Number SR–NYSEArca–2009–103 and should be submitted on or before December 9, 2009.

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61022; File No. SR–NYSEArca–2009–101]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Amending Equities Rule 5.2(j)(3)

November 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), the initial listing standards for Investment Company Units. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing 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 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 IV 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 proposes to amend Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) to amend the index weight requirements and adopt notional volume traded per month[3] to the initial listing standards for Investment Company Units, commonly referred to as exchange traded funds. The Exchange proposes to amend the minimum component stock weight requirement for monthly trading volumes from 90% to 70% of the weight of the underlying index. In addition, the Exchange's proposal to adopt an alternative notional volume traded per month listing standard is based upon NYSE Arca Equities Rule 5.2(j)(6), the Exchanges listing standards for Equity Index-Linked Securities.[4]

Currently for U.S. indexes, Commentary .01(a)(A)(2) to Rule 5.2(j)(3) provides that Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 90% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

The Exchange proposes to amend the minimum component stock weight requirements from 90% to 70% of the weight of the underlying index or portfolio. Further, the Exchange is proposing adopt and average minimum trading volume of 250,000 shares over a six month period instead of in each of the last six months and to adopt a notional volume traded per month of $25,000,000 averaged over the last six months as an option for meeting the listing requirements. Proposed Commentary .01(a)(A)(2) to Rule 5.2(j)(3) sets forth:

- Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;

Currently for international or global indexes, Commentary .01(a)(B)(2) to Rule 5.2(j)(3) provides that Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 90% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

The Exchange proposes to amend the minimum component stock weight requirements from 90% to 70% of the weight of the underlying index or portfolio. Further, the Exchange is proposing adopt and average minimum trading volume of 250,000 shares over a six month period instead of in each of the last six months and to adopt a notional volume traded per month of $25,000,000 averaged over the last six months as an option for meeting the listing requirements. Further, the Exchange proposes to clarify that the component stock trading volumes are determined on a global basis. Proposed Commentary .01(a)(B)(2) to Rule 5.2(j)(3) sets forth:

- Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months;

With regard to the Exchange's proposal to amend the minimum component stock weight requirement for monthly trading volumes from 90% to 70% of the weight of the underlying index, the Exchange believes the proposed standard reasonably ensures that securities with substantial monthly trading volumes account for a substantial portion of the underlying index and, when applied in conjunction with the other applicable listing requirements, remain sufficiently broad-based in scope to minimize potential manipulation. The Exchange notes that the Commission has previously approved the listing and trading of Investment Company Units based upon indices that were composed of stocks that did not meet the 90% monthly trading volume weight.[5] Instead, these

[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The notional volume traded per month is the number of shares traded globally in a calendar month multiplied by the monthly closing price.

[4] *See* Securities Exchange Act Release No. 58376 (August 18, 2008), 73 FR 49726 (August 22, 2008) (SR–NYSEArca–2008–70).

[5] *See* Securities and [sic] Exchange Act Release No. 46306 (August 2, 2002), 69 [sic] FR 51916 (August 9, 2002) (SR–NYSE–2002–28) (approving the following funds for trading pursuant to unlisted

indices would meet the proposed 70% monthly trading volume weight criteria.

With respect to adopting, as an alternative to monthly trading volume, the notional volume traded for each of the last six months to the initial and listing standards for both domestic and international indexes, the Exchange believes that notional volume traded averaged per month is a better measure of the liquidity of component stocks of the underlying index or indexes.[6] Specifically, notional volume nullifies the volume discrepancies that generally occur between low priced and high priced stocks.[7]

With respect to adopting a six-month average, instead of in each of the last six-months, criteria for volume and notional volume, the Exchange believes that the averaged six month period is a better indicator of the current liquidity on an index and serves to eliminate seasonal volume fluctuations of component securities.[8] Further, investors, exchange traded fund issuers and third-party index sponsors would also benefit from NYSE Arca's ability to list—without the delay associated with a stand-alone rule filing—Investment Company Units based on a broader group of indexes promoting competition.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[9] of the Securities Exchange Act of 1934 (''Act'') in general, and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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, 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.

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. 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 the proposed rule change, or

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–101 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2009–101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2009–101 and should be submitted on or before December 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

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trading privileges on the NYSE: (1) Vanguard Total Stock Market VIPERs; (2) iShares Russell 2000 Index Funds; (3) iShares Russell 2000 Value Index Funds; and (4) iShares Russell 2000 Growth Index Fund); Securities Exchange Act Release No. 55953 (June 25, 2007), 72 FR 36084 (July 2, 2007) (SR–NYSE–2007–46) (approving listing on NYSE of HealthShares Orthopedic Repair Exchange-Traded Fund); Securities Exchange Act Release No. 56695 (October 24, 2007), 72 FR 61413 (October 30, 2007) (SR–NYSEArca–2007–111) (approving listing on NYSE Arca of HealthShares Ophthalmology Exchange-Traded Fund); Securities Exchange Act Release No. 60137 [sic] (February 27, 2009), 72 [sic] FR 9862 (March 6, 2009) (SR–NYSEArca–2009–13) (approving [sic] listing on NYSE Arca of iShares MSCI All Peru Index Fund); and Securities Exchange Act Release No. 60137 (June 18, 2009), 72 FR 30351 [sic] (June 25, 2009) (SR–NYSEArca–2009–54) (approving [sic] listing on NYSE Arca of iShares MSCI All Peru Capped Index Fund).

[6] Telephone conversation on November 12, 2009 between Timothy J. Malinowski, Director, NYSE Euronext and Christopher W. Chow, Special Counsel and Andrew Madar, Special Counsel, Commission.

[7] For example, a stock priced at $10 per share that trades 2,500,000 shares in a month has a notional volume of $25,000,000. Conversely, a stock priced at $100 per share that trades 250,000 shares in a month has a notional volume of $25,000,000.

[8] *See* Footnote 4. Telephone conversation on November 12, 2009 between Timothy J. Malinowski, Director, NYSE Euronext and Christopher W. Chow, Special Counsel and Andrew Madar, Special Counsel, Commission.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).