

the Commission believe [sic] that SROs and their members also should be free to distribute their trades independently.”⁹

The Commission rescinded the prohibition in recognition of the fact that competition in the realm of SRO trade-report distribution would produce market forces and innovation that would benefit the investing public. By means of the pilot program, the Exchange would allow internet service providers and traditional vendors to test the viability of an alternative market data fee structure that does not exist today and to do so without the burden of the reporting, contracting and other administrative obligations associated with most other market data services. If they believe that the proposed fees would enable them to make market data available in the most cost-effective manner for them and their subscribers and customers, they will embrace the pilot program's proposed fees. If not, they will continue to make consolidated last sale prices available pursuant to the Network A fees currently in effect under the CTA Plan.

Given that the pilot program proposes to provide an alternative to existing fees and does not alter or rescind any existing fees, the Exchange 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

The Exchange has discussed the proposed rules change with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE Real-Time Trade Prices service by becoming NYSE-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and the proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 NYSE 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. Please include File Number SR-NYSE-2007-04 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSE-2007-04. 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. 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-NYSE-2007-04 and should be submitted on or before March 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55339; File No. SR-NYSEArca-2007-14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend Existing Rules for Investment Company Units

February 23, 2007.

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 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”) the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comment on the proposed rule change from interested persons.

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

NYSE Arca, proposes to modify its listing standards applicable to Investment Company Units (“Investment Company Units” or “ICUs”) by amending Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3) to eliminate the requirement that the calculation methodology for the index underlying a series of ICUs must be one of those enumerated in the commentary. The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and <http://www.nysearca.com/regulation/filings.asp>.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ See Footnote 638 to Regulation NMS (Securities Exchange Act Release No. 51808; File No. S7-10-04 (June 9, 2005), 70 FR 37495 (June 29, 2005)).

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 Exchange 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 these 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 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 Exchange proposes to eliminate the requirement that the prescribed calculation methodology for the index underlying a series of ICUs must be one of those enumerated in Commentary .01(b)(1) of Rule 5.2(j)(3). The proposed rule change is based on proposed rule changes of both the American Stock Exchange and New York Stock Exchange.³

The Exchange has adopted listing standards applicable to ICUs which are consistent with the listing criteria currently used by other national securities exchanges, and trading standards pursuant to which the Exchange may either list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges ("UTP") basis.⁴ An Investment Company Unit 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 1940.⁵

The "generic" listing criteria of Commentary .01 to Rule 5.2(j)(3) permits listing or trading pursuant to UTP of ICUs that satisfy such criteria in reliance upon Rule 19b-4(e) under the Act,⁶ without a separate filing. Commentary .01(b)(1) to Rule 5.2(j)(3) currently requires that where a series of ICUs approved for trading (including pursuant to UTP) on the Exchange in reliance upon Rule 19b-4(e) of the Act, the index underlying the series of ICUs must be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology or a methodology weighting components of the index based on any, some or all of the following: Sales, cash flow, book value, and dividends.⁷

The Exchange proposes to delete Commentary .01(b)(1) to Rule 5.2(j)(3) and thereby eliminate the calculation methodology limitation.

In recent years, academics and market professionals have explored and defined a growing list of innovations in index construction. Most recently, the Commission approved amendments to the generic listing criteria to accommodate new index weighting methodologies based on ranking companies by financial data such as sales, cash flow, book value and dividends.⁸ The Exchange believes there are multiple ways for indexes to be constructed to serve useful market purposes. Additional methodologies are under active development by academics and market professionals and permitting only certain specified index weighting methods does not take into account the rapid innovation in this area. The Exchange believes that, with respect to ICUs listed pursuant to Rule 19b-4(e) under the Act, applying the numerical weighting and liquidity criteria and index dissemination requirements set forth in the remainder of Commentary .01 to Rule 5.2(j)(3), without imposing constraints on the index methodology, will provide greater flexibility to indexers and ICU issuers to develop indexes that meet the investment objectives of investors. In addition, the proposed rule change would allow ICUs based on a non-traditional weighting methodology to be brought to market more quickly, thereby reducing burdens

on ICU issuers and other market participants and promoting competition.

The Exchange notes that the numerical criteria in Commentary .01 already define the concentration limits, diversity requirements and liquidity requirements of the companies in the underlying index. For example, the generic listing standards for domestic indexes require, among other things, that an index include at least 13 stocks, that the most heavily weighted component stock of an index cannot exceed 30% of the index or portfolio weight, and the five most heavily weighted component stocks of an index cannot exceed 65% of the index or portfolio weight. ICUs and their underlying indexes would continue to be subject to all other requirements of Rule 5.2(j)(3) and Commentary .01. Under these circumstances, the Exchange believes that removal of the index weighting requirements of Commentary .01(b)(1) will not compromise investor protection.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁹ of the 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.

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

Written comments on the proposed rule change 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

³ See Securities Exchange Act Release No. 55240 (February 5, 2007), 72 FR 06624 (February 12, 2007). See also SR-NYSE-2007-12 (submitted to the Commission).

⁴ In October 1999, the Commission approved NYSE Arca Equities Rule 5.2(j)(3), which sets forth the rules related to listing and trading criteria for Investment Company Units. See Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-1998-29). In July 2001, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of Investment Company Units under NYSE Arca Equities Rule 5.2(j)(3). See Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14).

⁵ 15 U.S.C. 80a.

⁶ 17 CFR 240.19b-4(e).

⁷ See Securities Exchange Act Release No. 54490 (September 22, 2006), 71 FR 58034 (October 2, 2006) (SR-NYSEArca-2006-61) (approving underlying index weightings for: sales, cash flow, book value and dividends).

⁸ See Securities Exchange Act Release No. 54649 (October 24, 2006), 71 FR 63816 (October 31, 2006) (SR-NYSE-2006-88).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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 modifications, or

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

The Exchange has requested accelerated approval of this proposed rule change. The Commission has determined that a 15-day comment period is appropriate in this case.

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 rules-comments@sec.gov. Please include File No. SR-NYSEArca-2007-14 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR-NYSEArca-2007-14. 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. Copies of such filing also will be available for inspection and copying at the principal offices 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 No. SR-NYSEArca-2007-14 and should be submitted on or before March 20, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55340; File No. SR-NYSEArca-2007-18]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Clarifying the Operative Date of Rules Relating to Regulation NMS

February 23, 2007.

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 February 22, 2007, the 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 substantially prepared by NYSE Arca. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission. 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

NYSE Arca proposes to clarify the operative date of the rule changes made in connection with Regulation NMS,⁵ from February 4, 2007 to March 5, 2007.⁶ There is no new rule text.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 54549 (September 29, 2006), 71 FR 59179 (October 6, 2006) (SR-NYSEArca-2006-59).

⁶ See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

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 and discussed any comments it received on 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 proposed rule change clarifies the operative date of the rule changes made in connection with Regulation NMS⁷ from February 4, 2007 to March 5, 2007. This clarification stems in part from the Commission's extension of the Trading Phase Date of Regulation NMS to March 5, 2007.⁸

2. Statutory Basis

NYSE Arca believes the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,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 mechanism of a free and open market and a national market system.

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 either solicited or received.

⁷ See *supra* note 5.

⁸ See *supra* note 6.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).