

equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that transferring NASD Rule 2220 into the Consolidated Rulebook protects investors and the public interest by providing the investing public with options communications rules that are designed to provide appropriate safeguards and greater clarity by promoting harmonization between FINRA's and other SROs' options communications rules. FINRA believes that transferring NASD Rule 2441 into the Consolidated FINRA Rulebook promotes investor protection by requiring members to provide disclosure and obtain customer consent when trading on a net basis. In addition, FINRA believes that the benefits to investors of requiring certain disclosures and obtaining customer consent when trading on a net basis outweighs the additional responsibilities placed on broker-dealers. FINRA believes that transferring NASD Rule 2460 into the Consolidated FINRA Rulebook will protect investors and the public interest and avert a potential conflict of interest by prohibiting members from receiving compensation or other payments from an issuer or others for listing, quoting or making a market in an issuer's securities. Finally, FINRA believes that transferring and combining NASD Rules 3510 and 3520 in the Consolidated FINRA Rulebook will help ensure that members are prepared in the event of a significant business disruption. The proposed rule change makes non-substantive changes to rules that have proven effective in meeting the statutory mandates.

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

FINRA does not believe that the proposed rule change will result in 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*

Written comments were neither solicited nor received.

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-036 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2009-036. 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 FINRA. 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-FINRA-2009-036 and should be submitted on or before July 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-13971 Filed 6-12-09; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60065; File No. SR-NYSEArca-2009-47]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Generic Listing Rules for Currency Trust Shares**

June 8, 2009.

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 May 28, 2009, 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.<sup>3</sup>

#### **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" or the "Corporation"), proposes to amend its rules governing NYSE Arca, LLC, which is the equities trading facility of NYSE Arca. NYSE Arca is proposing to amend NYSE Arca Equities Rule 8.202 (Currency Trust Shares) to provide generic listing and trading rules for such securities. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.<sup>4</sup>

<sup>11</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> See *infra* notes 7 and 36 and accompanying text.

<sup>4</sup> E-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated June 4, 2009 ("Exchange Confirmation").

## 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 self-regulatory organization 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 those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 currently has rules permitting the listing and trading, including trading pursuant to unlisted trading privileges ("UTP"), of Currency Trust Shares (NYSE Arca Equities Rule 8.202).<sup>5</sup> The Exchange proposes to amend NYSE Arca Equities Rule 8.202 to include provisions for the listing and trading (including trading pursuant to UTP) of Currency Trust Shares pursuant to Rule 19b-4(e)<sup>6</sup> under the Act.<sup>7</sup>

#### Generic Listing Standards

Rule 19b-4(e) under the Act 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 Section (c)(1) of Rule 19b-4,<sup>8</sup> if the Commission has approved, pursuant to Section 19(b) of the Act,<sup>9</sup> the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a

surveillance program for the product class.<sup>10</sup>

The Exchange is proposing to adopt generic listing standards under amended Rule 8.202 for Currency Trust Shares,<sup>11</sup> pursuant to which it will be able to trade such securities without Commission approval of each individual product pursuant to Section 19(b)(2) of the Act.<sup>12</sup> Instead, the Exchange represents that any securities it lists and/or trades pursuant to NYSE Arca Equities Rule 8.202 will satisfy the standards set forth therein. The Exchange states that within five (5) business days after commencement of trading of a security pursuant to NYSE Arca Equities Rule 8.202, the Exchange will file a Form 19b-4(e).<sup>13</sup>

#### Currency Trust Shares

The Exchange proposes to amend the definition of the term "Currency Trust Shares" in NYSE Arca Equities Rule 8.202(c) to provide that Currency Trust Shares may be issued by a trust that holds more than one non-U.S. currency. In addition, NYSE Arca Equities Rule 8.202(c) would be amended to provide that Currency Trust Shares may be surrendered to the Trust by an Authorized Participant (as defined in the Trust's prospectus), and the Trust will deliver to the redeeming Authorized Participant the specified non-U.S. currency or currencies.<sup>14</sup> The reference to surrender of Currency Trust Shares by the beneficial owner would be deleted. NYSE Arca Equities Rule 8.202(d) relating to designation of a non-U.S. currency would be amended to clarify the rule's application to an issue of Currency Trust Shares that holds more than one currency. Commentary .01 also would be amended to clarify that Currency Trust Shares are Trust Issued Receipts that can hold multiple currencies.

The Exchange proposes to amend Commentary .04 to NYSE Arca Equities Rule 8.202 to incorporate generic listing and trading standards for Currency Trust Shares.<sup>15</sup> In addition to the

general requirements of NYSE Arca Equities Rule 8.202, Currency Trust Shares listed on the Exchange must satisfy the following initial listing criteria. For a series of Currency Trust Shares listed on the Exchange, a minimum of 100,000 shares of a series of Currency Trust Shares is required to be outstanding at commencement of trading.<sup>16</sup> In addition, for both listed Currency Trust Shares and those traded pursuant to UTP: (1) The value of the applicable non-U.S. currency must be disseminated by one or more major market data vendors on at least a 15-second delayed basis; (2) the Indicative Trust Value must be calculated and widely disseminated by the Corporation or one or more major market data vendors on at least a 15-second basis during the Core Trading Session as defined in NYSE Arca Equities Rule 7.34; and (3) the Corporation will implement written surveillance procedures applicable to Currency Trust Shares.

Proposed Commentary .05 to NYSE Arca Equities Rule 8.202 provides certain "firewall" requirements where the value of a Currency Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, as well as requirements on any advisory committee, supervisory board or similar entity that advises or that makes certain decisions regarding the index, similar to the requirements currently specified in NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(b)(1).

Commentary .06 provides that Currency Trust Shares will be subject to the Exchange's equity trading rules. Commentary .07 provides that, if the

<sup>5</sup> See Securities Exchange Act Release No. 53253 (February 8, 2006), 71 FR 8029 (February 15, 2006) (SR-PCX-2005-123) (order approving Rule 8.202 and trading on the Exchange pursuant to UTP of shares of the Euro Currency Trust).

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

<sup>7</sup> The Exchange previously filed a proposed rule change to permit listing pursuant to Rule 19b-4(e) of Commodity-Based Trust Shares, Currency Trust Shares, and Commodity Index Trust Shares. See Securities Exchange Act Release No. 58332 (August 8, 2008), 73 FR 47996 (August 15, 2008) (SR-NYSEArca-2008-51) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Adopt Generic Listing and Trading Rules for Commodity-Based Trust Shares, Currency Trust Shares, and Commodity Index Trust Shares). The Exchange withdrew NYSEArca-2008-51 on May 18, 2009. The amendments to NYSE Arca Equities Rule 8.202 proposed herein are substantially identical to changes to NYSE Arca Equities Rule 8.202 proposed in SR-NYSEArca-2008-51.

<sup>8</sup> 17 CFR 240.19b-4(c)(1).

<sup>9</sup> 17 U.S.C. 78s(b).

<sup>10</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

<sup>11</sup> See Exchange Confirmation, *supra* note 4 (replacing the term "Shares" with "Currency Trust Shares" where applicable).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 240.19b-4(e)(2)(ii); 17 CFR 249.820.

<sup>14</sup> See Exchange Confirmation, *supra* note 4.

<sup>15</sup> The Commission has previously approved a number of issues of Currency Trust Shares for exchange listing and trading. See, e.g., Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR-NYSE 2005-65) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Euro Trust); Securities Exchange Act Release No. 54020 (June 20, 2006), 71 FR 36579 (June 27, 2006)

(SR-NYSE-2006-35) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Australian Dollar Trust, CurrencyShares British Pound Sterling Trust, CurrencyShares Canadian Dollar Trust, CurrencyShares Mexican Peso Trust, CurrencyShares Swedish Krona Trust and CurrencyShares Swiss Franc Trust); Securities Exchange Act Release No. 55268 (February 9, 2007), 72 FR 7793 (February 20, 2007) (SR-NYSE-2007-03) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Japanese Yen Trust); and Securities Exchange Act Release No. 56131 (July 25, 2007), 72 FR 42212 (August 1, 2007) (SR-NYSEArca-2007-57) (order granting accelerated approval for listing on NYSE Arca of CurrencyShares Trusts).

<sup>16</sup> The Exchange notes that the proposed 100,000 share minimum is the same as the requirement in NYSE Arca Equities Rule 5.2(j)(3)(d) applicable to Investment Company Units ("Units"), which provides that a minimum of 100,000 shares of a series of Units is required to be outstanding at commencement of trading. In addition, the 100,000 share minimum is comparable to requirements previously applied to series of Units approved by the Commission for exchange listing pursuant to Section 19(b)(2) of the Act. See, e.g., Securities Exchange Act Release No. 52816 (November 21, 2005), 70 FR 71574, 71578 n.19 and accompanying text (November 29, 2005) (SR-NYSE-2005-70).

Indicative Trust Value, or the value of the currency, currencies or currency index applicable to a series of Currency Trust Shares is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption 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. If the Exchange becomes aware that the net asset value applicable to a series of Currency Trust Shares is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

Proposed NYSE Arca Equities Rule 8.202(j) provides that the Exchange may submit a rule filing pursuant to Section 19(b)(2) of the Act<sup>17</sup> to permit the listing and trading of Currency Trust Shares that do not otherwise meet the standards set forth in proposed Commentary .04 to NYSE Arca Equities Rule 8.202.

#### Exchange Rules Applicable to Currency Trust Shares

Currency Trust Shares will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules will apply to transactions in Currency Trust Shares. Currency Trust Shares will trade during trading hours set forth in Rule 7.34(a).<sup>18</sup>

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Currency Trust Shares, to monitor trading in the securities. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the securities in all trading sessions and to deter and detect violations of Exchange rules or applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The components underlying Currency Trust Shares are based on spot prices of the relevant currency, and such underlying currencies are traded in over-the-counter markets rather than on exchanges.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.<sup>19</sup>

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading an issue of Currency Trust Shares, including risks inherent with trading such securities during the Opening and Late Trading Sessions and suitability recommendation requirements.

Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Currency Trust Shares; (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Currency Trust Shares; (3) how information regarding the Indicative Trust Value is disseminated; (4) the risks involved in trading an issue of Currency Trust Shares during the Opening and Late Trading Sessions when an updated Indicative Trust Value will not be calculated or publicly disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Currency Trust Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the relevant issue of Currency Trust Shares. The Exchange notes that investors purchasing Currency Trust Shares directly from the applicable trust will

receive a prospectus. ETP Holders purchasing Currency Trust Shares from the trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that an issue of Currency Trust Shares is subject to various fees and expenses described in the applicable prospectus. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding non-U.S. currencies, and that the Commission has no jurisdiction over the trading of currencies or futures contracts on which the value of an issue of Currency Trust Shares may be based.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>20</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>21</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules serve to foster investor protection. The proposed rules will also enhance market competition by assisting in bringing Currency Trust Shares to market more quickly, consistent with the Commission's adoption of Rule 19b-4(e)<sup>22</sup> under the Act.

#### 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.

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

<sup>18</sup> Pursuant to NYSE Arca Rule 7.34(a), the NYSE Arca Marketplace will have three trading sessions each day the Corporation is open for business unless otherwise determined by the Corporation:

Opening Session—begins at 1:00:00 a.m. (Pacific Time) and concludes at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction shall occur during the Opening Session.

Core Trading Session—begins for each security at 6:30:00 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and concludes at 1:00:00 p.m. (Pacific Time).

Late Trading Session—begins following the conclusion of the Core Trading Session and concludes at 5:00:00 p.m. (Pacific Time).

<sup>19</sup> For a list of current members of the ISG, see <http://www.isgportal.org>.

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

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

<sup>22</sup> 17 CFR 240.19b-4(e).

### 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 Number SR-NYSEArca-2009-47 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2009-47. 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-2009-47 and should be submitted on or before July 6, 2009.

### IV. Commissions 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>23</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>24</sup> which requires, among other things, that the Exchange's rules be 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 open market and national market system, and, in general, to protect investors and the public interest.

#### *A. Generic Listing Standards for Currency Trust Shares*

To list and trade Currency Trust Shares, the Exchange currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act<sup>25</sup> and Rule 19b-4 thereunder.<sup>26</sup> Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange proposes to adopt certain provisions that would permit it to list and trade Currency Trust Shares pursuant to Rule 19b-4(e).

The Commission notes that it has previously approved the adoption of generic listing standards for various classes of new derivative securities products, including currency-related derivative securities products, to be listed and traded pursuant to Rule 19b-4(e).<sup>27</sup> In addition, the Commission

notes that it has approved multiple series of Currency Trust Shares for listing and trading on the Exchange.<sup>28</sup> In approving these securities for Exchange trading, the Commission considered the applicable Exchange rules that govern their trading. The Commission believes that proposed generic listing standards for Currency Trust Shares should fulfill the intended objective of Rule 19b-4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.<sup>29</sup> The Exchange's ability to rely on Rule 19b-4(e) to list and trade Currency Trust Shares that meet the applicable requirements and minimum standards should reduce the time frame for bringing these securities to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly.

#### *B. Listing and Trading Currency Trust Shares*

Taken together, the Commission finds that the proposal contains adequate rules and procedures to govern the listing and trading of Currency Trust Shares pursuant to Rule 19b-4(e) on the Exchange. Products listed and traded under the proposed generic standards will be subject to the full panoply of NYSE Arca Equities rules and procedures, including the equity rules relating to margin, that currently govern the trading of equity securities on the Exchange.

2001-14) (approving, among other things, generic listing standards for Units); 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86) (approving, among other things, generic listing standards for Units based on foreign equity securities); 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR-NYSEArca-2007-36) (approving generic listing standards for Units based on fixed income indexes); 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63) (approving generic listing standards for Index-Linked Securities); and 57701 (April 23, 2008), 73 FR 23281 (April 29, 2008) (SR-NYSEArca-2008-20) (approving generic listing rules for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities).

<sup>28</sup> See *supra* note 15 (indicating prior Commission orders approving the listing and trading of Currency Trust Shares).

<sup>29</sup> The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(1) of the Act, requesting Commission approval to list and trade a particular series of Currency Trust Shares. See proposed NYSE Arca Equities Rule 8.202(j) (providing that NYSE Arca Equities may submit a proposed rule change pursuant to Section 19(b) of the Act to permit the listing and trading of Currency Trust Shares that do not otherwise meet the generic listing standards set forth in the relevant rules).

<sup>23</sup> In approving the 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>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78s(b)(1).

<sup>26</sup> 17 CFR 240.19b-4. See Commentary .04 to NYSE Arca Equities Rule 8.202 (providing that NYSE Arca Equities must file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares).

<sup>27</sup> See, e.g., Securities Exchange Act Release No. 56637 (October 10, 2007), 72 FR 58704 (October 16, 2007) (SR-NYSEArca-2007-92) (approving, among other things, generic listing and trading rules for Currency-Linked Securities). See also, e.g., Securities Exchange Act Release Nos. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-

Each of the proposed modifications to the listing requirements under NYSE Arca Equities Rule 8.202 provide the following:

- For the Exchange to approve each applicable issue for listing, each such issue must satisfy all of the criteria set forth in the relevant rule,<sup>30</sup> and, for those issues approved for trading pursuant to UTP, each such issue must satisfy the requirements relating to the dissemination of the underlying asset and/or index values and the Indicative Trust Values and the implementation of written surveillance procedures applicable to Currency Trust Shares;

- The Exchange may submit a proposed rule change to permit the listing and trading of Currency Trust Shares that do not otherwise meet the proposed generic listing standards set forth in Commentary .04 to NYSE Arca Rule 8.202;<sup>31</sup>

- A minimum of 100,000 Currency Trust Shares is required to be outstanding at the commencement of trading;

- The values of the underlying non-U.S. currency, currencies, or currency index, as the case may be, must be disseminated by one or more major market data vendors on at least a 15-second delayed basis;

- The Indicative Trust Value must be calculated and widely disseminated by NYSE Arca Equities or one or more major market data vendors on at least a 15-second basis during the Core Trading Session;

- The Exchange must implement written surveillance procedures applicable to Currency Trust Shares; and

- Currency Trust Shares will be subject to the Exchange's equity trading rules; and

- If the Indicative Trust Value or the values of the underlying non-U.S. currency, currencies, or currency index, as the case may be, is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption 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. In addition, if the Exchange becomes aware that the net asset value applicable to a series of Currency Trust Shares is not being

disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

In addition, the Commission notes that the proposed "firewall" provisions in Commentary .05 to NYSE Arca Equities Rules 8.202 are virtually identical to the "firewall" restrictions applicable to all types of Index-Linked Securities, including Currency-Linked Securities.<sup>32</sup>

To clarify the definition of Currency Trust Shares under NYSE Arca Equities Rule 8.202(c), with respect to the procedures for surrendering or redeeming Currency Trust Shares, the proposal provides that such Currency Trust Shares may be surrendered or redeemed, when aggregated in some specified minimum number, to the trust only by, or at the request of, an Authorized Participant, as such term is defined in the relevant trust prospectus. The proposal also seeks to modify the definition of Currency Trust Shares and other provisions under NYSE Arca Equities Rule 8.202 such that the underlying asset thereof may be represented by more than one non-U.S. currency deposited with the trust.

The Commission believes that the proposal is designed to maintain fair and orderly markets for the listing and trading of Currency Trust Shares. The proposed generic listing standards seek to ensure a minimum level of transparency with respect key values of the underlying currency assets, establish events that would trigger a trading halt in Currency Trust Shares when the availability of such key information related to Currency Trust Shares becomes impaired, and prevent conflicts of interest and the use and dissemination of material, non-public information with respect to the personnel responsible for the maintenance of an underlying index maintained by a broker-dealer. The Commission notes that all of the existing continued listing standards applicable to Currency Trust Shares, requirements relating to information barriers and accounts with respect to ETP Holders acting as registered Market Makers or Market Maker Authorized Traders in Currency Trust Shares, and prospectus delivery requirements continue to apply to Currency Trust Shares. The Commission further notes that the Exchange has a general policy prohibiting the distribution of material,

non-public information by its employees.

### C. Surveillance

Proposed Commentary .04(d) to NYSE Arca Equities Rule 8.202 provides that NYSE Arca Equities will implement written surveillance procedures applicable to Currency Trust Shares. The Commission notes that Currency Trust Shares would be subject to the Exchange's existing surveillance procedures applicable to derivative products, including Currency Trust Shares. The Exchange has represented that its surveillance procedures are adequate to properly monitor the trading of Currency Trust Shares in all trading sessions and to deter and detect violations of Exchange rules or applicable federal securities laws.

The Exchange states that, with respect to Currency Trust Shares based on spot prices of a currency or currencies, such underlying currencies are traded in OTC markets rather than on exchanges. The Commission notes that information relating the trading of such assets in the OTC markets may not be readily available.

### D. Information Bulletin

The Exchange has represented that, prior to the commencement of trading in Currency Shares, it will inform its ETP Holders in an Information Bulletin describing the special characteristics and risks associated with trading an issue of Currency Trust Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Currency Trust Shares; (2) suitability requirements; (3) how information regarding the Indicative Trust Value is disseminated; (4) the risks involved in trading an issue of Currency Trust Shares during the Opening and Late Trading Sessions when an updated Indicative Trust Value will not be calculated or publicly disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Currency Trust Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

The Information Bulletin will also advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the relevant issue of Currency Trust Shares. The Exchange notes that investors purchasing Currency Trust Shares directly from the applicable trust will receive a prospectus; ETP Holders purchasing Currency Trust Shares from the trust for resale to investors will deliver a

<sup>30</sup> The Commission notes that each issue of Currency Trust Shares to be traded on the Exchange, whether by listing or pursuant to UTP, must satisfy not only those requirements proposed to be adopted herein, but also all of the other existing applicable requirements in the respective rules for Currency Trust Shares.

<sup>31</sup> See *supra* note 29.

<sup>32</sup> See NYSE Arca Equities Rule 5.2(j)(6)(C) (setting forth similar firewall restrictions with respect to all types of Index-Linked Securities); see also Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3) (setting forth similar firewall restrictions with respect to Units).

prospectus to such investors. Finally, the Information Bulletin will reference that: An issue of Currency Trust Shares is subject to various fees and expenses described in the applicable prospectus; that there is no regulated source of last-sale information regarding non-U.S. currencies; and the Commission has no jurisdiction over the trading of physical currencies on which the value of an issue of Currency Trust Shares may be based.

#### E. Firewall Procedures

Currency Trust Shares, which are securities issued by a trust that may hold multiple currencies, will be subject to the firewall requirements under proposed Commentary .05 to NYSE Arca Equities Rule 8.202. The firewall requirements provide that, if the value of a Currency Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel responsible for the maintenance of the underlying index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer. Furthermore, any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio.

The Commission believes that the proposed "firewall" restrictions applicable to Currency Trust Shares are designed to prevent the use and dissemination of material, non-public information regarding an underlying index and prevent conflicts of interest with respect to personnel of a broker-dealer maintaining an index underlying such securities. The Commission notes that such proposed restrictions are substantially similar to restrictions adopted for the listing and trading of Index-Linked Securities and Units.<sup>33</sup>

#### F. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> for approving the proposed rule change prior to the 30th day after publication of notice in the **Federal Register**. The Commission notes that the Exchange previously filed a proposed

rule change (NYSEArca-2008-51) seeking to adopt generic listing standards for Currency Trust Shares and other commodity-related derivative securities products.<sup>35</sup> Notice of the proposed rule change was published in the **Federal Register** on August 15, 2008 for a 21-day comment period, and no comments were received by the Commission.<sup>36</sup> The Commission further notes that the proposed changes to NYSE Arca Equities Rule 8.202 in NYSEArca-2008-51 are substantively identical to this proposed rule change. The Commission believes that the Exchange's proposed amendments to NYSE Arca Equities Rule 8.202 do not raise any new issues or significant regulatory concerns. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, enhanced competition in the market for Currency Trust Shares, consistent with Section 6(b) of the Act and Rule 19b-4(e) thereunder.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>37</sup> that the proposed rule change (SR-NYSEArca-2009-47) 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>38</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-13970 Filed 6-12-09; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60064; File No. SR-NYSEArca-2009-30]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Adoption of Listing Standards for Managed Trust Securities and the Listing and Trading of Shares of the iShares® Diversified Alternatives Trust

June 8, 2009.

#### I. Introduction

On April 9, 2009, 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"), 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 proposed rule change to: (1) Adopt listing standards for Managed Trust Securities; (2) amend NYSE Arca Equities Rule 7.34 and its Listing Fees to add references to proposed NYSE Arca Equities Rule 8.700 relating to Managed Trust Securities; and (3) list and trade shares ("Shares") of the iShares® Diversified Alternatives Trust ("Trust"). On April 24, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 6, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

##### A. Listing Standards for Managed Trust Securities

The Exchange proposes to adopt new NYSE Arca Equities Rule 8.700 to list and trade, or trade pursuant to unlisted trading privileges, Managed Trust Securities. A Managed Trust Security as a security that is registered under the Securities Act of 1933, as amended, and (a) is issued by a trust that (i) is a commodity pool, as defined in the Commodity Exchange Act ("CEA") and regulations thereunder, and is managed by a commodity pool operator registered with the Commodity Futures Trading Commission ("CFTC"), and (ii) holds long and/or short positions in exchange-traded futures contracts and/or currency forward contracts selected by the trust's advisor consistent with the trust's investment objectives,<sup>4</sup> which would only include exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private, and mortgage or asset backed debt instruments<sup>5</sup> and/or forward contracts on specified currencies, as disclosed in the trust's prospectus, as

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59835 (April 28, 2009), 74 FR 21041 ("Notice").

<sup>4</sup> It should be noted that the trust holdings will be actively managed in accordance with the trust's investment objectives; therefore, products listed under proposed NYSE Arca Equities Rule 8.700 are ineligible for listing under any other existing Exchange rule (e.g., NYSE Arca Equities Rules 8.203 and 8.204).

<sup>5</sup> The trust may only hold exchange-traded futures contracts on sovereign, private, and mortgage- or asset-backed debt and not the debt itself.

<sup>33</sup> See *id.* and accompanying text.

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> See *supra* note 7.

<sup>36</sup> See *id.* (noting that the Exchange subsequently withdrew the proposed rule change on May 18, 2009).

<sup>37</sup> 15 U.S.C. 78s(b)(2).

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