payments of interest and principle of the underlying securities. Proposed Commentary .10 provides that Trust payments may be guaranteed pursuant to a financial guaranty insurance policy, which may include swap agreements. Lastly, proposed Commentary .11 provides that Trust Certificates may be subject to early termination or call features.

The Exchange also proposes to amend footnote 4 to the NYSE Arca Equities Fee Schedule to include Trust Certificates as "Structured Products" for purposes of such schedule.

#### B. Issues of Amex Trust Certificates To Be Listed

Pursuant to proposed NYSE Arca Equities Rule 5.2(j)(7), the Exchange proposes to list and trade the Amex Trust Certificates. The Amex Trust Certificates are currently listed and traded on NYSE Alternext US. The Exchange states that: (1) It does not currently list Trust Certificates; and (2) the proposed rule change is intended only to accommodate the listing of the Amex Trust Certificates on the Exchange.<sup>7</sup> Prior to listing on the Exchange, the Amex Trust Certificates

<sup>7</sup> The Exchange represents that it will not list an additional issue of Trust Certificates unless the Exchange has previously filed with the Commission a proposed rule change pursuant to Rule 19b-4 under the Act to permit such listing.

<sup>4</sup> The 14 issues of Trust Certificates, the descriptions of which may be found in the Notice and respective prospectuses, are: (1) Safety First Trust Series 2007-1 (AZP); (2) Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series Nasdaq 2003-13 (NAS); (3) Safety First Trust Series 2008-1 (ATA); (4) Safety First Trust Series 2007-2 (AFO); (5) Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series S&P 2003-22 (SYP); (6) Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series S&P 2003-23 (SPO); (7) Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series Nasdaq 2003-12 (SFH); (8) Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series Russell 2004-1 (RUD); (9) Safety First Trust Series 2008-2 (AMM); (10) Safety First Trust Series 2008-3 (AHB); (11) Safety First Trust Series 2008-4 (AHY); (12) Safety First Trust Series 2007-3 (AKE); (13) Safety First Trust Series 2007-4 (AKN); and (14) Safety First Trust Series 2006-1 (AGB). See Notice, *id.*, at nn.9-22.

would be required to satisfy the applicable delisting procedures of NYSE Alternext US and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Exchange Act,<sup>8</sup> relating to the listing of the Amex Trust Certificates on the Exchange.<sup>9</sup> The Exchange represents that the Amex Trust Certificates satisfy the requirements of proposed NYSE Arca Equities Rule 5.2(j)(7) and thereby qualify for listing on the Exchange.

Descriptions of the Amex Trust Certificates are included in their respective prospectuses<sup>10</sup> and in the Notice.

### C. Exchange Rules Applicable to Trust Certificates

Trust Certificates will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules will apply to transactions in Trust Certificates. Trust Certificates will trade during trading hours set forth in NYSE Arca Equities Rule 7.34(a).<sup>11</sup>

The Exchange notes that none of the indexes related to the Amex Trust Certificates described above is maintained by a broker-dealer. The Exchange notes further that, with respect to such indexes, any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index.

### D. Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Trust Certificates. Trading may be halted

because of market conditions or for reasons that, in the view of the Exchange, make trading in the Trust Certificates inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>12</sup>

### E. Information Dissemination

The value of the applicable index relating to an issue of the Trust Certificates, or, for Trust Certificates based on multiple indexes, the composite value of the indexes, will be calculated and disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities.<sup>13</sup> The values of the indexes upon which the applicable Amex Trust Certificates are based are widely disseminated by major market data vendors and financial publications. In addition, the Exchange will disseminate the composite index values, as applicable, via the Consolidated Tape. If the index or composite index value applicable to an issue of Trust Certificates is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Further, quotation and last-sale information will be disseminated by the Exchange via the Consolidated Tape.

### F. Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Trust Certificates, to monitor trading in the securities. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the securities in all trading sessions and to deter and detect violations of Exchange rules and all applicable federal securities laws.<sup>14</sup> The Exchange's current trading surveillance focuses on

detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. In addition, the Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange also states that it may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of ISG.<sup>15</sup> The Exchange notes, however, that some of the index components on which the Trust Certificates are valued may trade on markets that are not ISG members. The Exchange notes further that, as of October 30, 2008, with the exceptions noted below, for all Amex Trust Certificates described above, no more than 20% of the dollar weight in the aggregate of the index or composite indexes, as applicable, consists of component securities having their primary trading market outside the United States on foreign trading markets that are not members of ISG or parties to comprehensive surveillance sharing agreements with the Exchange. As of October 30, 2008, for AZP, ATA, AHB and AKN,<sup>16</sup> 20.56% of the applicable composite index weights consisted of non-U.S. securities having a primary trading market that is not an ISG member or is not a party to a comprehensive surveillance sharing agreement with the Exchange.

### G. Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading an issue of Trust Certificates and suitability recommendation requirements. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Trust Certificates; (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Trust Certificates; and (3) trading information. In addition, the Information Bulletin will reference that an issue of Trust Certificates is

<sup>8</sup> 15 U.S.C. 78(l).

<sup>9</sup> The Exchange will seek the voluntary consent of the issuer of the Amex Trust Certificates to be delisted from NYSE Alternext US and listed on the Exchange. The Exchange notes that its approval of the Amex Trust Certificates' listing applications would be required prior to listing.

<sup>10</sup> See *supra* note 4.

<sup>11</sup> Pursuant to NYSE Arca Equities Rule 7.34(a), the NYSE Arca Marketplace will have three trading sessions each day the Corporation is open for business unless otherwise determined by the Corporation: (1) Opening Session, from 1:00:00 a.m. (Pacific Time) until the commencement of the Core Trading Session (the Opening Auction and the Market Order Auction shall occur during the Opening Session); (2) Core Trading Session, for each security from 6:30:00 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, until 1:00:00 p.m. (Pacific Time); and (3) Late Trading Session, from the conclusion of the Core Trading Session until 5:00:00 p.m. (Pacific Time).

<sup>12</sup> See Commentary .04 to NYSE Arca Equities Rule 7.12.

<sup>13</sup> For issues of Trust Certificates based on multiple indexes, the Exchange will cause to be calculated and disseminated a composite value for such indexes.

<sup>14</sup> E-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated November 20, 2008.

<sup>15</sup> For a list of current members of the ISG, see <http://www.isgportal.org>.

<sup>16</sup> AZP, ATA, AHB and AKN are the trading symbols for Safety First Trust Series 2007-1, Safety First Trust Series 2008-1, Safety First Trust Series 2008-3, and Safety First Trust Series 2007-4, respectively. See Notice, *supra* note 3; see also *supra* note 4.

subject to various fees and expenses described in the applicable prospectus.

## II. 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 Exchange Act<sup>17</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>18</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Exchange Act,<sup>19</sup> which requires, among other things, that the Exchange's rules be 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, 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.

With respect to the proposal to adopt new NYSE Arca Equities Rule 5.2(j)(7), the Commission notes that the definitions of Equity Index Reference Asset and Index Warrants are substantively identical to the definitions assigned to Equity Reference Asset, with respect to Equity Index-Linked Securities under NYSE Arca Equities Rule 5.2(j)(6), and Index Warrants, as defined in NYSE Arca Equities Rule 8.2(e), respectively. In addition, the Commission notes that proposed NYSE Arca Equities Rule 5.2(j)(7) is solely designed to accommodate the listing and trading of the Amex Trust Certificates, which are currently listed on NYSE Alternext US, on the Exchange. No Trust Certificates are currently listed on the Exchange. The Exchange represents that it will not list any additional Trust Certificates other than the Amex Trust Certificates, unless the Exchange has previously filed a proposed rule change pursuant to Rule 19b-4 under the Exchange Act to permit such listing.<sup>20</sup> The Commission believes that the proposed criteria under new NYSE Arca Equities Rule 5.2(j)(7), and in particular, the continued listing requirements under proposed

Commentary .01 thereto, are reasonably designed to protect investors and the public interest. Specifically, the Exchange must commence delisting or removal proceedings with respect to an issue of Trust Certificates if: (1) The aggregate market value or the principal amount publicly held is less than \$400,000; (2) the value of the index or composite value of the indexes is no longer calculated or widely disseminated as required; or (3) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings in Trust Certificates on the Exchange inadvisable. In addition, the Commission believes that the conforming change made to the Fee Schedule clarifies the application of the listing fees as they pertain to "Structured Products," and specifically, Trust Certificates.

The Commission further believes that the proposal to list and trade the Amex Trust Certificates on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>21</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information regarding Trust Certificates, as well as the composite value of the indexes on which certain Units are based, will be disseminated by the Exchange via the Consolidated Tape. The value of the index or indexes, as the case may be, will also be widely disseminated by major market data vendors and financial publications. The Exchange represents that the value of the applicable index relating to an issue of the Amex Trust Certificates, or, for Amex Trust Certificates based on multiple indexes, the composite value of the indexes, will be calculated and disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities.<sup>22</sup>

The Commission also believes that the proposal to list and trade the Amex Trust Certificates is reasonably designed to promote fair disclosure of information that may be necessary to price the Amex Trust Certificates appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The

Commission notes that, if the index or composite index value applicable to an issue of Trust Certificates is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Trust Certificates. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Trust Certificates inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Exchange has further represented that none of the indexes related to the Amex Trust Certificates is maintained by a broker-dealer. The Exchange notes that, with respect to such indexes, any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index.

The Commission further believes that the trading rules and procedures to which the Amex Trust Certificates will be subject pursuant to this proposal are consistent with the Exchange Act. The Exchange has represented that the Amex Trust Certificates will be subject to all Exchange's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Amex Trust Certificates satisfy the requirements of proposed NYSE Arca Equities Rule 5.2(j)(7), which includes the continued listing criteria for Trust Certificates.

(2) The Exchange's surveillance procedures are adequate to properly monitor trading of Trust Certificates in all trading sessions and to deter and detect violations of Exchange rules and all applicable federal securities laws.

(3) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to its ETP Holders in connection with the trading of Trust Certificates.

<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> The Commission notes that, if the Exchange seeks to list additional Trust Certificates other than the Amex Trust Certificates in the future, additional standards such as initial listing criteria to proposed NYSE Arca Equities Rule 5.2(j)(7) may need to be incorporated.

<sup>21</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>22</sup> See *supra* note 5.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act<sup>23</sup> and the rules and regulations thereunder applicable to a national securities exchange.

### III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,<sup>24</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that proposed NYSE Arca Equities Rule 5.2(j)(7) is solely designed to accommodate the listing and trading of the Amex Trust Certificates, which are currently listed and trading on NYSE Alternext US, on the Exchange. The Commission further notes that, if the Exchange seeks to list and trade, or trade pursuant to unlisted trading privileges, any additional series of Trust Certificates, the Exchange is required to file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder. The Commission finds that the proposed rule change would benefit investors by permitting the listing of the Amex Trust Certificates on the Exchange and providing investors and other market participants seamless and uninterrupted trading opportunities in the Amex Trust Certificates, while maintaining sufficient minimum standards with respect to the continued trading of such Trust Certificates.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>25</sup> that the proposed rule change (SR-NYSEArca-2008-123), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

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

[FR Doc. E8-29155 Filed 12-9-08; 8:45 am]

BILLING CODE 8011-01-P

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> *Id.*

<sup>26</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58895; File No. SR-NYSEArca-2008-122]

### 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

#### Correction

In notice document E8-26627 beginning on page 66956 in the issue of Wednesday, November 12, 2008 make the following correction:

On page 66957, in the third column, under heading **III. Solicitation of Comments**, in the last paragraph, in the second to last line "December 1, 2008" should read "December 3, 2008".

[FR Doc. Z8-26627 Filed 12-9-08; 8:45 am]  
BILLING CODE 1505-01-D

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59054; File Nos. SR-OCC-2008-13 and SR-OCC-2008-14]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to iShares COMEX Gold Trust and iShares Silver Trust Shares

December 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 23, 2008, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule changes SR-OCC-2008-13 and SR-OCC-2008-14 as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval to the proposed rule changes.

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

The proposed rule changes would remove any potential question on the jurisdictional status of options or security futures on iShares COMEX Gold Trust shares and iShares Silver Trust shares by amending the interpretation following the definition

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

of "fund share" in Article I, Section 1 of OCC's By-Laws.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to remove any potential question on the jurisdictional status of options or security futures on iShares COMEX Gold Trust shares and iShares Silver Trust shares by amending the interpretation following the definition of "fund share" in Article I, Section 1 of OCC's By-Laws. On May 30, 2008, the Commission approved rule filing SR-OCC-2008-07, which added this interpretation with respect to the treatment and clearing of options and security futures on SPDR Gold Shares.<sup>3</sup> Under the proposed rule changes, OCC would also (1) clear and treat as securities options any option contracts on iShares COMEX Gold shares and iShares Silver Trust shares that are traded on securities exchanges and (2) clear and treat as security futures any futures contracts on iShares COMEX Gold shares and iShares Silver Trust shares.<sup>4</sup>

In its capacity as a "derivatives clearing organization" registered as such with the Commodity Futures Trading Commission ("CFTC"), OCC also filed the proposed rule changes with the CFTC for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act ("CEA") in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options or that the clearing

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>3</sup> Securities Exchange Act Release No. 57895 (May 30, 2008), 73 FR 32066 (June 5, 2008).

<sup>4</sup> The exact language of the interpretation can be found at [http://www.optionsclearing.com/publications/rules/proposed\\_changes/sr\\_occ\\_08\\_13.pdf](http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_13.pdf) and [http://www.optionsclearing.com/publications/rules/proposed\\_changes/sr\\_occ\\_08\\_14.pdf](http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_14.pdf).