

Regulation SHO.<sup>13</sup> For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

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 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 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-NSX-2007-09 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NSX-2007-09. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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 statement 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 filings will also 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-NSX-2007-09 and should be submitted on or before September 21, 2007.

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

**Nancy M. Morris,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56329; File No. SR-NYSEArca-2007-75]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Expand the Trading Hours of Certain Exchange-Traded Funds

August 28, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 30, 2007, 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 substantially prepared by the Exchange. On August 22, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to expand the trading hours of securities of certain exchange-traded funds ("ETFs") identified herein to include all three Exchange trading sessions (Opening, Core Trading, and Late Trading Sessions). 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 Equities Rule 7.34 provides for three trading sessions on the NYSE Arca Marketplace each day that NYSE Arca Equities is open for business: (1) An Opening Session (4 a.m. to 9:30 a.m. Eastern Time or "ET"); (2) a Core Trading Session (9:30 a.m. to 4 p.m. ET); and (3) a Late Trading Session (4 p.m. to 8 p.m. ET). The Core Trading Session for securities described in NYSE Arca Equities Rules 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, 8.300, and 8.400 currently concludes at 4:15 p.m. ET.<sup>3</sup>

NYSE Arca proposes to expand the trading hours of securities of the ETFs identified below to include all three Exchange trading sessions. The Commission previously approved proposals to list and trade and to trade pursuant to unlisted trading privileges ("UTP") the securities of such ETFs. The following ETFs are listed in reverse chronological order based on the dates of the Commission's approval orders, in one, but not all three, of the Exchange's trading sessions:

- the PowerShares DB U.S. Dollar Index Bullish Fund and the PowerShares DB U.S. Dollar Index Bearish Fund;<sup>4</sup>

<sup>3</sup> NYSE Arca Equities Rules 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, 8.300, and 8.400 relate to Investment Company Units, Portfolio Depository Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Partnership Units, and Paired Trust Shares, respectively. See Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR-NYSEArca-2006-77) (establishing hours of trading for securities of certain ETFs).

<sup>4</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Commentary .02

<sup>13</sup> For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

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

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

- the PowerShares DB Energy Fund, the PowerShares DB Oil Fund, the PowerShares DB Precious Metals Fund, the PowerShares DB Gold Fund, the PowerShares DB Silver Fund, the PowerShares DB Base Metals Fund, and the PowerShares DB Agriculture Fund;<sup>5</sup>

- 81 ETFs of the ProShares Trust, including certain Ultra Funds, Short Funds, and Ultra Short Funds: (1) Ultra Russell 2000 ProShares (f/k/a Ultra Russell 2000); (2) Ultra S&P SmallCap 600 ProShares (f/k/a Ultra S&P SmallCap 600); (3) Ultra S&P500/Citigroup Value; (4) Ultra S&P500/Citigroup Growth; (5) Ultra S&P MidCap 400/Citigroup Value; (6) Ultra S&P MidCap 400/Citigroup Growth; (7) Ultra S&P SmallCap 600/Citigroup Value; (8) Ultra S&P SmallCap 600/Citigroup Growth; (9) Ultra Basic Materials ProShares (f/k/a Ultra Basic Materials); (10) Ultra Consumer Goods ProShares (f/k/a Ultra Consumer Goods); (11) Ultra Consumer Services ProShares (f/k/a Ultra Consumer Services); (12) Ultra Financials ProShares (f/k/a Ultra Financials); (13) Ultra Health Care ProShares (f/k/a Ultra Health Care); (14) Ultra Industrials ProShares (f/k/a Ultra Industrials); (15) Ultra Oil & Gas ProShares (f/k/a Ultra Oil & Gas); (16) Ultra Real Estate ProShares (f/k/a Ultra Real Estate); (17) Ultra Semiconductors ProShares (f/k/a Ultra Semiconductors); (18) Ultra Technology ProShares (f/k/a Ultra Technology); (19) Ultra Utilities ProShares (f/k/a Ultra Utilities); (20) Ultra Russell Midcap Index; (21) Ultra Russell Midcap Growth ProShares (f/k/a Ultra Russell Midcap Growth Index); (22) Ultra Russell Midcap Value ProShares (f/k/a Ultra Russell Midcap Value Index); (23) Ultra Russell 1000 Index; (24) Ultra Russell 1000 Growth ProShares (f/k/a Ultra Russell 1000 Growth Index); (25) Ultra Russell 1000 Value ProShares (f/k/a Ultra Russell 1000 Value Index); (26) Ultra Russell 2000 Growth ProShares (f/k/a Ultra Russell 2000 Growth Index); (27) Ultra Russell 2000 Value ProShares (f/k/a Ultra Russell 2000 Value Index); (28) Short Russell 2000 ProShares (f/k/a Short Russell 2000); (29) Short S&P SmallCap 600 ProShares (f/k/a Short S&P SmallCap 600); (30) Short S&P500/Citigroup Value; (31) Short S&P500/

- Citigroup Growth; (32) Short S&P MidCap 400/Citigroup Value; (33) Short S&P MidCap 400/Citigroup Growth; (34) Short S&P SmallCap 600/Citigroup Value; (35) Short S&P SmallCap 600/Citigroup Growth; (36) Short Basic Materials; (37) Short Consumer Goods; (38) Short Consumer Services; (39) Short Financials; (40) Short Health Care; (41) Short Industrials; (42) Short Oil & Gas; (43) Short Real Estate; (44) Short Semiconductors; (45) Short Technology; (46) Short Utilities; (47) Short Russell Midcap Index; (48) Short Russell Midcap Growth Index; (49) Short Russell Midcap Value Index; (50) Short Russell 1000 Index; (51) Short Russell 1000 Growth Index; (52) Short Russell 1000 Value Index; (53) Short Russell 2000 Growth Index; (54) Short Russell 2000 Value Index; (55) UltraShort Russell 2000 ProShares (f/k/a UltraShort Russell 2000); (56) UltraShort S&P SmallCap 600; (57) UltraShort S&P500/Citigroup Value; (58) UltraShort S&P500/Citigroup Growth; (59) UltraShort S&P MidCap 400/Citigroup Value; (60) UltraShort S&P MidCap 400/Citigroup Growth; (61) UltraShort S&P SmallCap 600/Citigroup Value; (62) UltraShort S&P SmallCap 600/Citigroup Growth; (63) UltraShort Basic Materials ProShares (f/k/a UltraShort Basic Materials); (64) UltraShort Consumer Goods ProShares (f/k/a UltraShort Consumer Goods); (65) UltraShort Consumer Services ProShares (f/k/a UltraShort Consumer Services); (66) UltraShort Financials ProShares (f/k/a UltraShort Financials); (67) UltraShort Health Care ProShares (f/k/a UltraShort Health Care); (68) UltraShort Industrials ProShares (f/k/a UltraShort Industrials); (69) UltraShort Oil & Gas ProShares (f/k/a UltraShort Oil & Gas); (70) UltraShort Real Estate ProShares (f/k/a UltraShort Real Estate); (71) UltraShort Semiconductors ProShares (f/k/a UltraShort Semiconductors); (72) UltraShort Technology ProShares (f/k/a UltraShort Technology); (73) UltraShort Utilities ProShares (f/k/a UltraShort Utilities); (74) UltraShort Russell Midcap Index; (75) UltraShort Russell Midcap Growth ProShares (f/k/a UltraShort Russell Midcap Growth Index); (76) UltraShort Russell Midcap Value ProShares (f/k/a UltraShort Russell Midcap Value Index); (77) UltraShort Russell 1000 Index; (78) UltraShort Russell 1000 Growth ProShares (f/k/a UltraShort Russell 1000 Growth Index); (79) UltraShort Russell 1000 Value ProShares (f/k/a UltraShort Russell 1000 Value Index); (80) UltraShort Russell 2000 Growth ProShares (f/k/a UltraShort Russell 2000 Growth Index); and (81) UltraShort

- Russell 2000 Value ProShares (f/k/a UltraShort Russell 2000 Value Index);<sup>6</sup>

- the SPD®<sup>7</sup> DJ Global Titans ETF (f/k/a the streetTRACKS Dow Jones Global Titans Index Fund);<sup>8</sup>
- the iShares®<sup>9</sup> MSCI Emerging Markets Index Fund;<sup>10</sup>
- the iShares S&P Global Energy Sector Index Fund, iShares S&P Global Financials Sector Index Fund, iShares S&P Global Health Care Sector Index Fund, iShares S&P Global Telecommunications Sector Index Fund, iShares S&P Global Information Technology Sector Index Fund, iShares S&P Latin America 40 Index Fund, and iShares MSCI EAFE Index Fund;<sup>11</sup>
- the Claymore MACROshares Oil Up Tradeable Shares and the Claymore MACROshares Oil Down Tradeable Shares;<sup>12</sup>
- the DJ STOXX 50 ETF (f/k/a the streetTRACKS Dow Jones STOXX 50 Fund) and the DJ Euro STOXX 50 ETF (f/k/a the streetTRACKS Dow Jones EURO STOXX 50 Fund);<sup>13</sup>
- the iShares S&P Global 100 Index Fund;<sup>14</sup>

<sup>6</sup> These ETFs of the ProShares Trust were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR-NYSEArca-2006-87). Some of the ETFs of the ProShares Trust listed above are not currently trading because they have not yet been launched.

<sup>7</sup> SPDR® is a registered trademark of The McGraw-Hill Companies, Inc.

<sup>8</sup> This ETF was approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 55085 (January 11, 2007), 72 FR 2717 (January 22, 2007) (SR-NYSEArca-2006-37).

<sup>9</sup> iShares® is a registered trademark of Barclays Global Investors, N.A.

<sup>10</sup> This ETF was approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 55083 (January 10, 2007), 72 FR 2322 (January 18, 2007) (SR-NYSEArca-2006-39).

<sup>11</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 55053 (January 5, 2007), 72 FR 1794 (January 16, 2007) (SR-NYSEArca-2006-38).

<sup>12</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 8.400 during the Core Trading Session. See Securities Exchange Act Release No. 55033 (December 29, 2006) 72 FR 1253 (January 10, 2007) (SR-NYSEArca-2006-75).

<sup>13</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 55032 (December 29, 2006), 72 FR 1042 (January 9, 2007) (SR-NYSEArca-2006-36).

<sup>14</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 55019 (December 28, 2006), 72 FR 1047 (January 9, 2007) (SR-NYSEArca-2006-35).

to Rule 8.200 during the Core Trading Session. See Securities Exchange Act Release No. 55484 (March 16, 2007), 72 FR 13847 (March 23, 2007) (SR-NYSEArca-2006-67).

<sup>5</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Commentary .02 to Rule 8.200 during the Core Trading Session (except for the PowerShares DB Base Metals Fund, which was approved for trading during the Late Session as well). See Securities Exchange Act Release No. 55453 (March 13, 2007) 72 FR 13333 (March 21, 2007) (SR-NYSEArca-2006-62).

- the iShares MSCI Belgium Index Fund, iShares MSCI France Index Fund, iShares MSCI Italy Index Fund, iShares MSCI Netherlands Index Fund, iShares MSCI Spain Index Fund, iShares MSCI Sweden Index Fund, iShares MSCI Switzerland Index Fund, and iShares MSCI United Kingdom Index Fund;<sup>15</sup>
- the iShares S&P Europe 350 Index Fund;<sup>16</sup>
- the iShares MSCI Brazil Index Fund and iShares MSCI South Africa Index Fund;<sup>17</sup>
- the iShares S&P Global Consumer Discretionary Sector Index Fund, iShares S&P Global Consumer Staples Sector Index Fund, iShares S&P Global Industrials Sector Index Fund, iShares S&P Global Utilities Sector Index Fund, and iShares S&P Global Materials Sector Index Fund;<sup>18</sup>
- the PowerShares DB G10 Currency Harvest Fund;<sup>19</sup>
- the UltraShort S&P 500 ProShares (f/k/a Ultra Short 500 Fund, UltraShort QQQ ProShares (f/k/a Ultra Short 100 Fund), UltraShort Dow 30 ProShares (f/k/a Ultra Short 30 Fund), and UltraShort Mid-Cap 400 ProShares (f/k/a Ultra Short Mid-Cap 400 Fund);<sup>20</sup>
- the Ultra S&P 500 ProShares (f/k/a Ultra 500 Fund), Ultra QQQ ProShares (f/k/a Ultra 100 Fund), Ultra Dow 30 ProShares (f/k/a Ultra 30 Fund), Ultra Mid-Cap 400 ProShares (f/k/a Ultra Mid-Cap 400 Fund), Short S&P 500 ProShares (f/k/a Short 500 Fund), Short QQQ ProShares (f/k/a Short 100 Fund),

<sup>15</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 55017 (December 28, 2006), 72 FR 1044 (January 9, 2007) (SR-NYSEArca-2006-34).

<sup>16</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 55004 (December 22, 2006), 72 FR 173 (January 3, 2007) (SR-NYSEArca-2006-33).

<sup>17</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 55002 (December 21, 2006), 71 FR 78503 (December 29, 2006) (SR-NYSEArca-2006-32).

<sup>18</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 54473 (September 20, 2006), 71 FR 56204 (September 26, 2006) (SR-NYSEArca-2006-60).

<sup>19</sup> This ETF was approved for trading on the Exchange pursuant to UTP under Commentary .02 to Rule 8.200 during the Core Trading Session. See Securities Exchange Act Release No. 54569 (October 4, 2006), 71 FR 60594 (October 13, 2006) (SR-NYSEArca-2006-64).

<sup>20</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR-PCX-2005-115).

Short Dow 30 ProShares (f/k/a Short 30 Fund), and Short Mid-Cap 400 ProShares (f/k/a Short Mid-Cap 400 Fund);<sup>21</sup>

- the following ETFs of the WisdomTree Trust: (1) WisdomTree Europe Total Dividend Fund; (2) WisdomTree Europe High-Yielding Equity Fund; (3) WisdomTree Japan Total Dividend Fund; (4) WisdomTree Japan High-Yielding Equity Fund; (5) WisdomTree DIEFA Fund; (6) WisdomTree DIEFA High Yielding Equity Fund; (7) WisdomTree Pacific ex-Japan Total Dividend Fund; (8) WisdomTree Pacific ex-Japan High-Yielding Equity Fund; (9) WisdomTree International LargeCap Dividend Fund; (10) WisdomTree International MidCap Dividend Fund; (11) WisdomTree International SmallCap Dividend Fund; (12) WisdomTree International Dividend Top 100 Fund; (13) WisdomTree Europe Dividend Top 100 Fund; (14) WisdomTree Europe SmallCap Dividend Fund; (15) WisdomTree Japan SmallCap Dividend Fund; (16) WisdomTree International Consumer Non-Cyclical Sector Fund; (17) WisdomTree International Basic Materials Sector Fund; (18) WisdomTree International Communications Sector Fund; (19) WisdomTree International Consumer Cyclical Sector Fund; (20) WisdomTree International Energy Sector Fund; (21) WisdomTree International Financial Sector Fund; (22) WisdomTree International Healthcare Sector Fund; (23) WisdomTree International Industrial Sector Fund; (24) WisdomTree International Technology Sector Fund; (25) WisdomTree International Utilities Sector Fund; (26) WisdomTree Emerging Markets Total Dividend Fund; (27) WisdomTree Emerging Markets High-Yielding Equity Fund; (28) WisdomTree Emerging Markets Dividend Top 100 Fund; (29) WisdomTree Latin America Dividend Fund; (30) WisdomTree Asia Emerging Markets Total Dividend Fund; (31) WisdomTree Asia Emerging Markets High-Yielding Equity Fund; (32) WisdomTree China Dividend Fund; (33) WisdomTree Hong Kong Dividend Fund; and (34) WisdomTree Singapore Dividend Fund;<sup>22</sup>

<sup>21</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR-PCX-2005-115).

<sup>22</sup> These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 53999 (June 15, 2006), 71 FR 35981 (June 22, 2006) (SR-NYSEArca-2006-30). Some of the ETFs of the

- the iShares GSCI Commodity-Indexed Trust;<sup>23</sup>
- the United States Oil Fund, LP;<sup>24</sup>
- the PowerShares DB Commodity Index Tracking Fund (f/k/a the DB Commodity Index Tracking Fund);<sup>25</sup>
- the iShares Silver Trust;<sup>26</sup>
- iShares MSCI Australia Index Fund, iShares MSCI Austria Index Fund, iShares MSCI Canada Index Fund, iShares MSCI EMU Index Fund, iShares MSCI Germany Index Fund, and iShares MSCI Mexico Index Fund;<sup>27</sup>
- the Vanguard European ETF (f/k/a the Vanguard MSCI Europe Index Fund), the Vanguard Pacific ETF (f/k/a the Vanguard MSCI Pacific Index Fund), and the Vanguard Emerging Markets ETF (f/k/a the Vanguard MSCI Emerging Markets Select Index Fund);<sup>28</sup> and
- the iShares COMEX Gold Trust.<sup>29</sup>

In support of this proposed rule change, the Exchange states that the representations in the approval orders

WisdomTree Trust are not currently trading because they have not yet been launched.

<sup>23</sup> This ETF was approved for trading on the Exchange pursuant to UTP under Rule 8.203 during the Core Trading Session. See Securities Exchange Act Release No. 54025 (June 21, 2006), 71 FR 36856 (June 28, 2006) (SR-NYSEArca-2006-12).

<sup>24</sup> This ETF was approved for trading on the Exchange pursuant to UTP under Rule 8.300 during the Core Trading Session. See Securities Exchange Act Release No. 53875 (May 25, 2006), 71 FR 32164 (June 2, 2006) (SR-NYSEArca-2006-11).

<sup>25</sup> This ETF was approved for trading on the Exchange pursuant to UTP under Commentary .02 to Rule 8.200 during the Core Trading Session. See Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR-PCX-2006-22).

<sup>26</sup> This ETF was approved for trading on the Exchange pursuant to UTP under Rule 8.201 during the Core Trading Session. See Securities Exchange Act Release No. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR-PCX-2005-117).

<sup>27</sup> These ETFs were approved for listing and trading on the Exchange under Rule 5.2(j)(3) during the Core and Late Trading Sessions. See Securities Exchange Act Release No. 53230 (February 6, 2006), 71 FR 7594 (February 13, 2006) (SR-PCX-2005-116).

<sup>28</sup> These ETFs were originally approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core Trading Session. See Securities Exchange Act Release No. 52221 (August 8, 2005), 70 FR 48222 (August 16, 2005) (SR-PCX-2005-74). The Exchange expanded the hours during which these ETFs were eligible to trade to include the Late Trading Session in December 2005. See Securities Exchange Act Release No. 52927 (December 8, 2005), 70 FR 74397 (December 15, 2005) (SR-PCX-2005-128).

<sup>29</sup> This ETF was approved for UTP trading on the Exchange under Rule 8.201 during the Core Trading Session. See Securities Exchange Act Release No. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR-PCX-2004-132). This ETF was subsequently approved for listing and trading in all three Exchange trading sessions upon transfer of the listing to the Exchange. See Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43). Pursuant to this proposal, the Exchange seeks to trade the securities of this ETF in all three trading sessions prior to the transfer of the listing.

for the foregoing ETFs, as summarized below, continue to apply with respect to trading during the Core and Late Trading Sessions:

1. The Exchange has appropriate rules to facilitate transactions in shares of the above ETFs during all trading sessions. The Exchange deems such shares to be equity securities, thus rendering trading in such shares subject to the Exchange's existing rules governing the trading of equity securities.

2. The Exchange's surveillance procedures are adequate to properly monitor trading of shares of the above ETFs in all trading sessions.<sup>30</sup>

3. The Exchange has distributed an Information Bulletin to Equity Trading Permit ("ETP") Holders prior to the commencement of trading of the shares of the above ETFs on the Exchange that explains the terms, characteristics, and risks of trading such shares. In addition, the Exchange states that it will distribute an Information Bulletin that explains the terms, characteristics, and risks of trading the shares of the above ETFs that have not yet been launched to ETP Holders prior to the commencement of trading of such shares.

4. The Exchange will require ETP Holders with a customer who purchases newly issued shares of the above ETFs in any trading session on the NYSE Arca Marketplace to provide that customer with a product description, if available, or a prospectus, and has noted this delivery requirement in the Information Bulletin.

5. When the Exchange is the UTP trading market, the Exchange will cease trading in the shares of ETFs during all trading sessions if (a) the listing market stops trading the shares, or (b) the listing market delists the shares. Additionally, the Exchange may cease trading the shares if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. UTP trading in the shares of ETFs is also governed by the trading halt provisions of NYSE Arca Equities Rule 7.34 relating to temporary interruptions in the calculation or wide dissemination of the Intraday Indicative Value ("IIV")<sup>31</sup> or the value of the

<sup>30</sup> The Exchange states that it may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliate members of ISG. In addition, as referenced in the applicable approval orders, the Exchange has in place information sharing agreements with the relevant exchange(s).

<sup>31</sup> The IIV is also sometimes referred to as the Indicative Optimized Portfolio Value ("IOPV"), the Indicative Fund Value ("IFV"), the Indicative Trust Value ("ITV"), and the Indicative Partnership Value ("IPV"), depending upon the type of ETF being

underlying index or other applicable underlying benchmark. ETF shares will be traded following a trading halt in accordance with NYSE Arca Equities Rule 7.35(f).

6. When the Exchange is the listing market, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the shares of an ETF. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the shares inadvisable. Factors for consideration may include (a) the extent to which trading is not occurring in the securities or other instruments underlying an ETF, or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the shares of listed ETFs are subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule (NYSE Arca Equities Rule 7.12) or by the halt or suspension of trading of the underlying securities or other instruments underlying an ETF. If the IIV or the index value applicable to a series of shares is not being disseminated as required, 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 will halt trading no later than the beginning of the trading day following the interruption.

7. The IIV and/or index value (or value of the underlying asset or instrument, if not an index) will continue to be disseminated during all three trading sessions, to the extent the relevant approval order provides for this dissemination requirement.

The Exchange intends to distribute to its ETP Holders and make available on its Web site a Regulatory Information Bulletin titled "*Exchange-Traded Funds—Extended Trading Hours*" that discloses and discusses, among other things, the following: (1) The underlying index value may not be updated during the Core and Late Trading Sessions; (2) the IIV may not be updated during the Core and Late Trading Sessions; (3) commodity and currency spot prices are available in the Core and Late Trading Sessions, but commodity and currency futures prices generally will not be available in the Core and Late Trading

traded and the terminology used in the Commission approval orders.

Sessions;<sup>32</sup> (4) lower liquidity in the Core and Late Trading Sessions may impact pricing; (5) higher volatility in the Core and Late Trading Sessions may impact pricing; (6) wider spreads may occur in the Core and Late Trading Sessions; (7) required customer disclosures;<sup>33</sup> (8) the circumstances that trigger trading halts; and (9) suitability requirements. The Exchange recently amended NYSE Arca Equities Rule 7.34(e) to require ETP Holders to disclose additional risks associated with extended hours trading in new derivative securities products to customers.<sup>34</sup>

The Exchange notes that if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, because of time zone differences or holidays in countries where the index component stocks trade), then the last calculated official index value must remain available throughout Exchange trading hours. Similarly, if the IIV does not change during any portion of Exchange trading hours, then the last official calculated IIV must remain available throughout Exchange trading hours.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>35</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>36</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

<sup>32</sup> The Exchange states that, in certain cases, the futures or options markets for a particular commodity may be closed during part of the Core Trading Session, and the IIV would be static for that particular future or options price, but widely disseminated. In addition, the prices of certain futures contracts in commodities (e.g., gold) and currencies are available on a 24-hour basis.

<sup>33</sup> See *infra* note 34.

<sup>34</sup> See Securities Exchange Act Release No. 56270 (August 15, 2007), 72 FR 47109 (August 22, 2007) (SR-NYSEArca-2007-74). Specifically, the Exchange requires ETP Holders to disclose to their non-ETP Holder customers that an updated underlying index value or IIV may not be calculated or publicly disseminated during extended trading hours. Since the IIV is not calculated or widely disseminated during the Opening and Late Trading Sessions, an investor who is unable to calculate an implied value for a derivative securities product in those sessions may be at a disadvantage to market professionals. The Exchange believes that requiring ETP Holders to disclose this risk to non-ETP Holders will facilitate informed participation in extended hours trading.

<sup>35</sup> 15 U.S.C. 78f(b).

<sup>36</sup> 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposed rule change will impose no 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*

The Exchange states that 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 NYSE Arca 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-75 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-2007-75. 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 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-2007-75 and should be submitted on or before September 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>37</sup>

**Nancy M. Morris,**  
Secretary.

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**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56323; File No. SR-NYSEArca-2007-86]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Fill-or-Kill Order Type**

August 27, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 10, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation") 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. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing with the Commission.<sup>4</sup> 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 NYSE Arca Equities, is proposing to amend its rules in order to add a new order type known as the Fill-or-Kill Order. The changes described in this rule proposal would add new NYSE Arca Equities Rule 7.31(l). 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 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**

In order to provide additional flexibility and increased functionality to its system and its Users,<sup>5</sup> the Exchange proposes to add a new order type known as the Fill-or-Kill order.

Fill-or-Kill orders are limit orders that will be executed in full as soon as such order is received. However, if execution is not possible, the entire order will be immediately cancelled. Of course, Fill-or-Kill orders will not route out of NYSE Arca to other market centers; they will either be immediately executed, or cancelled, in their entirety.

The Exchange believes that the addition of the proposed order type will

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

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

<sup>5</sup> See NYSE Arca Equities Rule 1.1(yy) for the definition of "User."

<sup>37</sup> 17 CFR 200.30-3(a)(12).

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

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