

*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.

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

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

NYSE has asked that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>11</sup> The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the immediate removal of the temporary rule should eliminate potential confusion relating to the usage of ISOs on the Exchange. For this reason, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.<sup>12</sup>

At any time within 60 days of the filing of such 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.<sup>13</sup>

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). Rule 19b-4(f)(6) also requires that the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of 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 Commission grants the Exchange's request for a waiver of the five-day pre-filing requirement.

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

<sup>13</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), the Commission considers the period to commence on April 9, 2007, the date NYSE filed Amendment No. 1 to the proposed rule change.

**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-NYSE-2007-32 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-NYSE-2007-32. 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. 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-NYSE-2007-32 and should be submitted on or before May 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55621; File No. SR-NYSEArca-2006-86]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, 3, and 4 Thereto and Order Granting Accelerated Approval of the Proposed Rule Change as Modified by Amendments No. 2 and 4 Thereto Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Indexes Described in Exchange Rules Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities**

April 12, 2007.

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> notice is hereby given that on November 13, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") 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. On March 19, 2007, the Exchange filed Amendment No. 1 to the proposal. On March 20, 2007, the Exchange filed Amendment No. 2 to the proposal.<sup>3</sup> On April 4, 2007, the Exchange filed Amendment No. 3 to the filing. On April 10, 2007, the Exchange filed Amendment No. 4 to the filing.<sup>4</sup> This order provides notice of the proposal, as amended, and approves the proposal on an accelerated basis.

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

NYSE Arca, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to amend its rules governing NYSE Arca, L.L.C. (also referred to as the "NYSE Arca Marketplace"), the equities trading facility of NYSE Arca Equities. The Exchange proposes to amend NYSE Arca Equities Rules 5.2(j)(3), 5.5(g)(2), and 8.100 to include generic listing standards for Investment Company

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 2 replaced and superseded the original filing and Amendment No. 1 in their entirety.

<sup>4</sup> Amendment No. 4 superseded Amendment No. 3 in its entirety. In Amendment No. 4, the Exchange made clarifying changes to Exhibit 5 and the purpose section, including reflecting a recent approval of an exchange rule that changed the current rule text.

Units (“Units”) and Portfolio Depositary Receipts (“PDRs”) (“Units” and “PDRs” together referred to herein as “exchange-traded funds” or “ETFs”) that are based on international or global indexes or on indexes described in exchange rules that have been previously approved by the Commission for the trading of ETFs and other index-based securities. The text of the proposed rule change is available at the Exchange, from the Commission’s Public Reference Room, and on NYSE Arca’s Web site ([www.nysearca.com](http://www.nysearca.com)).

## 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 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

The Exchange proposes to amend NYSE Arca Equities Rules 5.2(j)(3), 5.5(g)(2), and 8.100 to include generic listing standards for series of Units and PDRs that are based on international or global indexes or on indexes described in rules previously approved by the Commission under Section 19(b)(2) of the Exchange Act<sup>5</sup> for the trading of ETFs, options, or other specified index-based securities. This proposal would enable the Exchange to list and trade ETFs pursuant to Rule 19b-4(e) under the Exchange Act<sup>6</sup> if each of the conditions set forth in Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) or Commentary .01 to NYSE Arca Equities Rule 8.100 is satisfied. Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO’s trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product,

and the SRO has a surveillance program for the product class.<sup>7</sup> Similar proposals for the New York Stock Exchange LLC (“NYSE”), The NASDAQ Stock Market LLC (“Nasdaq”), and the American Stock Exchange LLC (“Amex”) have been approved by the Commission.<sup>8</sup>

#### Exchange-Traded Funds

NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) provide standards for initial and continued listing of Units, which are securities representing interests in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. The investment company must hold securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities, or the investment company must hold securities in another registered investment company that holds securities in such a manner.<sup>9</sup> NYSE Arca Equities Rule 8.100 allows for the listing and trading on the Exchange of PDRs. PDRs represent securities based on a unit investment trust that holds the securities that comprise an index or portfolio underlying a series of PDRs. Pursuant to NYSE Arca Equities Rules 5.2(j)(3) and 8.100, Units and PDRs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount. When aggregated in the same specified minimum number, Units and PDRs must be redeemable by the issuer for the underlying securities and/or cash.

To meet the objective of providing investment returns that correspond to the price, dividend, and yield performance of the underlying index, an ETF may use a “replication” strategy or a “representative sampling” strategy with respect to the ETF portfolio.<sup>10</sup> An

<sup>7</sup> When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the exchange begins trading a new derivative securities product. See 17 CFR 240.19b-4(e)(2)(ii). See also Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

<sup>8</sup> See Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-Nasdaq-2006-050); Securities Exchange Act Release No. 55113 (January 18, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101); Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-Amex-2006-78); and Securities Exchange Act Release No. 55018 (December 28, 2006), 72 FR 1040 (January 9, 2007) (SR-Amex-2006-109) (making clarifying changes to the generic listing standards set forth in SR-Amex-2006-78).

<sup>9</sup> See NYSE Arca Equities Rule 5.2(j)(3)(A)(i)(a)-(b).

<sup>10</sup> In either case, an ETF, by its terms, may be considered invested in the securities of the

ETF using a replication strategy invests in each stock of the underlying index in about the same proportion as that stock is represented in the index itself. An ETF using a representative sampling strategy generally invests in a significant number but not all of the component securities of its underlying index, and will hold stocks that, in the aggregate, are intended to approximate the full index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code (“IRC”).<sup>11</sup>

#### Generic Listing Standards for Exchange-Traded Funds

The Commission has previously approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. exchanges.<sup>12</sup> In general, the proposed criteria for the underlying component securities in the international and global indexes are similar to those for the domestic indexes, but with modifications as appropriate for the issues and risks associated with non-U.S. securities.

In addition, the Commission has previously approved rules governing the listing and trading of ETFs based on international indexes—those based on non-U.S. component stocks—as well as global indexes—those based on non-U.S. and U.S. component stocks.<sup>13</sup>

The Commission has also approved rules of other exchanges that permit the listing pursuant to Rule 19b-4(e) of index-based derivatives where the Commission had previously approved rules contemplating the trading of

underlying index to the extent the ETF invests in sponsored American Depositary Receipts (“ADRs”), Global Depositary Receipts (“GDRs”), or European Depositary Receipts (“EDRs”) that trade on exchanges with last-sale reporting of securities in the underlying index.

<sup>11</sup> For an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC, including requirements with respect to the nature and the value of the ETF’s assets.

<sup>12</sup> See Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3); Commentary .01 to NYSE Arca Equities Rule 8.100; Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (approving generic listing standards for Units and PDRs).

<sup>13</sup> See, e.g., Securities Exchange Act Release No. 53999 (June 15, 2006), 71 FR 35981 (June 22, 2006) (SR-NYSEArca-2006-30) (approving the trading of certain Wisdom Trade exchange-traded funds); and Securities Exchange Act Release No. 53230 (February 6, 2006), 71 FR 7594 (February 13, 2006) (SR-PCX-2005-116) (approving the listing and trading of funds of iShares, Inc. based on certain MSCI country-specific indexes).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

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

specified index-based derivatives on the same index, on the condition that all of the standards set forth in those orders, in particular with respect to surveillance sharing agreements, continued to be satisfied.<sup>14</sup>

The Exchange believes that adopting additional generic listing standards for ETFs and applying Rule 19b-4(e) thereto should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading without the need for the public comment period and Commission approval. The proposed rules have the potential to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the proposed generic listing standards under Rule 19b-4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular ETF.

*Requirements for Listing and Trading ETFs Based on International and Global Indexes or Previously Approved Indexes*

ETFs listed pursuant to these proposed generic listing standards for international and global indexes, and for indexes described in rules previously approved by the Commission for trading of options or other derivative securities, would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to ETFs<sup>15</sup> and would be covered under the Exchange's surveillance program for derivative products. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of Units and PDRs listed pursuant to the proposed new listing standards and those traded pursuant to UTP. Specifically, the Exchange will rely on its existing surveillance procedures governing derivative products, which apply both to Exchange-listed Units and PDRs and those traded pursuant to UTP. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

To list an ETF pursuant to the proposed generic listing standards for international or global indexes, and for

indexes described in exchange rules previously approved by the Commission for trading of options or other derivative securities, the index underlying the Units or PDRs must satisfy all the conditions contained in proposed Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) (for Units) or proposed Commentary .01 to NYSE Arca Equities Rule 8.100 (for PDRs). However, for Units or PDRs traded on the Exchange pursuant to UTP, only the provisions of paragraphs (c), (e), (f), (g), and (h) of Commentary .01 to NYSE Arca Equities Rule 5.2(j) and NYSE Arca Equities Rule 8.100(c) and paragraphs (c), (e), (f), and (g) of Commentary .01 to NYSE Arca Equities Rule 8.100 would apply. These paragraphs relate to trading increments, trading hours, dissemination of IIV, implementation of surveillance procedures, information circulars, and prospectus delivery.

As with the existing generic standards for ETFs based on domestic indexes, these generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio. While the standards in this proposal are based on the standards contained in the current generic listing standards for ETFs based on domestic indexes, they have been adapted as appropriate to apply to international and global indexes.

As proposed, the definition section of each of NYSE Arca Equities Rules 5.2(j)(3) and 8.100 would be revised to include definitions of U.S. Component Stock and Non-U.S. Component Stock. These new definitions would provide the basis for the standards for indexes with either domestic or international stocks, or a combination of both. A "Non-U.S. Component Stock" would mean an equity security that is not registered under Section 12(b) or 12(g) of the Exchange Act,<sup>16</sup> and that is issued by an entity that (1) is not organized, domiciled, or incorporated in the United States, and (2) is an operating company (including a real estate investment trust) or income trust, but excluding an investment trust, unit trust, mutual fund, or derivative). This definition is designed to create a category of component stocks that are issued by companies that are not based in the United States, but that also are not subject to oversight through Commission registration, and would include sponsored GDRs and EDRs. This definition would appear in an amended introductory paragraph in NYSE Arca Equities Rule 5.2(j)(3) and new

subsection (4) of NYSE Arca Equities Rule 8.100(a).

A "U.S. Component Stock" would mean an equity security that is registered under Section 12(b) or 12(g) of the Exchange Act or an ADR, the underlying equity security of which is registered under Section 12(b) or 12(g) of the Exchange Act. An ADR with an underlying equity security that is registered pursuant to the Exchange Act is considered a U.S. Component Stock because the issuer of that underlying security is subject to Commission jurisdiction and must comply with Commission rules. This definition would appear in an amended introductory paragraph in NYSE Arca Equities Rule 5.2(j)(3) and new subsection (3) of NYSE Arca Equities Rule 8.100(a).

The Exchange proposes that, to list a Unit or PDR based on an international or global index or portfolio pursuant to the generic listing standards, such index or portfolio must meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million (proposed NYSE Arca Equities Rules 5.2(j)(3), Commentary .01(a)(B)(1), and 8.100, Commentary .01(a)(B)(1));

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares (proposed NYSE Arca Equities Rules 5.2(j)(3), Commentary .01(a)(B)(2) and 8.100, Commentary .01(a)(B)(2));

- The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio (proposed NYSE Arca Equities Rules 5.2(j)(3), Commentary .01(a)(B)(3) and 8.100, Commentary .01(a)(B)(3));

- The index or portfolio shall include a minimum of 20 component stocks (proposed NYSE Arca Equities Rules 5.2(j)(3), Commentary .01(a)(B)(4) and 8.100, Commentary .01(a)(B)(4)); and

- Each U.S. Component Stock in the index or portfolio shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Exchange Act, and each Non-U.S. Component Stock in the index or portfolio shall be listed on an exchange that has last-sale reporting (proposed NYSE Arca Equities Rules 5.2(j)(3), Commentary .01(a)(B)(5) and 8.100, Commentary .01(a)(B)(5)).

<sup>14</sup> See NYSE Arca Equities Rule 5.2(j)(6); Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63) (approving generic listing standards for index-linked securities).

<sup>15</sup> See NYSE Arca Equities Rules 5.2(j)(3), 5.5(g)(2), and 8.100.

<sup>16</sup> 15 U.S.C. 781(b) or (g).

The Exchange believes that these proposed standards are reasonable for international and global indexes, and, when applied in conjunction with the other listing requirements, would result in the listing and trading on the Exchange of ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that the proposed standards would result in ETFs that are adequately diversified in weighting for any single security or small group of securities, which should significantly reduce concerns that trading in an ETF based on an international or global index could become a surrogate for the trading of securities not registered in the United States.

The Exchange further notes that, while these standards are similar to those for indexes that include only U.S. Component Stocks, they differ in certain important respects and are generally more restrictive, reflecting greater concerns over portfolio diversification with respect to ETFs investing in components that are not individually registered with the Commission. First, in the proposed standards, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million, compared to a minimum market value of at least \$75 million for indexes with only U.S. Component Stocks.<sup>17</sup> Second, in the proposed standards, the most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio, in contrast to a 30% standard for an index or portfolio comprised of only U.S. Component Stocks (in the case of Units, but not PDRs, which has a 25% standard). Third, in the proposed standards, the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio, compared to a 65% standard for indexes comprised of only U.S. Component Stocks. Fourth, the minimum number of component stocks in the proposed standards is 20, in contrast to a minimum of 13 in the standards for an index or portfolio with only U.S. Component Stocks. Finally, the proposed standards require that each Non-U.S. Component Stock included in the index or portfolio be listed and traded on an exchange that has last-sale reporting.

The Exchange also proposes to modify Commentary .01(b)(2) to NYSE Arca

Equities Rule 5.2(j)(3) and Commentary .01(b)(3) to NYSE Arca Equities Rule 8.100 to require that the index value for an ETF listed pursuant to the proposed standards for international and global indexes be widely disseminated by one or more major market data vendors at least every 60 seconds during the time when the ETF shares trade on the NYSE Arca Marketplace. In contrast, the index value for an ETF listed pursuant to the existing standards for domestic indexes must be disseminated at least every 15 seconds during the trading day. This 60-second standard reflects limitations, in some instances, on the frequency of intra-day trading information with respect to Non-U.S. Component Stocks and that in many cases, trading hours for overseas markets overlap only in part, or not at all, with NYSE Arca Marketplace trading hours.

In addition, Commentary .01(c) to NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01(c) to NYSE Arca Equities Rule 8.100 are being modified to define the term "Intraday Indicative Value" ("IIV") as the estimate, updated at least every 15 seconds, during the Core Trading Session (9:30 a.m. to 4 p.m., Eastern Time), and, if applicable the Opening Session (4 a.m. to 9:30 a.m., Eastern Time) of the value of a share of each ETF, for ease of reference in these rules and also in NYSE Arca Equities Rules 5.5(g)(2)(b) and 8.100(e)(2)(ii) regarding continued listing standards. The Exchange also proposes to clarify in Commentary .01(c) to NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01(c) to NYSE Arca Equities Rule 8.100 that the IIV would be updated at least every 15 seconds during regular market hours and during any pre-market trading sessions for the ETF to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. In addition, if the IIV does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated IIV must remain available throughout Exchange trading hours.

The Exchange is proposing that it may designate a series of Units or PDRs for trading during the Opening Session or Late Trading Session (4 p.m. to 8 p.m., Eastern Time) as long as the index value and IIV dissemination requirements of Commentary .01(b)(2) and (c) to NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01(b)(3) and (c) to NYSE Arca Equities Rule 8.100 are met. If there is no overlap with the trading hours of the primary market trading the underlying components of a series of Units or PDRs, the Exchange may

designate such series for trading in the Opening Session as long as the last official calculated IIV remains available. Although the IIV does not need to be calculated during the Exchange's Late Trading Session, the last official calculated IIV must also remain available during such session.

The Exchange is also proposing to add a subsection (i) to Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) and a subsection (h) to Commentary .01 to NYSE Arca Equities Rule 8.100 regarding the creation and redemption process for ETFs and compliance with Federal securities laws for ETFs listed pursuant to the new generic listing standards. These new subsections would apply to Units listed pursuant to Commentary .01(a)(B) or (C) to NYSE Arca Equities Rule 5.2(j)(3) and for PDRs listed pursuant to Commentary .01(a)(B) or (C) to NYSE Arca Equities Rule 8.100. They would require that the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the ETF being listed pursuant to these new standards must state that the ETF must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

The Commission has approved generic standards providing for the listing pursuant to Rule 19b-4(e) of other derivative products based on indexes described in rules previously approved by the Commission under Section 19(b)(2) of the Exchange Act.<sup>18</sup> The Exchange proposes to include in the generic standards for the listing of Units and PDRs, in new Commentary .01(a)(C) to NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01(a)(C) to NYSE Arca Equities Rule 8.100, indexes described in rule changes that have been approved by the Commission in connection with the trading of options, PDRs, Units, Index-Linked Exchangeable Notes, or Index-Linked Securities. The Exchange believes that the application of that standard to ETFs is appropriate because the underlying index would have been subject to Commission review in the context of the approval of rules contemplating the trading of other derivatives. This new generic standard would be limited to stock indexes and portfolios and would require that each component stock be either: (1) A U.S. Component Stock that

<sup>17</sup> Market value is calculated by multiplying the total shares outstanding by the price per share of the component stock.

<sup>18</sup> See *supra* note 12.

is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Exchange Act; or (2) a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

The Exchange proposes to modify the initial and continued listing standards relating to disseminated information relating to ETFs to formalize in the rules existing best practices for providing equal access to material information about the value of ETFs. Pursuant to NYSE Arca Equities Rules 5.2(j)(3)(A)(v) and NYSE Arca Equities 8.100(e)(1)(ii), prior to approving an ETF for listing, the Exchange would obtain a representation from the ETF issuer that the net asset value ("NAV") per share would be calculated daily and made available to all market participants at the same time. Proposed NYSE Arca Equities Rules 5.5(g)(2)(b) and 8.100(e)(2)(ii) would set forth the trading halt parameters for ETFs. In particular, the proposed rules specifically provide that, if the IIV (as defined in Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01 to NYSE Arca Equities Rule 8.100) or the index value applicable to that series of ETFs is not being disseminated as required when the Exchange is the listing market, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the index value occurs. If the interruption to the dissemination of the IIV or the index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

In addition, proposed NYSE Arca Equities Rules 5.5(g)(2)(b) and 8.100(e)(2)(ii) have been modified to provide that the Exchange: (1) Would halt trading in a series of ETFs if the circuit breaker parameters of Rule 7.12 have been reached; and (2) in exercising its discretion to halt trading in a series of ETFs, would consider factors such as the extent to which trading in the underlying securities is not occurring or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, in addition to other relevant factors.

The Exchange is proposing other minor and clarifying changes to NYSE Arca Equities Rules 5.2(j)(3) and 8.100. The standards set forth in Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01(a)(A) to NYSE Arca Equities Rule 8.100 are being modified to make the wording of each requirement consistent. In

addition, Commentary .01(a)(A)(5) to each of NYSE Arca Equities Rules 5.2(j)(3) and 8.100 would be modified to reflect the adoption of Regulation NMS. Proposed Commentary .01(b)(4) to NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01(b)(4) to NYSE Arca Equities Rule 8.100 would be added to make sure that an entity that advises index providers or calculators has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF.

The Exchange is also proposing the following clean-up changes to NYSE Arca Equities Rule 8.100 in order to make it consistent with NYSE Arca Equities Rule 5.2(j)(3). The Exchange proposes changing the term "Reporting Authority" to "one or more major market data vendors" in Commentary .01(c) to NYSE Arca Equities Rule 8.100.<sup>19</sup> Also, Commentary .01(c) to NYSE Arca Equities Rules 5.2(j)(3) and 8.100 would be modified to clarify that the obligation to disseminate an IIV applies to Units and PDRs that are listed or traded on the Exchange (which would include Units or PDRs traded pursuant to UTP).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,<sup>20</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>21</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 would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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.

## III. 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 Exchange 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-2006-86 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-2006-86. 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. 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-2006-86 and should be submitted on or before May 9, 2007.

<sup>19</sup> See Securities Exchange Act Release No. 52809 (November 18, 2005), 70 FR 71590 (November 29, 2005) (SR-PCX-2005-108) (approving change to listing standards for Units to allow "one or more major market data vendors" to satisfy dissemination requirements rather than "Reporting Authority").

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>22</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Exchange Act<sup>23</sup> 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, 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.

Currently, the Exchange must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act<sup>24</sup> and Rule 19b-4 thereunder<sup>25</sup> to list and trade any ETF based on an index comprised of foreign securities. The Exchange also must file a proposed rule change to list and trade ETFs based on indexes or portfolios described in rule changes that have previously been approved by the Commission as underlying benchmarks for derivative securities. However, Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of ETFs pursuant to Rule 19b-4(e) based on (1) certain indexes with components that include foreign securities or (2) indexes or portfolios previously described in exchange rules that have been approved by the Commission as underlying benchmarks for derivative securities, fulfill these requirements. Use of Rule 19b-4(e) by NYSE Arca to list and trade such ETFs should promote competition, reduce

burdens on issuers and other market participants, and make such ETFs available to investors more quickly.<sup>26</sup>

The Commission previously has approved generic listing standards for other exchanges that are substantially similar to those proposed here by NYSE Arca.<sup>27</sup> This proposal does not appear to raise any novel regulatory issues. Therefore, the Commission finds that NYSE Arca's proposal is consistent with the Exchange Act on the same basis that it approved the other exchanges' generic listing standards for ETFs based on international or global indexes or on indexes or portfolios described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities.

Proposed Commentary .01(a)(A) and (B) to NYSE Arca Equities Rules 5.2(j)(3) and 8.100 establish standards for the composition of an index or portfolio underlying an ETF. These requirements are designed, among other things, to require that components of an index or portfolio underlying the ETF are adequately capitalized and sufficiently liquid, and that no one security dominates the index. The Commission believes that, taken together, these standards are reasonably designed to ensure that securities with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and that when applied in conjunction with the other applicable listing requirements, will permit the listing and trading only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation. The Commission further believes that the proposed listing standards are reasonably designed to preclude NYSE Arca from listing and trading ETFs that might be used as surrogate for trading in unregistered securities. The requirement that each component security underlying an ETF be an NMS Stock (in the case of a U.S. Component Stock) or listed on an exchange and subject to last-sale reporting (in the case of a Non-U.S. Component Stock) also should contribute to the transparency of the market for these ETFs.

The proposed generic listing standards will permit NYSE Arca to list and trade an ETF if the Commission has previously approved an SRO rule change that contemplates listing and trading a derivative product based on the same underlying index. NYSE Arca would be able to rely on that earlier approval order, provided that: (1) The securities comprising the underlying index consist of U.S. Component Stocks or Non-U.S. Component Stocks, as set forth in proposed NYSE Arca Equities Rules 5.2(j)(3), 8.100(a)(3), and 8.100(a)(4); and (2) NYSE Arca complies with the commitments undertaken by the other SRO set forth in the prior order, including any surveillance-sharing arrangements with a foreign market.

The Commission believes that NYSE Arca's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>28</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. The Exchange's proposal requires the value of the index or portfolio underlying an ETF based on a global or international index to be disseminated at least once every 60 seconds during Exchange trading hours.<sup>29</sup> Furthermore, these generic listing standards provide that the issuer of an ETF must represent that it will calculate the NAV and make it available daily to all market participants at the same time.<sup>30</sup> In addition, an IIV, which represents an estimate of the value of a share of each ETF, must be updated and disseminated at least once every 15 seconds during the time an ETF trades on the Exchange.<sup>31</sup> The IIV will be updated to reflect changes in the exchange rate between the U.S. dollar and the currency in which any index or portfolio component stock is denominated.<sup>32</sup> When there is no overlap with the trading hours of the primary market or markets trading the underlying components of an ETF,

<sup>28</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>29</sup> See proposed NYSE Arca Equities Rules 5.2(j)(3), Commentary .01(b)(2) and 8.100, Commentary .01(b)(3). If an index or portfolio value does not change for some of the time that the ETF trades on the Exchange, the last official calculated value must remain available throughout Exchange trading hours.

<sup>30</sup> See proposed NYSE Arca Equities Rules 5.2(j)(3)(A)(v) and 8.100(e)(1)(ii).

<sup>31</sup> See proposed NYSE Arca Equities Rules 5.2(j)(3), Commentary .01(c) and 8.100, Commentary .01(c).

<sup>32</sup> See *id.*

<sup>22</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>24</sup> 15 U.S.C. 78s(b)(1).

<sup>25</sup> 17 CFR 240.19b-4.

<sup>26</sup> The Commission notes, however, that the failure of a particular ETF to meet these generic listing standards would not preclude the Exchange from submitting a separate proposed rule change to list and trade the ETF.

<sup>27</sup> See Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-Nasdaq-2006-050); Securities Exchange Act Release No. 55113 (January 18, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101); and Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-Amex-2006-78).

NYSE Arca may trade such ETF during the Opening Session without an IIV being updated, as long as the last official calculated IIV remains available. Although the IIV is not calculated during the Late Trading Session, the last official calculated IIV must also remain available during such session. The Commission believes that the proposed rules regarding the dissemination of the index value and the IIV are reasonably designed to promote transparency in the pricing of ETFs and thus are consistent with the Exchange Act.

Similarly, the Exchange's trading halt rules are reasonably designed to prevent trading in an ETF when transparency cannot be assured. Proposed NYSE Arca Equities Rule 5.5(g)(2)(b) provides that, when the Exchange is the listing market, if the IIV or index value applicable to an ETF is not disseminated as required, the Exchange may halt trading during the day in which the interruption occurs. If the interruption continues, the Exchange will halt trading no later than the beginning of the next trading day.<sup>33</sup> This proposed rule is substantially similar to those recently adopted by other exchanges and found by the Commission to be consistent with the Exchange Act.<sup>34</sup>

In approving this proposal, the Commission relied on NYSE Arca's representation that its surveillance procedures are adequate to properly monitor the trading of the Units and PDRs listed pursuant to the proposed new listing standards or traded on a UTP basis. This approval is conditioned on the continuing accuracy of that representation.

#### *Acceleration*

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of the amended proposal in the **Federal Register**. The Commission notes that NYSE Arca's proposal is substantially similar to other proposals that have been approved by the Commission.<sup>35</sup> The Commission does not believe that NYSE Arca's proposal raises any novel regulatory issues and, therefore, that good cause exists for approving the filing before the conclusion of a notice-and-comment period. Accelerated approval of the proposal will expedite the listing and trading of additional ETFs by the Exchange, subject to

consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Exchange Act,<sup>36</sup> to approve the proposed rule change, as amended, on an accelerated basis.

#### **V. Conclusion**

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,<sup>37</sup> that the proposed rule change (SR-NYSEArca-2006-86), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>38</sup>

**Nancy M. Morris,**

*Secretary.*

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**BILLING CODE 8010-01-P**

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#### **SMALL BUSINESS ADMINISTRATION**

##### **Public Federal Regulatory Enforcement Fairness Hearing; Region I Regulatory Fairness Board**

The U.S. Small Business Administration (SBA) Region I Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a National Regulatory Fairness Hearing on Tuesday, May 1, 2007, at 1 p.m. The forum will take place at the Rhode Island Convention Center, 1 Sabin Street, Room 558, Providence, RI 02903. The purpose of the meeting is for Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

Anyone wishing to attend or to make a presentation must contact Norm Deragon, in writing or by fax in order to be placed on the agenda. Norm Deragon, Public Information Officer, SBA, Providence District Office, 380 Westminster Street, Room 511, Providence, RI 02903, phone (401) 528-4561, Ext. 4576 and fax (401) 528-4539, e-mail: [Norm.deragon@sba.gov](mailto:Norm.deragon@sba.gov).

For more information, see our Web site at <http://www.sba.gov/ombudsman>.

**Matthew Teague,**

*Committee Management Officer.*

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<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> *Id.*

<sup>38</sup> 17 CFR 200.30-3(a)(12).

#### **DEPARTMENT OF TRANSPORTATION**

##### **Federal Aviation Administration**

##### **FAA Approval of Noise Compatibility Program 14 CFR Part 150; Spirit of St. Louis Airport, Chesterfield, MO**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by St. Louis County under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On December 12, 2006, the FAA determined that the noise exposure maps submitted by St. Louis County under Part 150 were in compliance with applicable requirements. On April 6, 2007, the FAA approved the Spirit of St. Louis Airport noise compatibility program. All but one of the recommendations of the program was approved.

**DATES:** *Effective date:* The effective date of the FAA's approval of the Spirit of St. Louis Airport noise compatibility program is April 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mark Schenkelberg, 901 Locust, Kansas City, Missouri, 816-329-2645.

Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Spirit of St. Louis Airport, effective April 6, 2007.

Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport

<sup>33</sup> In addition, NYSE Arca Equities Rule 7.34 sets forth trading halt procedures when the Exchange trades ETFs pursuant to UTP.

<sup>34</sup> See e.g., Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR-NYSEArca-2006-77).

<sup>35</sup> See *supra* note 27.