

yield.” The proposal was published for comment in the **Federal Register** on August 7, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

## II. Background

NASD Rule 6230(c) currently requires a member, in connection with a transaction in a TRACE-eligible security, to report various pieces of information to TRACE, including, for most transactions, the lower of yield to call or yield to maturity.<sup>4</sup> Upon receipt of that trade report, TRACE disseminates certain information about the transaction (except if it is a Rule 144A transaction), including the yield as reported by the member. TRACE calculates the standard yield<sup>5</sup> but generally does not disseminate it.<sup>6</sup>

FINRA has proposed (1) to eliminate the requirement for members to report yield; and (2) to disseminate the standard yield in most cases.<sup>7</sup> FINRA stated that there currently is no uniformity in the manner by which members calculate yield, and that disseminating standard yield—calculated according to a single formula and with a uniform set of assumptions—will provide more useful information to market participants. Moreover, FINRA believes that it may be useful for customers to compare the standard yield in a transaction as reported by TRACE against the member-calculated yield that

the member provides on the customer confirmation required by Rule 10b-10 under the Act.<sup>8</sup>

*Vendors.* FINRA also has proposed to require that data vendors and redistributors that provide TRACE information display the yield. However, certain vendors desire to disseminate a yield calculated by the vendor, rather than the standard yield. FINRA would permit this flexibility, provided that a vendor displaying a yield other than the standard yield disclose that fact.

*Effective Date.* FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date would be no later than 90 days following publication of that *Regulatory Notice*.

## III. Discussion and Findings

After careful consideration, 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 association.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act,<sup>10</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general to protect investors and the public interest. The Commission believes that the proposal will likely improve transparency in the corporate debt markets by making available a standard yield for most transactions that is calculated using an industry-recognized formula with a uniform set of assumptions. At the same time, the proposal reduces regulatory burdens by relieving FINRA members of the obligation to calculate and report yield for each transaction in a TRACE-eligible security.

## IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-FINRA-2008-040) be, and hereby is, approved.

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

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58502; File No. SR-NYSEArca-2008-93]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing of the iShares Lehman Agency Bond Fund

September 10, 2008.

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 25, 2008, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approves the proposed rule change on an accelerated basis.

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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), proposes to list and trade shares (“Shares”) of the following fund of iShares Lehman Agency Bond Fund. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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

<sup>3</sup> Securities Exchange Act Release No. 58283 (August 1, 2008), 73 FR 46108 (August 7, 2008) (SR-FINRA-2008-040).

<sup>4</sup> The member is not required to report yield if the TRACE-eligible security is in default; the interest rate on the security floats; the interest rate will or may be “stepped-up” or “stepped-down”; and the amount of increase or decrease is an unknown variable; the security is a pay-in-kind (“PIK”) security; the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable; or if FINRA determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security. See NASD Rule 6230(c)(13).

<sup>5</sup> FINRA stated that the standard yield in TRACE: (1) is calculated as the internal rate of return according to a discounted cash flow model; (2) is calculated, in a principal trade, on the reported price, which includes the mark-up/mark-down, and in an agency trade, on the reported price and reported commission; (3) does not include any fees or charges that are not included, in a principal trade, as part of the reported price, and in an agency trade, in the reported commission; (4) is calculated as the lower of yield to call (if the bond is callable) and yield to maturity, or so-called “yield-to-worst;” and (5) is calculated utilizing a methodology that is widely used by professionals in the securities industry.

<sup>6</sup> Standard yield is included in the disseminated TRACE data when the member is required to report yield but fails to do so.

<sup>7</sup> TRACE would not disseminate a standard yield for any transaction where a member currently is not required to report yield under NASD Rule 6230(c)(13). See *supra* note 4.

<sup>8</sup> 17 CFR 240.10b-10.

<sup>9</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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.

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 list and trade the Shares of the following fund under NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units ("ICUs"):<sup>3</sup> iShares Lehman Agency Bond Fund (the "Fund"), a series of the iShares Trust ("Trust").

The Fund seeks investment results that correspond generally to the price and yield, before fees and expenses, of the agency sector of the U.S. government bond market as defined by the Lehman Brothers U.S. Agency Index ("Index"). The Index measures the performance of the agency sector of the U.S. government bond market and is comprised of investment grade U.S. dollar-denominated debentures issued by government and government-related agencies.

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the "generic" listing requirements of Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on Fixed Income Securities.<sup>4</sup> The Index meets all such requirements except for those set forth in Commentary .02(a)(5).<sup>5</sup> The Exchange

represents that: (1) Except for the requirement under Commentary .02(a)(5) to NYSE Arca Equities Rule 5.2(j)(3) that an underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers, the Shares of the Fund currently satisfy all of the applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A-3<sup>6</sup> under the Act for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls and Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.<sup>7</sup>

Detailed descriptions of the Fund, the Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, and reports to be distributed to beneficial owners of the Shares can be found in the Trust's Registration Statement<sup>8</sup> or on the Web site for the Fund (<http://www.ishares.com>), as applicable.

**2. Statutory Basis**

The proposed rule change is consistent with Section 6(b)<sup>9</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>10</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 mechanisms of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

**III. 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 No. SR-NYSEArca-2008-93 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-NYSEArca-2008-93. 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

<sup>3</sup> An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

<sup>4</sup> Fixed Income Securities are described in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 as debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities, government-sponsored entity securities, municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof.

<sup>5</sup> The Exchange states that, as of August 8, 2008, the Index included securities of 10 non-affiliated issuers. Approximately 0.59% of the Index weight consisted of non-exempted securities. The Exchange notes that all 10 non-affiliated issuers of issues in the Index are U.S. government or government-related agencies. The Exchange believes that, under these circumstances, having 10 non-affiliated issuers rather than 13 non-affiliated issuers, as required by Commentary .02(a)(5) to NYSE Arca Equities Rule 5.2(j)(3), will have no negative impact on investor protection or on

competition among market participants. E-mail from Tim Malinowski, Director, NYSE Euronext, Exchange, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated September 3, 2008.

<sup>6</sup> 17 CFR 240.10A-3.

<sup>7</sup> See, e.g., Securities Exchange Act Release No. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR-NYSEArca-2007-36) (order approving generic listing standards for ICUs based on fixed income indexes); Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (order approving generic listing standards for ICUs and Portfolio Depositary Receipts); Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (order approving rules for listing and trading of ICUs).

<sup>8</sup> See the Trust's Registration Statement on Form N-1A, dated July 16, 2008 (File Nos. 333-92935 and 811-09729).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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-NYSEArca-2008-93 and should be submitted on or before October 9, 2008.

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

After careful consideration, 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>11</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be designed 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.

Although NYSE Arca Equities Rule 5.2(j)(3) permits the Exchange to list ICUs based on Fixed Income Securities pursuant to Rule 19b-4(e) under the Act,<sup>13</sup> the Index for the Fund does not meet all of the generic listing requirements applicable to ICUs based on Fixed Income Securities. Specifically, the Index does not satisfy Commentary .02(a)(5) to NYSE Arca Equities Rule 5.2(j)(3), which requires that an underlying index or portfolio (excluding one consisting entirely of exempted securities) include a minimum of 13 non-affiliated issuers.

<sup>11</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>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See 17 CFR 240.19b-4(e). See also Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

According to the Exchange, as of August 8, 2008, the Index included securities of only 10 non-affiliated issuers, all of which are U.S. government or government-related agencies. The Exchange has noted that approximately 0.59% of the weight of the Index consists of non-exempted securities.<sup>14</sup>

The Commission believes that the listing and trading of the Shares is consistent with the Act. The Commission notes that all of the issuers of the Fixed Income Securities comprising the Index are either U.S. government or other government-related agencies. In addition, the Commission notes that, based on the Exchange's representations: (1) the Shares will meet all of the applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(3), except for the requirement under Commentary .02(a)(5) thereto that the Index include a minimum of 13 non-affiliated issuers; (2) the Shares will be subject to all of the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs; and (3) the Trust is required to comply with Rule 10A-3 under the Act.<sup>15</sup> The Commission also notes that Shares of the Fund will comply with all other requirements of NYSE Arca Equities Rule 5.2(j)(3), applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value and rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.<sup>16</sup>

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that, because the Shares comply with all of NYSE Arca Equities' generic listing

standards for ICUs based on Fixed Income Securities (except for the requirement relating to the minimum number of non-affiliated issuers), the listing and trading of the Shares by the Exchange does not appear to present any novel or significant regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission further notes that it has previously approved the listing and trading of derivative securities products based on underlying assets that did not meet certain quantitative generic listing criteria<sup>18</sup> and, more specifically, the listing and trading of an exchange-traded fund based on an underlying index of Fixed Income Securities, which similarly did not satisfy the generic listing requirement relating to minimum number of non-affiliated issuers.<sup>19</sup> The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for ICUs. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis. This order is based on the Exchange's representations.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-NYSEArca-2008-93) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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<sup>14</sup> See *supra* note 5.

<sup>15</sup> See 17 CFR 240.10A-3.

<sup>16</sup> See, e.g., Securities Exchange Act Release Nos. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (approving the adoption of rules governing the listing and trading of ICUs); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (approving generic listing standards for ICUs and portfolio depository receipts); 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR-NYSEArca-2007-36) (approving generic listing standards for ICUs based on fixed income indexes); and 56625 (October 5, 2007), 72 FR 58144 (October 12, 2007) (SR-NYSEArca-2007-73) (approving a proposal relating to extended hours trading for ICUs and portfolio depository receipts).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> See, e.g., Securities Exchange Act Release Nos. 58437 (August 28, 2008), 73 FR 51684 (September 4, 2008) (SR-NYSEArca-2008-77); 57349 (February 19, 2008), 73 FR 10084 (February 25, 2008) (SR-NYSEArca-2008-22); 55953 (June 25, 2007), 72 FR 36084 (July 2, 2007) (SR-NYSE-2007-46); and 56695 (October 24, 2007), 72 FR 61413 (October 30, 2007) (SR-NYSEArca-2007-111).

<sup>19</sup> See Securities Exchange Act Release No. 57356 (February 20, 2008), 73 FR 10314 (February 26, 2008) (SR-Amex-2007-115) (approving the listing and trading of shares of the SPDR® Barclays Capital Global Inflation Linked Exchange-Traded Fund).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).