

eliminating technical errors.<sup>14</sup> Accordingly, the Commission designates the proposed rule change effective and operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>15</sup>

#### 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-NYSE-2008-115 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-NYSE-2008-115. 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

<sup>14</sup> For purposes only of waiving the operative delay for 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>15</sup> 15 U.S.C. 78s(b)(3)(C).

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 NYSE. 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-NYSE-2008-115 and should be submitted on or before December 15, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58945; File No. SR-NYSEArca-2008-118]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services

November 13, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 3, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "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 its Schedule of Fees and Charges for Exchange Services. A copy of the new Schedule, showing changes pursuant to 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.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

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

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca 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 purpose of this filing is to amend the existing Schedule in order to include foreign currency options ("FCO") in the Linkage Fees rates that are currently applied only to issues included in the Penny Pilot.

The Exchange has recently proposed an amendment to its rules that will enable the Exchange to list and trade FCOs.<sup>3</sup> In addition to the issues included in the Penny Pilot, FCOs will also be quoted and traded in one cent increments. Presently, the Exchange charges \$0.45 for all electronically executed Linkage Orders in Penny Pilot issues.<sup>4</sup> Pursuant to the proposed change, the Exchange will also charge \$0.45 for all electronically executed Linkage Orders in FCO's. Upon approval, the Exchange intends to apply this reduced fee (as compared to fees charged for Linkage Orders executed in non-eligible issues).

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)<sup>5</sup> of the Act, in general, and section 6(b)(4),<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities for the purpose of executing Linkage orders that are routed to the Exchange from other market centers. In most instances, this proposal decreases the applicable fees for Users.

<sup>3</sup> See Securities and Exchange Commission Release No. 34-58800, October 16, 2008, (notice of immediate effectiveness of SR-NYSEArca-2008-109).

<sup>4</sup> The Exchange may trade option contracts in one cent increments in certain approved issues as part of the Penny Pilot, through March 27, 2009. See Securities Exchange Act Release No. 34-56568 (September 27, 2007), 72 FR 56422 (October 3, 2007).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

Without this filing, orders in FCOs that access the Exchange via Linkage will be charged more than similar electronic transactions on the Exchange.

#### *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 Exchange 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](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEArca-2008-118 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2008-118. 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, 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-2008-118 and should be submitted on or before December 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-27877 Filed 11-21-08; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58948; File No. SR-NYSEArca-2008-105]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Relating to Listing Certain Derivative Products Pursuant to Continued Listing Criteria**

November 14, 2008.

#### **I. Introduction**

On October 1, 2008, NYSE Arca, Inc. ("Exchange" or "NYSE Arca"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to listing certain Derivative Products (as defined

in proposed Commentary .01 to NYSE Arca Equities Rule 5.2(b)) pursuant to continued listing criteria. The proposed rule change was published for comment in the **Federal Register** on October 10, 2008.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### **II. Description of the Proposed Rule Change**

The Exchange proposes to adopt new Commentary .01 to NYSE Arca Equities Rule 5.2(b) to permit the listing of a Derivative Product<sup>4</sup> that (1) was originally listed on another registered national securities exchange ("Other SRO") and continues to be listed on such Other SRO, and (2) satisfies the Exchange's continued listing criteria applicable to the relevant product class that would include such Derivative Product.

For example, in the case of an Index-Linked Security that is listed on an Other SRO, the staff of the Exchange would determine whether the Index-Linked Security meets the Exchange's continued listing criteria. If the Index-Linked Security satisfies the Exchange's continued listing criteria, then NYSE Arca could proceed to list such security on the Exchange. If the Index-Linked Security does not meet the continued listing criteria, the staff of the Exchange would then, in its sole discretion, either file a separate rule filing pursuant to Rule 19b-4 under the Act proposing that the Index-Linked Security be listed on the Exchange pursuant to the criteria

<sup>3</sup> See Securities Exchange Act Release No. 58734 (October 6, 2008), 73 FR 60388.

<sup>4</sup> Commentary .01 to NYSE Arca Equities Rule 5.2(b) defines "Derivative Product" to include securities described in NYSE Arca Equities Rule 5.2(j)(2) (Equity Linked Notes); NYSE Arca Equities Rule 5.2(j)(3) (Investment Company Units); NYSE Arca Equities Rule 5.2(j)(4) (Index-Linked Exchangeable Notes); NYSE Arca Equities Rule 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities); NYSE Arca Equities Rule 8.100 (Portfolio Depositary Receipts); and Commentary .01 to NYSE Arca Equities Rule 8.200 (Trust Issued Receipts). Exchange rules relating to the listing and trading, including trading pursuant to unlisted trading privileges, of "Derivative Products," as described above, permit the listing and trading of such products pursuant to Rule 19b-4(e) under the Act. 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 paragraph (c)(1) of Rule 19b-4, 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 derivatives securities product, and the SRO has a surveillance program for the product class. See 17 CFR 240.19b-4(e)(1).

<sup>7</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.