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 self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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–NASDAQ–2008–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–NASDAQ–2008–016 and should be submitted on or before August 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16346 Filed 7–16–08; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58137; File No. SR–NYSE–2008–55]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 17 To Address Issues Related to Vendor Liability

July 10, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 7, 2008, New York Stock Exchange LLC (''NYSE'' 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 prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 proposes to amend NYSE 17 to address issues related to vendor liability. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.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 IV below. NYSE 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 Rule 17 to address issues related to vendor liability.

Background

Currently, NYSE Rule 17(a) provides:

> The Exchange shall not be liable for any damages sustained by a member, allied member or member organization growing out of the use or enjoyment by such member, allied member or member organization of the facilities afforded by the Exchange, except as provided in the rules.[5]

NYSE Rule 17 does not specifically address liability for any loss sustained by a member or member organization arising from use of any systems, services or facilities provided by a vendor to the Exchange.

Due to the highly diversified nature of the Exchange business and trading operations, the Exchange retains the services of various vendors in its regular course of business. Through this amendment, the Exchange proposes to amend NYSE Rule 17 to permit the Exchange to expressly provide in the contract with any vendor that it and/or its subcontractors of electronic systems, services or facilities are not liable for any loss sustained by a member or member organization arising from use of the vendor and/or subcontractor systems, services or facilities. The proposed amendment to NYSE Rule 17 would further require members and member organizations to indemnify the Exchange and its vendors and/or subcontractors.

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* NYSE Rule 18 (Compensation in Relation to Exchange System Failure), which provides for compensation by the Exchange to members and member organizations for a loss sustained as a result of an NYSE systems failure, as defined by the Rule.

Proposed Amendment to NYSE Rule 17

In recent years, especially since the adoption of Regulation National Market System (''Reg. NMS''),[6] customers have demanded, and thus exchanges have prioritized, the delivery of faster and increasingly more innovative products for order entry and execution and the dissemination of market information. In order to provide this service, exchanges have made significant investments in technology, including an increase in the use of third-party facilities and services. Exchanges have increasingly come to rely on third-party vendors to provide additional facilities or services. Third-party vendors often provide similar facilities or services directly to broker-dealers and other customers under contracts that limit or indemnify the vendor's liability for use of its facilities or services. The use of vendors enables exchanges to increase their capacity to deliver faster and more efficient trading tools to market, with the ultimate beneficiaries being the investing public. In order for exchanges to remain competitive and provide a marketplace that removes impediments to, and perfects the mechanism of, a free and open market, it is imperative to have the ability to use third-party vendor services.

The Exchange believes that, where vendors provide the facilities and services directly to an exchange and not directly to the actual users, *i.e.*, the exchange members, vendors may find themselves exposed to a greater risk of liability from exchange members. The possibility of liability to end-users with whom they have no contractual relationship could result in vendors being unwilling to enter into agreements to provide their services to exchanges.

The Exchange therefore proposes to amend NYSE Rule 17 to incorporate as paragraph (b) of the Rule the provisions of American Stock Exchange (''Amex'') Rule 60—AEMI[7] (''Vendor Liability Disclaimer''), which provides as follows:

In connection with member or member organization use of any electronic system, service, or facility provided by the Exchange to members for the conduct of their business on the Exchange (i) the Exchange may expressly provide in the contract with any vendor providing all or part of such electronic system, service, or facility to the Exchange, that such vendor and its subcontractors shall not be liable to the member or member organization for any damages sustained by a member or member organization growing out of the use or enjoyment thereof by the member or member organization, and (ii) members and member organizations shall indemnify the Exchange and any vendor and subcontractor covered by subsection (i) above (and their directors, officers, employees and agents) with regard to any and all judgments, damages, costs, or losses of any kind (including reasonable attorneys' fees and expenses), as a result of any claim, action, or proceeding that arises out of or relates to the member or member organization's use of such electronic system, service, or facility.[8]

The Exchange believes that the proposed amendment to NYSE Rule 17 will allow the Exchange to continue to improve its services to its investors by allowing the Exchange to contract the services of premiere third-party vendors.

The Exchange also proposes to make a stylistic change to paragraph (a) of NYSE Rule 17 dealing with Exchange Liability. Specifically, the Exchange seeks to replace the reference to ''the rules'' with ''NYSE Rule 18,'' which directly addresses the issue of Exchange Liability.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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. The Exchange believes the proposed rule promotes just and equitable principles of trade and protects investors and the public interest. Furthermore, the proposed vendor liability rule removes impediments to and perfects the mechanism of a free and open market by providing disclaimer liability to vendors that assist the Exchange in providing faster delivery and increasingly more innovative facilities and services to Exchange customers. The Exchange believes that the provision of liability protection to third-party vendors and subcontractors of electronic systems, services, or facilities from liability for any damages sustained by a member or member organization arising from use of their systems will allow the Exchange to provide faster delivery and increasingly more innovative facilities and services to Exchange customers.

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 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Because this filing proposes vendor liability provisions substantively identical to an Amex rule that has previously been approved by

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

[7] Amex Rule 60, Commentary.03 sets forth the original Vendor Liability Disclaimer language that has been incorporated into Amex Rule 60—AEMI. AEMI (''Auction & Electronic Market Integration'') is Amex's Hybrid Market Structure for equities and exchange-traded funds. The Exchange notes that on January 17, 2008, it announced that it had entered into a definitive agreement to acquire the Amex. On June 17, 2008, the Exchange and the Amex announced that members of the Amex Membership Corporation \ (''AMC'') approved the adoption of the merger agreement between AMC and NYSE Euronext and certain of their subsidiaries. *See* NYSE News Release, January 17, 2008; *see also* NYSE News Release, June 17, 2008.

[8] Amex Rule 60–AEMI.

[9] U.S.C. 78f(b).

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

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii). The Exchange has satisfied the five-day pre-filing requirement of Rule 19b–4(f)(6)(iii).

the Commission,[14] the proposal does not appear to present any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing.[15]

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 the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–55. 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 such 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–2008–55 and should be submitted on or before August 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16349 Filed 7–16–08; 8:45 am]

BILLING CODE 8010–01–P

[14] *See supra,* note 8.

[15] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58142; File No. SR–NYSEArca–2008–70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Generic Listing Standard for Equity Index-Linked Securities

July 11, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), 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 proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Exchange's generic listing standard for equity index-linked securities (''Equity Index-Linked Securities'') to: (1) Eliminate initial and continued listing capitalization weighted and modified capitalization weighted index requirements; and (2) to adjust certain equity index weighting criteria and adopt notional volume traded per month to both initial listing standards and continued listing standards. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.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 IV 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

NYSE Arca proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Exchange's generic listing standard for Equity Index-Linked Securities. Specifically, the Exchange proposes to: (1) Eliminate initial and continued listing capitalization weighted and modified capitalization weighted index requirements; and (2) to adjust certain equity index weighting criteria and adopt notional volume traded per month to both the initial listing standards and continued listing standards.

For Equity Index-Linked Securities, the Exchange proposes to eliminate NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(iii), the current initial listing requirement that, in the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest dollar weighted component securities in the index or the highest dollar weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, must have an average monthly trading volume of at least 2,000,000 shares over the previous six months. The Exchange also proposes to eliminate NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(iii),[3] the current

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

[2] 17 CFR 240.19b–4.

[3] E-mail from Timothy J. Malinowski, Director, NYSE Euornext, to Michou H.M. Nguyen, Special Counsel, and Steve Varholik, Attorney-Advisor,

Continued