

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 Act⁷ 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

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).

global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

FOR MORE INFORMATION CONTACT: Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522-2008, phone: 571-345-2214.

Dated: January 26, 2008.

Gregory B. Starr,

*Director of the Diplomatic Security Service,
Department of State.*

[FR Doc. E9-2584 Filed 2-5-09; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will

meet on February 23-24, 2009. The meeting will be held in Room NG3.202 at the T. Boone Biomedical Building, University of Texas Southwestern, 6001 Forest Park Road, Dallas, Texas. On February 23, the session will convene at 8 a.m. and adjourn at 4:30 p.m. On February 24, the session will convene at 8 a.m. and adjourn at 1 p.m. All sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

At the February 23-24 meeting, the Committee will review VA program activities related to Gulf War veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. Additionally, there will be presentations and discussion of white matter disorders affecting Gulf War veterans and preliminary results from the University of Texas Southwestern Gulf War Illnesses Research Program.

Additionally, public comments will be received at 4:15 p.m. on February 23 and at 12:30 p.m. on February 24. Public comments will be limited to five minutes each. A sign-in sheet will be available each day. Individuals who speak are invited to submit 1-2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Roberta White, RAC-Gulf War Veterans' Illnesses (T-GW), U.S. Department of Veterans Affairs, 116B-4 150 S. Huntington Ave., Boston, MA 02130.

Any member of the public seeking additional information should contact Dr. William Goldberg, Designated Federal Officer, at (202) 461-1667, or Dr. White, Scientific Director, at (617) 278-4517.

Dated: February 3, 2009.

By Direction of the Secretary.

E. Philip Riggins,

Committee Management Officer.

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