

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 NSX. 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-2007-11 and should be submitted on or before December 28, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56879; File No. SR-NYSEArca-2007-110]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Certain Modifications to the Initial Listing and Trading Standards for Equity Index-Linked Securities

December 3, 2007.

#### I. Introduction

On October 18, 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"), 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> a proposal to modify certain initial listing and trading standards for Equity Index-Linked Securities.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on November 1, 2007.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

NYSE Arca Equities Rule 5.2(j)(6)(B)(I) currently permits the Exchange to list and trade, pursuant to Rule 19b-4(e) under the Act,<sup>5</sup> Equity Index-Linked Securities if, among other requirements, all component securities included in the underlying index are either: (1) Securities (other than foreign country securities and American Depository Receipts ("ADRs")) that are (a) issued by a reporting company under the Act that is listed on a national securities exchange and (b) an "NMS stock," as defined in Rule 600 of Regulation NMS;<sup>6</sup> or (2) foreign country securities or ADRs, subject to certain limitations. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I) to permit the listing and trading of Equity Index-Linked Securities where the underlying index consists, in whole or in part, of (1) securities of closed-end management investment companies ("Closed-End Fund Securities") or (2) investment company units ("ETF Securities"), which, in each case, are registered under the Investment Company Act of 1940 (the "1940 Act") and listed on a national securities exchange.

In its proposal, the Exchange stated its belief that trading in exchange-listed Closed-End Fund Securities and ETF Securities is subject to the same level of

regulation as trading in exchange-listed equity securities. In addition, the Exchange stated that Closed-End Fund Securities and ETF Securities trade on the same exchange platforms as equity securities registered under the Act and are subject to the same exchange trading rules as equity securities. As such, the Exchange believes that it is appropriate to permit their inclusion as components of indexes underlying Equity Index-Linked Securities.

The Exchange also proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(v) to incorporate a limited exception to the requirement that 90% of the index's numerical value and at least 80% of the total number of component securities underlying an Equity Reference Asset must meet the then current criteria for standardized options trading set forth in NYSE Arca Rule 5.3. The Exchange proposes that an underlying index would not be subject to such requirement if (1) no underlying component security represents more than 10% of the dollar weight of such index, and (2) such index has a minimum of 20 component securities.

All of the options exchanges apply the same criteria to securities underlying exchange-traded options.<sup>7</sup> These criteria relate primarily to the distribution and trading volume of the securities underlying an option,<sup>8</sup> and, as such, the Exchange believes that such criteria are duplicative of the minimum market capitalization and trading volume requirements for securities underlying Equity Index-Linked Securities set forth in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(i) and (ii), respectively. The Exchange notes that the current requirement of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(ii), in particular, that relates to minimum trading volume for each component security is more stringent than the trading volume requirement related to options trading.<sup>9</sup> Notwithstanding the

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

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

<sup>3</sup> NYSE Arca Equities Rule 5.2(j)(6) defines Equity Index-Linked Securities as securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities, also referred to as the "Equity Reference Asset." See NYSE Arca Equities Rule 5.2(j)(6).

<sup>4</sup> See Securities Exchange Act Release No. 56696 (October 24, 2007), 72 FR 61927 ("Notice").

<sup>5</sup> See 17 CFR 240.19b-4(e). 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 Act (15 U.S.C. 78s(b)), 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 such product class.

<sup>6</sup> See 17 CFR 242.600(b)(47). NMS stock means any security or class of securities (other than options) for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan.

<sup>7</sup> See, e.g., Rule 1009 of the Philadelphia Stock Exchange, Inc.; Rule 5.3 of the Chicago Board Options Exchange, Incorporated; Rule 5.3 of NYSE Arca; and Rule 502 of the International Securities Exchange, LLC.

<sup>8</sup> The rules generally require a minimum of 7,000,000 publicly-held shares, 2,000 holders, a trading volume of at least 2,400,000 shares in the preceding 12 months, and a market price per share of the underlying security of at least \$3.00 per share for securities that are "covered securities," as defined in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)), and a market price per share of the underlying security of at least \$7.50 for securities that are not "covered securities." See, e.g., NYSE Arca Rule 5.3.

<sup>9</sup> NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(ii) requires that each component security must have trading volume in each of the last six months or not less than 1,000,000 shares per month, except that for each of

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

foregoing, while a significant number of listed equity securities meet the minimum market capitalization and trading volume requirements for components of equity indexes under NYSE Arca Equities Rule 5.2(j)(6), the Exchange represents that many do not meet the current criteria for standardized options trading. The Exchange believes that the explicit market capitalization and trading volume requirements of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(i) and (ii), respectively, are sufficient to ensure that any component security comprising an Equity Reference Asset underlying a series of Equity Index-Linked Securities will have an adequate liquid trading market. In addition, the Exchange believes that, by requiring that both proposed conditions to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(v) (i.e., enhancing concentration limits for component securities and increasing the minimum number of component securities) be met in order to avail of the proposed exemption to such rule, the proposal would significantly reduce the possibility of manipulation of the index. Based on the foregoing, the Exchange believes that the protection of requiring such securities to be qualified for options trading is unnecessary.

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

After careful review and based on the Exchange's representations, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>11</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

the lowest dollar weighted component securities in the index that, in the aggregate, account for no more than 10% of the dollar weight of the index, the trading volume shall be at least 500,000 shares per month in each of the last six months. In contrast, the options criteria for underlying securities generally require a minimum trading volume (in all markets in which the underlying security is traded) of 2,400,000 shares in the preceding twelve months, as stated above.

<sup>10</sup> In approving this proposed 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>11</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest.

With respect to the proposal to permit the inclusion of Closed-End Fund Securities and ETF Securities in an underlying index of a series of Equity Index-Linked Securities, the Commission notes that issuers of Closed-End Fund Securities and ETF Securities must register under the 1940 Act, and such securities must be listed on a national securities exchange. The Commission also notes that Closed-End Securities and ETF Securities trade on the same platforms as equity securities and are generally subject to the same exchange trading rules as equity securities. In addition, in order for such securities to be included in an underlying index of an issue of Equity Index-Linked Securities, it must be an NMS stock, as defined in Rule 600(b)(47) of Regulation NMS.<sup>12</sup> The Commission believes that this proposal should benefit investors by creating additional alternatives to investing in such regulated products and competition in the market for Equity Index-Linked Securities, while maintaining transparency of the underlying components comprising an index.

The Commission further believes that the proposal to provide for a limited exception to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(v) reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in Section 6(b)(5) of the Act. The Commission notes that the minimum trading volume standard relating to the eligibility of securities underlying options overlaps with, and is less stringent than, the equivalent trading volume standards provided in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(2)(ii) and (iii). Because the overall purpose of the current criteria for standardized options trading is to ensure proper liquidity of the underlying security, the Commission believes that the minimum market value thresholds of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(i), the minimum trading volume requirements provided in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(2)(ii) and (iii), together with the enhanced concentration limits and increased minimum number of component securities needed in order to avail of the proposed exemption to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(v), will help ensure adequate liquidity of

each component comprising an underlying index of Equity Index-Linked Securities. As such, the Commission believes it is reasonable and consistent with the Act for the Exchange to modify the listing standards for Equity Index-Linked Securities in the manner described in the proposal.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSEArca-2007-110), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56885; File No. SR-NYSEArca-2007-123]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Relating to the Extension of the Pilot Program for Initial and Continued Financial Listing Standards for Common Stock of Operating Companies Until May 31, 2008

December 3, 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 November 29, 2007, 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 November 30, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</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.

<sup>3</sup> In Amendment No. 1, the Exchange corrected a typographical error on the proposed Pilot Program (as defined below) extension date and explained the amendment to the Pilot Program.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> See *supra* note 6.