

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58113; File No. SR-NYSEArca-2008-40]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the NETS Tokyo Stock Exchange REIT Index Fund

July 7, 2008.

I. Introduction

On May 22, 2008, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade the shares ("Shares") of the NETS™ Tokyo Stock Exchange REIT Index Fund ("Fund") issued by the NETS Trust ("Trust"). The proposed rule change was published for comment in the **Federal Register** on June 6, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units ("ICUs").⁴ The Fund seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly-traded securities in the aggregate in the Japanese market, as represented by the Tokyo Stock Exchange REIT Index ("Index"). The Index is a market capitalization weighted index consisting of stocks of all of the real estate investment trusts traded primarily on the Tokyo Stock Exchange. 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 Registration Statement⁵ or on the Fund's Web site (<http://www.netsetfs.com>), as applicable.

This proposed rule change is required because the Index does not meet all of the "generic" listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on international or global indexes. The Index meets all such requirements except for those set forth in Commentary .01(a)(B)(2).

Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares; for the period of October 2007 up to and including March 2008, component stocks that in the aggregate accounted for at least 90% of the weight of the Index had a minimum worldwide monthly trading volume of 2,918 shares.

The Exchange represents that: (1) Except for Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares currently satisfy all of the 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 under the Act⁶ 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, 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.⁷

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the Exchange's rules 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 the Index does not meet the generic listing requirement that component stocks accounting in the aggregate for at least 90% of the weight of the index have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares, the Commission believes that the proposed rule change should not significantly affect the protection of investors or the public interest or impose any significant burden on competition. Commentary .01(a)(B) was designed to, in conjunction with other listing requirements, ensure that ICUs listed on the Exchange are sufficiently broad-based in scope to be not readily susceptible to manipulation.¹¹ In approving these standards, the Commission believed that, taken together, they are reasonably designed to ensure that securities with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio that, when applied in conjunction with the other applicable listing requirements, would permit the listing and trading only of products that are sufficiently broad-based in scope to minimize potential manipulation.¹² In this case, the Commission believes that the global notional volume traded (number of shares traded multiplied by

⁵ See the Trust's Registration Statement on Form N-1A, dated February 13, 2008 (File Nos. 333-147077 and 811-22140) ("Registration Statement").

⁶ 17 CFR 240.10A-3.

⁷ See, e.g., Securities Exchange Act Release Nos. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86) (approving generic listing standards for ICUs based on international or global indexes); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (approving generic listing standards for ICUs and Portfolio Depositary Receipts); and 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (approving rules for the listing and trading of ICUs). See also e-mail from Michael Cavalier, Associate

General Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated June 2, 2008.

⁸ 15 U.S.C. 78f.

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

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571, 19574 (April 18, 2007) (SR-NYSEArca-2006-86) (order approving generic listing standards for ICUs based on global or international indexes).

¹² *Id.* at 19576.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57906 (June 2, 2008), 73 FR 32377.

⁴ ICUs are securities that represent interests 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).

price of security) of Index components indicates that the Shares should not be readily susceptible to manipulation: for the period of October 2007 up to and including March 2008, component stocks that in the aggregate accounted for 93.42% of the weight of the Index each had global notional volume traded per month of at least \$25,000,000, averaged over the last six months. In addition, the Commission notes the Exchange's representation that the Shares satisfy all of the other generic listing standards under NYSE Arca Equities Rule 5.2(j)(3), which includes: (1) Commentary .01(a)(B)(1), which establishes a minimum market value of index component stocks that in the aggregate account for at least 90% of the weight of the underlying index; (2) Commentary .01(a)(B)(3), which prohibits (a) the most heavily weighted component stock from exceeding 25% of the weight of the underlying index, and (b) the five most heavily weighted component stocks from exceeding 60% of the weight of the underlying index; and (3) Commentary .01(a)(B)(4), which establishes (in certain circumstances) a minimum number of component stocks for an underlying index.

The Commission notes that the Exchange represented that the Shares will be subject to all of its continued listing standards applicable to ICUs and all other requirements applicable to ICUs, and that the Trust is required to comply with Rule 10A-3 under the Act.¹³ The Commission also notes that it has previously approved the listing and trading of derivative securities products based on indexes that were composed of stocks that did not meet certain quantitative generic listing criteria, including Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3).¹⁴

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NYSEArca-2008-40) be, and it hereby is, approved.

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

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58121; File No. PCAOB-2008-03]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Changes Regarding Ethics and Independence Rule 3526, Communication With Audit Committees Concerning Independence, Amendment to Interim Independence Standards, and Amendment to Rule 3523, Tax Services for Persons in Financial Reporting Oversight Roles

July 9, 2008.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on April 24, 2008, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule changes described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule Change

On April 22, 2008, the Board adopted Ethics and Independence Rule 3526, *Communication with Audit Committees Concerning Independence*, an amendment to the Board's Interim Independence Standards, and an amendment to Rule 3523, *Tax Services for Persons in Financial Reporting Oversight Roles*. The proposed rule change text is set out below. Language deleted by the amendment to Rule 3523 is in brackets. Language that is added by the amendment to Rule 3523 is italicized.

Rules of the Board

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Section 3. Professional Standards

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Part 5—Ethics

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Subpart I—Independence

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Rule 3523. Tax Services for Persons in Financial Reporting Oversight Roles

A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the [audit and] professional engagement period provides any tax service to a

person in a financial reporting oversight role at the audit client, or an immediate family member of such person, unless—

(a) The person is in a financial reporting oversight role at the audit client only because he or she serves as a member of the board of directors or similar management or governing body of the audit client;

(b) The person is in a financial reporting oversight role at the audit client only because of the person's relationship to an affiliate of the entity being audited—

(1) Whose financial statements are not material to the consolidated financial statements of the entity being audited; or

(2) Whose financial statements are audited by an auditor other than the firm or an associated person of the firm; or

(c) The person was not in a financial reporting oversight role at the audit client before a hiring, promotion, or other change in employment event and the tax services are—

(1) Provided pursuant to an engagement in process before the hiring, promotion, or other change in employment event; and

(2) Completed on or before 180 days after the hiring or promotion event.

Note: In an engagement for an audit client whose financial statements for the first time will be required to be audited pursuant to the standards of the PCAOB, the provision of tax services to a person covered by Rule 3523 before the earlier of the date that the firm: (1) Signed an initial engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB, or (2) began procedures to do so, does not impair a registered public accounting firm's independence under Rule 3523.

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Rule 3526. Communication With Audit Committees Concerning Independence

A registered public accounting firm must—

(a) Prior to accepting an initial engagement pursuant to the standards of the PCAOB—

(1) Describe, in writing, to the audit committee of the issuer, all relationships between the registered public accounting firm or any affiliates of the firm and the potential audit client or persons in financial reporting oversight roles at the potential audit client that, as of the date of the communication, may reasonably be thought to bear on independence;

(2) Discuss with the audit committee of the issuer the potential effects of the relationships described in subsection (a)(1) on the independence of the registered public accounting firm,

¹³ See 17 CFR 240.10A-3.

¹⁴ See, e.g., Securities Exchange Act Release No. 56695 (October 24, 2007), 72 FR 61413 (October 30, 2007) (SR-NYSEArca-2007-111).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).