arbitration claim.[40] This commenter suggested that the economic benefits that will inure to FINRA from reduced arbitration costs should be passed through to public investors in terms of reduced filing fees.[41]

FINRA responded by stating that it considered the effect of the proposal on all fees imposed by the forum. FINRA indicated that the significant cost savings for hearing sessions with a single arbitrator represent the greatest impact of the proposal to users of the forum. For example, under the proposal the forum fees for a dispute involving $75,000 will decrease from $750 to $450 per four-hour hearing session. FINRA has not proposed to amend the initial filing fees, which are already based on the amount in dispute, and which may be reallocated by the panel at the end of the case. The Codes will continue to provide that the Director of Arbitration may defer payment of all or part of the filing fee if a claimant has demonstrated a financial hardship. Moreover, parties will continue to be able to request that the panel consider assessing all or part of any filing fee on other parties in the case. For these reasons, FINRA declined to revise the forum's filing fees.[42]

IV. Discussion and Findings

After careful review of the proposed rule change, the comments, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.[43] In particular, the Commission believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[44] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will reduce costs for participants in FINRA arbitration proceedings with claims of greater than $25,000 but no more than $100,000 who have their matters heard before a single arbitrator, while preserving the parties' ability to agree to have their case heard by a panel of three arbitrators.

The Commission believes that FINRA has responded adequately to the comments regarding increasing the monetary threshold under which disputes would be heard by a single arbitrator. The Commission agrees that the proposal, as filed, balances offering users an efficient and cost-effective forum for disputes of $100,000 or less and providing three-arbitrator panels for disputes that involve greater amounts or that do not specify an amount in controversy. The Commission also agrees that parties in these cases will experience reduced case processing times because of the flexibility associated with scheduling conference calls and hearing dates with one arbitrator rather than three, and that FINRA would benefit from a more efficient use of its arbitrator roster.

The Commission also believes that FINRA has adequately responded to comments regarding the aggregation of claims in calculating whether the $100,000 threshold has been met. The Commission notes that FINRA is not changing its current practice with respect to aggregating claims, and clarifying this practice in the Regulatory Notice announcing the rule change should help to resolve any ambiguity about how FINRA will determine whether a matter may be heard by a single arbitrator.

The Commission also believes that FINRA has adequately responded to comments regarding the requirement that single arbitrators be chair-qualified arbitrators. The Commission agrees that appointing chair-qualified arbitrators to resolve claims up to $100,000 would ensure that parties have experienced arbitrators resolving their disputes.

The Commission also believes that FINRA has adequately responded to comments regarding filing fees that investors would pay to bring a claim. The Commission agrees that parties will realize cost savings for hearing sessions with a single arbitrator.

V. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–FINRA–2008–047) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2531 Filed 2–5–09; 8:45 am]

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[40] *See* Caruso Letter.

[41] *Id.*

[42] *See* FINRA Letter.

[43] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[44] 15 U.S.C. 78o–3(b)(6).

[45] 15 U.S.C. 78s(b)(2).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59332; File No. SR–NYSEArca–2008–136]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending NYSE Arca Equities Rule 5.2(j)(6) Relating to the Initial Listing Standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities

January 30, 2009.

I. Introduction

On December 10, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 5.2(j)(6), which sets forth listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities (''Index-Linked Securities''). The proposed rule change was published in the **Federal Register** on December 31, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend one of the requirements of NYSE Arca Equities Rule 5.2(j)(6), which sets forth the listing standards for Index-Linked Securities. Rule 5.2(j)(6) permits the Exchange to consider for listing and trading Index-Linked Securities pursuant to Rule 19b–4(e) under the Act, provided that, among other things, in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds twice the performance of an underlying Reference Asset. The Exchange proposes to amend Rule 5.2(j)(6)(A)(d) to provide that in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds *three* times the performance of an underlying Reference Asset. The Exchange proposes this change to allow it to list and trade Index-Linked Securities that employ

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59146 (December 22, 2008), 73 FR 80504.

investment strategies similar or analogous to certain exchange-traded funds which list and trade on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(3).[4] Currently, exchange-traded funds are able to seek daily investment results, before fees and expenses, that correspond to three times the inverse or opposite of the daily performance (−300%) of the underlying indexes.

For Index-Linked Securities that are structured to allow a loss or negative payment at maturity that may be accelerated by a multiple that exceeds three times the performance of an underlying Reference Asset, the Exchange's proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.[5] In particular, NYSE Arca Equities Rule 5.2(j)(6) would expressly prohibit such Index-Linked Securities from being approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Act.[6]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in particular, with Section 6(b) of the Act[7] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the Exchange's rules 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.[9]

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.[10] The Commission notes that it has previously approved a proposed rule change that would permit the Exchange to list and trade, pursuant to Rule 19b–4(e) under the Act, exchange-traded funds that seek daily investment results, before fees and expenses, that correspond to three times the inverse or opposite of the daily performance (−300%) of the underlying indexes.[11] With respect to the listing and trading of Index-Linked Securities that would allow a loss or negative payment at maturity that is accelerated by a multiple that exceeds three times the performance of an underlying Reference Asset, the Commission further notes that the Exchange would be required to obtain prior Commission approval pursuant to Section 19(b)(2) of the Act.[12]

The Commission also notes that Index-Linked Securities must comply with all of the applicable provisions under NYSE Arca Equities Rule 5.2(j)(6), as proposed to be amended, and all other requirements applicable to Index-Linked Securities including, without limitation, requirements relating to initial and continued listing standards, the dissemination of index value and related information, rules and policies governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Index-Linked Securities.

The Commission also notes that NYSE Arca Equities Rule 9.2(a), which sets forth the Exchange's suitability requirements, would apply to the trading of Index-Linked Securities. Specifically, before recommending a transaction to a non-institutional customer in such securities, ETP Holders must have reasonable grounds to believe that the recommendation is suitable for the customer, based on facts disclosed by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information that such ETP Holder believes would be useful to make a recommendation. ETP Holders must also have a reasonable basis to believe that the customer can evaluate the special characteristics, and is able to bear the financial risks, of investments in Index-Linked Securities. An Information Bulletin would inform ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) prior to the commencement of trading in such securities.

In sum, the Commission believes that the Exchange's amendment to NYSE Arca Equities Rule 5.2(j)(6) relating to the listing and trading of Index-Linked Securities should fulfill the intended objective of Rule 19b–4(e) under the Act by allowing such derivative securities products to be listed and traded without separate Commission approval. The Commission believes that the proposed rule change should facilitate the listing and trading of additional types of Index-Linked Securities and reduce the time frame for bringing these securities to market.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.[13]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSEArca–2008–136) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2529 Filed 2–5–09; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 6489]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 26, 2009 at the Boeing Company, Arlington, Virginia. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of proprietary commercial information that is considered privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a

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[4] *See* Securities Exchange Act Release No. 58825 (October 21, 2008), 73 FR 63756 (October 27, 2008) (SR–NYSEArca–2008–89).

[5] 15 U.S.C. 78s(b)(2). *See* e-mail dated January 29, 2009 from Tim Malinowski, Director, NYSE Euronext to Mitra Mehr, Special Counsel, Division of Trading and Markets, Commission (''NYSE Arca e-mail'').

[6] 17 CFR 240.19b–4(e). *See* NYSE Arca e-mail.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving the 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).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 4.

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).