

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55545; File No. SR-NYSE-2007-12]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change as Modified by Amendment No. 1 To Amend Section 703.16 of the NYSE Listed Company Manual To Eliminate Requirement Regarding Index Weighting and Calculation Methodology

March 27, 2007.

#### I. Introduction

On February 5, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") 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 proposal to amend Section 703.16 of the NYSE Listed Company Manual ("NYSE Manual"), the Exchange's generic listing standard for investment company units ("ICUs"),<sup>3</sup> to eliminate the requirement that the weighting and calculation methodology for the index underlying a series of ICUs must be one of those specified in Section 703.16(C)(4)(a). On February 15, 2007, the NYSE submitted Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on March 5, 2007 for a 15-day comment period.<sup>4</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposal

The Exchange has proposed to amend its "generic" listing standard pursuant to Rule 19b-4(e) under the Act<sup>5</sup> for ICUs (which include exchange-traded funds) to eliminate the requirement that an eligible index be calculated and weighted according to a specific methodology.

The Exchange currently has listing and trading standards, which permit the Exchange either to list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges ("UTP") basis, subject to the procedures contained in Rule 19b-4(e) under the Act.<sup>6</sup> The existence of generic listing standards allows qualifying ICUs to list or trade without the need to file a rule change for each security. Section 703.16(C)(4)(a) of the NYSE Manual requires that, if a series of ICUs is listed for trading on the Exchange in reliance upon Rule 19b-4(e) under the Act,<sup>7</sup> the index underlying the series must follow a market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology, or alternately, a methodology weighting components of the index based on any, some or all of the following: Sales, cash flow, book value and dividends. The proposed rule change would eliminate this standard, and, as a result, the Exchange would no longer consider index methodology in its review of an ICU's eligibility for listing and trading pursuant to Rule 19b-4(e) under the Act.<sup>8</sup>

#### III. Discussion

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>9</sup> and, in particular, the requirements of Section 6 of the Act.<sup>10</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

As the market for ICUs has expanded, the variety of weighting and calculation methodologies for underlying indexes has grown, limiting the applicability of NYSE's current generic listing standards for ICUs. The Commission believes that eliminating the index methodology requirement from the Exchange's generic listing standards for ICUs will facilitate bringing ICUs based on indexes with nontraditional weighting techniques to the market, encourage innovation in index construction, reduce costs to issuers and other market participants, and promote competition.

The Commission believes that these goals may be furthered without compromising investor protection. The Commission notes that the numerical criteria in Section 703.16(C) of the NYSE Manual addressing concentration, diversity, and liquidity of an underlying index's components would continue to apply. For example, the generic listing standards for domestic indexes will continue to require, without limitation, that the most heavily weighted component stock of an index not exceed 30% of the weight of the index, and the five most heavily weighted component stocks of an index not exceed 65% of the weight of the index,<sup>12</sup> and that an index include a minimum of 13 component stocks.<sup>13</sup> In addition, component stocks that in the aggregate account for at least 90% of the weight of the index must have a market value of at least \$75 million and minimum monthly trading volume of at least 250,000 shares for each of the last six months.<sup>14</sup> Similarly, the generic listing standards for international or global indexes require, without limitation, that the most heavily weighted component stock of an index not exceed 25% of the weight of the index, and the five most heavily weighted component stocks of an index not exceed 60% of the weight of the index,<sup>15</sup> and that an index include a minimum of 20 component stocks.<sup>16</sup> Component stocks that in the aggregate account for at least 90% of the weight of the index must have a market value of at least \$100 million and minimum monthly trading volume of at least 250,000 shares for each of the last

<sup>21</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> An ICU is defined in Section 703.16 of the NYSE Manual as a security that represents an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. A registered investment company is registered under the Investment Company Act of 1940, 15 U.S.C. 80a *et seq.*

<sup>4</sup> See Securities Exchange Act Release No. 55343 (February 23, 2007), 72 FR 9814.

<sup>5</sup> 17 CFR 240.19b-4(e).

<sup>6</sup> See Section 703.16 of the NYSE Manual.

<sup>7</sup> 17 CFR 240.19b-4(e).

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

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

<sup>10</sup> 15 U.S.C. 78f.

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

<sup>12</sup> See Section 703.16(C)(2)(a)(iii) of the NYSE Manual.

<sup>13</sup> See Section 703.16(C)(2)(a)(iv) of the NYSE Manual.

<sup>14</sup> See Section 703.16(C)(2)(a)(i) and (a)(ii) of the NYSE Manual.

<sup>15</sup> See Section 703.16(C)(2)(b)(iii) of the NYSE Manual.

<sup>16</sup> See Section 703.16(C)(2)(b)(iv) of the NYSE Manual.

six months.<sup>17</sup> Therefore, the Commission believes that indexes underlying ICUs will continue to be sufficiently broad-based in scope to minimize potential manipulation. Additionally, ICUs and their underlying indexes would continue to be subject to all other requirements of Section 703.16 of the NYSE Manual.

The Commission believes that accelerating approval of the proposed rule change would enable the Exchange and issuers to immediately benefit from the expected efficiencies resultant from this proposed rule change without delay while at the same time still ensuring adequate protection for investors and the public in general. The Commission notes that NYSE's proposal substantively tracks a recently approved rule change by the American Stock Exchange LLC<sup>18</sup> and raises no new regulatory issues. Thus, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>19</sup> to grant accelerated approval of the proposed rule change, as amended, prior to the thirtieth day after the notice is published for comment in the **Federal Register**.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-NYSE-2007-12), as modified by Amendment No. 1, be, and is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>21</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55546; File No. SR-NYSEArca-2007-14]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval To a Proposed Rule Change to Amend Existing Rules for Investment Company Units To Eliminate Requirement Regarding Index Weighting and Calculation Methodology

March 27, 2007.

#### I. Introduction

On February 8, 2007, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to revise its generic listing standards applicable to Investment Company Units ("Investment Company Units" or "ICUs")<sup>3</sup> to eliminate the requirement that the weighting and calculation methodology for the index underlying a series of ICUs must be one of those specified in Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3). The proposed rule change was published for comment in the **Federal Register** on March 5, 2007 for a 15-day comment period.<sup>4</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change on an accelerated basis.

#### II. Description of the Proposal

The Exchange has proposed to amend its "generic" listing standard pursuant to Rule 19b-4(e) under the Act<sup>5</sup> for ICUs (which include exchange-traded funds) to eliminate the requirement that an eligible index be calculated and weighted according to a specific methodology.

The Exchange currently has listing and trading standards, which permit the Exchange either to list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges ("UTP")

basis, subject to the procedures contained in Rule 19b-4(e) under the Act.<sup>6</sup> The existence of generic listing standards allows qualifying ICUs to list or trade without the need to file a rule change for each security. Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3) currently requires that, if a series of ICUs is listed for trading (or traded pursuant to UTP) on the Exchange in reliance upon Rule 19b-4(e) under Rule 19b-4 under the Act,<sup>7</sup> the index underlying the series must follow the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology, or alternately, a methodology weighting components of the index based on any, some or all of the following: sales, cash flow, book value, and dividends. The proposed rule change would eliminate this standard, and, as a result, the Exchange would no longer consider index methodology in its review of an ICU's eligibility for listing and trading pursuant to Rule 19b-4(e) under the Act.<sup>8</sup>

#### III. Discussion

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>9</sup> and, in particular, the requirements of Section 6 of the Act.<sup>10</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

As the market for ICUs has expanded, the variety of weighting and calculation methodologies for underlying indexes has grown, limiting the applicability of NYSE Arca's current generic listing standards for ICUs. The Commission believes that eliminating the index methodology requirement from the Exchange's generic listing standards for ICUs will facilitate bringing ICUs based

<sup>17</sup> See Section 703.16(C)(2)(b)(i) and (b)(ii) of the NYSE Manual.

<sup>18</sup> See Securities Exchange Act Release No. 55544 (March 27, 2007). NYSE Arca, Inc. has also proposed a parallel rule change, which the Commission is approving concurrently with this one. See Securities Exchange Act Release No. 55546 (March 27, 2007).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

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

<sup>21</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> An ICU is defined in NYSE Arca Equities Rule 5.1(b)(15) as a security representing an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. A registered investment company is registered under the Investment Company Act of 1940, 15 U.S.C. 80a *et seq.*

<sup>4</sup> See Securities Exchange Act Release No. 55339 (February 23, 2007), 72 FR 9820.

<sup>5</sup> 17 CFR 240.19b-4(e).

<sup>6</sup> See NYSE Arca Equities Rule 5.2(j)(3).

<sup>7</sup> 17 CFR 240.19b-4(e).

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

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

<sup>10</sup> 15 U.S.C. 78f.

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