transaction charges are capped at $1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class.[8] In addition, there is a $25,000 per member organization fee cap on equity option transaction charges incurred in one month for dividend, merger and short stock interest strategies combined. The purpose of making the Pilot permanent for the fee caps on equity option transaction charges on dividend, merger and short stock interest strategies is to continue to attract additional liquidity to the Exchange and to remain competitive with other options exchanges in connection with these types of options strategies.

The Exchange's Pilot also included fee caps on comparison charges on dividend, merger and short stock interest strategies, however the comparison charges were eliminated by a previous rule filing.[9] Additionally, the Pilot also included a license fee of $0.05 per contract side imposed on dividend and short stock interest strategies, which was also eliminated by a previous rule filing.[10]

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that its proposal to make the Pilot permanent is beneficial to its members by providing additional trading opportunities at an efficient cost.

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 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 either solicited or received.

[8] *Id.*

[9] *See* footnote 7.

[10] *See* footnote 7.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and paragraph (f)(2) of Rule 19b–4[14] thereunder. 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 Ccomments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–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–Phlx–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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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–Phlx–2009–18 and should be submitted on or before April 9, 2009.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5930 Filed 3–18–09; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59562; File No. SR–NYSEArca–2009–20]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Safety First Trust Certificates Linked to the S&P 500® Index

March 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') 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 prepared by the Exchange. 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, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), proposes to list under NYSE Arca Equities Rule 5.2(j)(7) (''Trust Certificates'') Safety First Trust Series 2009–1, Principal-Protected Trust Certificates Linked to the S&P 500® Index. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the

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

[2] 17 CFR 240.19b–4.

Exchange's principal office 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 self-regulatory organization 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 those 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

Trust Certificates are certificates representing an interest in a special purpose trust created pursuant to a trust agreement. The trust only issues Trust Certificates, which may or may not provide for the repayment of the original principal investment amount. The sole purpose of the trust is 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 an underlying index or indexes of equity securities an (''Equity Index Reference Asset''); 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 a put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index (''Index Warrants''); or a combination of two or more Equity Index Reference Assets or Index Warrants, as set forth in Rule 5.2(j)(7).

The Exchange proposes to list under Rule 5.2(j)(7) the Safety First Trust Series 2009–1, Principal-Protected Trust Certificates Linked to the S&P 500® Index (''Certificates'').[3] According to the Registration Statement, the Certificates are preferred securities of Safety First Trust Series 2009–1 (''Trust'') and will mature on a specified date in 2014 (''Maturity Date'').[4] Investors will receive at maturity for each certificate held intact (that is, that has not been exchanged by the holder, as described below) an amount in cash equal to $10 plus a ''Supplemental Distribution Amount,'' which may be positive or zero. The Supplemental Distribution Amount will be based on the percentage change of the value of the S&P 500 Index (''Index'') during the term of the Certificates. The Supplemental Distribution Amount for each Certificate will equal the product of (a) $10, (b) the percentage change in the value of the Index and (c) the Participation Rate, which is 90%–100%,[5] provided that the Supplemental Distribution Amount will not be less than zero.[6]

A holder of the Certificates has an interest in two separate securities—equity index participation securities (''Securities'') and equity index warrants (''Warrants'') of Citigroup Funding Inc.[7] The assets of the Trust will consist of the Securities and the Warrants. Beginning on the date the Certificates are issued and ending one business day prior to the Valuation Date,[8] a holder can exercise an ''exchange right.'' A holder can exercise the exchange right by providing notice to his or her broker and instructing the broker to forward that notice to the institutional trustee for the Certificates (U.S. Bank National Association), on any business day, to exchange the Certificates the investor holds for a pro rata portion of the assets of the Trust, which consist of the Securities and the Warrants. According to the Registration Statement, such holders will lose the benefit of principal protection at maturity, and this could result in their receiving substantially less than the amount of the original investment in the Certificates. In order to exercise the exchange right, the investor's account must be approved for options trading.[9]

The Securities will mature on the Maturity Date. At maturity, each Security will pay a ''Security Payment'' equal to $10 plus a ''Security Return Amount,'' which could be positive, zero or negative. If the value of the Index on the Valuation Date is greater than its value on the pricing date, the Security Return Amount for each Security will equal the product of (a) $10, (b) the percentage increase in the Index and (c) the Participation Rate, which equals 90%–100% (*e.g.*, assuming a Participation Rate of 90%, if the Index rises 30%, the Security Return Amount would be $2.70 ($10 times 0.30 times 0.90), and the Security Payment would be $12.70 ($10 plus $2.70)).

If the value of the Index on the Valuation Date is less than or equal to its value on the pricing date, the Security Return Amount for each security will equal the product of (a) $10 and (b) the percentage decrease in the Index. Thus, because the holder's participation in the depreciation of the S&P 500 is not limited by the Participation Rate, if the value of the Index on the Valuation Date is less than its value on the pricing date, investors will participate fully in the depreciation of the Index (*e.g.*, if the Index falls 30%, the Security Return Amount would be $3.00 ($10 times 0.30) and the Security Payment would be $7.00 ($10 minus $3.00). The Security Return Amount will be used only for the purpose of determining the Security Payment for the Securities and is different from the Supplemental Distribution Amount used in determining the maturity payment on the Certificates.

The Warrants will be automatically exercised on the Maturity Date. If the value of the Index increases or does not change, the Warrants will pay zero. If the value of the Index decreases, the warrants will pay a positive amount equal to the product of (a) $10 and (b) the percentage decrease in the value of the Index.

The Certificates are similar to securities previously approved by the Commission for listing on the Exchange, including Trust Certificates issued by Citigroup Funding, Inc. based on the Index.[10] At least one million publicly

[3] *See* the Registration Statement for Safety First Trust Series 2009–1, dated October 31, 2008 (Nos. 333–154914, 154914–08, 154914–11); Registration Statement for Safety First Trust Series 2009–1, dated February 19, 2009 (Nos. 333–157386 and 333–157386–01) (''Registration Statements'').

[4] The Certificates will be subject to acceleration to an earlier Maturity Date upon one of the acceleration events described in the Registration Statements.

[5] The Participation Rate will be determined at the time of issuance of the Certificates.

[6] The Trust payments will not be guaranteed pursuant to a financial guaranty insurance policy.

[7] The Securities and Warrants will not be exchange-listed and may trade over-the-counter.

[8] Capitalized terms used but not defined herein have the meanings set forth in the Registration Statements.

[9] *See* NYSE Arca Equities Rule 5.2(j)(7), Commentary .08.

[10] *See* Securities Exchange Act Release No. 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR–NYSEArca–2008–123) (order approving Rule 5.2(j)(7) and listing on the Exchange of 14 issues thereunder). Three of the issues in SR–NYSEArca–2008–123 related to Trust Certificates based on the Index: Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series S&P 2003–23; Safety First Trust Series 2008–2 Principal-Protected Trust Certificates Linked to the Index; and Safety First Trust Series 2008–4 Principal-Protected Trust Certificates Linked to the Index. The Certificates have similar characteristics and payout provisions to the Trust

Continued

held trading units will be issued prior to listing and trading on the Exchange, with at least 400 public beneficial holders. The issuer of the Certificates, Citigroup Funding, Inc., has total assets of at least $100 million and net worth of at least $10 million. In addition, the issuer will be required to have a minimum tangible net worth of $250,000,000, and, in the alternative, the issuer will be required to have a minimum tangible net worth of $150,000,000 and the original issue price of the Certificates combined with all of the issuer's other Trust Certificates listed on a national securities exchange or otherwise publicly traded in the United States, must not be greater than 25 percent of the issuer's tangible net worth at the time of issuance.[11] The Certificates also will be subject to the continued listing criteria of Rule 5.2(j)(7)[12] and will meet all other criteria of Rule 5.2(j)(7).

Additional information relating to Citigroup Funding, Inc., the Trust, Certificates, Securities, Warrants, exercise right, Security Return Amount, Supplemental Distribution Amount, and risks is included in the Registration Statements.

Exchange Rules Applicable to Trust Certificates

The 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. The Certificates will trade during trading hours set forth in Rule 7.34(a).[13]

Trading Halts

With respect to trading halts, 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.[14]

Information Dissemination

The value of the Index is calculated and disseminated on at least a 15-second basis. If the Index 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.

Quotation and last sale information will be disseminated by the Exchange via the Consolidated Tape. The value of the Index is widely disseminated by major market data vendors and financial publications.

Firewalls

Standard & Poor's (''S&P''),[15] which publishes the Index, is not a registered broker-dealer, and Citigroup Funding, Inc. is not affiliated with S&P. With respect to any index upon which the value of an issue of Trust Certificates is based that is maintained by a broker-dealer, the Exchange would require that such broker-dealer erect a ''firewall'' around personnel responsible for the maintenance of such index or who have access to information concerning adjustments to the index, and the index would be required to be calculated by a third party who is not a broker-dealer.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which 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 applicable Federal securities laws.

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.

The Exchange may obtain information via ISG from other exchanges who are members of the ISG.[16]

In addition, the Exchange also has a generally policy prohibiting the distribution of material, non-public information by its employees.

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 exchanges 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; (3) trading hours; and (4) trading information.

In addition, the Information Bulletin will reference that an issue of Trust Certificates is subject to various fees and expenses described in the applicable prospectus.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[17] of the Act in general and furthers the objectives of Section 6(b)(5)[18] 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The proposed rule change will permit listing on the Exchange in a timely manner of the

Certificates approved by the Commission in SR–NYSEArca–2008–123.

[11] The parameters relating to number of units, number of public beneficial holders and issuer assets and net worth and minimum tangible net worth are similar to those in NYSE Arca Equities Rule 5.2(j)(6)(A).

[12] Commentary .01 provides 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) (i) if the aggregate market value or the principal amount of the securities publicly held is less than $400,000; (ii) 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; or (iii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

[13] 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:

Opening Session—begins at 1:00:00 a.m. (Pacific Time) and concludes at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction shall occur during the Opening Session.

Core Trading Session—begins for each security at 6:30:00 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and concludes at 1:00:00 p.m. (Pacific Time).

Late Trading Session—begins following the conclusion of the Core Trading Session and concludes at 5:00:00 p.m. (Pacific Time).

Telephone conversation between Michael Cavalier, Chief Counsel, NYSE Euronext, and Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated March 11, 2009.

[14] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[15] S&P is a division of The McGraw-Hill Companies, Inc.

[16] For a list of current members of the ISG, *see http://www.isgportal.org*.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

Certificates. The Exchange believes that the provisions of Rule 5.2(j)(7), together with the Exchange's applicable surveillance, serve to foster investor protection 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

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

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

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.* Please include File No. SR–NYSEArca–2009–20 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–2009–20. 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 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–2009–20 and should be submitted on or before April 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5928 Filed 3–18–09; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59569; File No. SR–FICC–2009–03]

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule To Impose a Charge on Members With a Fail-to-Deliver in Treasury Securities

March 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 25, 2009, The Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change No. SR–FICC–2009–03, which is described in Items I, II, and III below and have been prepared primarily by the FICC. The Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as.

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

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

The proposed rule change will impose a charge on members with a fail-to-deliver position in treasury securities.[2]

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

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

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

1. Purpose

The Treasury Markets Practices Group (''TMPG''), a group of market participants active in the treasury securities market that is sponsored by the Federal Reserve Bank of New York (the ''FRBNY''), has been in the process of devising ways to address the persistent settlement fails in treasury securities transactions that have arisen, according to the TMPG, due to the recent market turbulence and low short-term interest rates. In order to encourage market participants to resolve fails promptly, the TMPG has proposed for adoption a ''best practice'' that would call for the market-wide assessment of a charge on fail-to-deliver positions. As part of this implementation of this ''best practice,'' the TMPG has asked the Government Securities Division of FICC (''GSD'') to impose this charge on failed positions involving treasury securities within FICC.

[2] The exact text of the FICC's proposed rule change can be found in Attachment 1 of this filing or at *http://www.dtcc.com/downloads/legal/rule_filings/2009/ficc/2009–03.pdf.*

[3] The Commission has modified portions of the text of the summaries prepared by the FICC.