

change is available at the Exchange, the Commission's Public Reference Room, and [www.ise.com](http://www.ise.com).

## 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. ISE has substantially 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 amend its PFOF fees for issues that trade as part of the Pilot. Specifically, ISE proposes to increase the PFOF fee from \$0.10 per contract to \$0.25 per contract. As a result of this change, ISE believes that its PFOF fee in the Pilot options classes would be more competitive with the PFOF fee other options exchanges assess in these options classes, and allow ISE market makers to compete better for order flow in these options classes. ISE proposes to implement this change in its PFOF fee beginning on June 2, 2008. The Exchange is not amending its PFOF program in any other respect.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among ISE members. In particular, the Exchange believes increasing its PFOF fees in the Pilot options classes is reasonable and equitable in that it will allow ISE market makers to better compete for order flow in these options classes.

### 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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect 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.

## 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-ISE-2008-42 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-ISE-2008-42. 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 the 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-ISE-2008-42 and should be submitted on or before July 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57950; File No. SR-NYSEArca-2008-57]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Rule 5.3 and Rule 5.4 To Enable the Listing and Trading of Options on Index-Linked Securities

June 11, 2008.

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> notice is hereby given that on May 29, 2008, NYSE Arca, Inc. ("NYSE Arca" or "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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

2008-27) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Phase II of the Penny Pilot Program Expansion).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</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.

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 revise NYSE Arca Rules 5.3 and 5.4 to enable listing and trading on the Exchange of options on Index-Linked Securities. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

### **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 states that the purpose of the proposed rule change is to revise NYSE Arca Rules 5.3 and 5.4 to enable the listing and trading of options on equity index-linked securities ("Equity Index-Linked Securities"), commodity-linked securities ("Commodity-Linked Securities"), currency-linked securities ("Currency-Linked Securities"), fixed income index-linked securities ("Fixed Income Index-Linked Securities"), futures-linked securities ("Futures-Linked Securities"), and multifactor index-linked securities ("Multifactor Index-Linked Securities"), collectively known as ("Index-Linked Securities") (as defined in NYSE Arca Equities Rule 5.2(j)(6)) that are principally traded on a national securities exchange and an "NMS stock" (as defined in Rule 600 of Regulation NMS under the Act).

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing ("Underlying Index" or "Underlying Indexes"). Index-Linked Securities are the non-convertible debt of an issuer

that have a term of at least one year but not greater than thirty years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options would apply to Index-Linked Securities. The Exchange does not propose any changes to rules pertaining to Stock Index Options.

##### **Listing Criteria**

The Exchange will consider listing and trading options on Index-Linked Securities provided the Index-Linked Securities meet the criteria for underlying securities set forth in NYSE Arca Rule 5.3(a)–(b).

The Exchange proposes that Index-Linked Securities deemed appropriate for options trading represent ownership of a security that provides for the payment at maturity, as described below:

- *Equity Index-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities ("Equity Reference Asset");
- *Commodity-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares or a basket or index of any of the foregoing ("Commodity Reference Asset");<sup>3</sup>
- *Currency-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares<sup>4</sup> or a basket or index of any of the foregoing ("Currency Reference Asset");<sup>5</sup>
- *Fixed Income Index-Linked Securities* are securities that provide for

the payment at maturity of a cash amount based on the performance of one or more notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing ("Fixed Income Reference Asset");

- *Futures-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b) ("Futures Reference Asset"); and

- *Multifactor Index-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets or Futures Reference Assets ("Multifactor Reference Asset").

For the purposes of NYSE Arca Rule 5.3(j), Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets, and Multifactor Reference Assets, would be collectively referred to as "Reference Assets," as defined in NYSE Arca Equities Rule 5.2(j)(6).

Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in NYSE Arca Rule 5.3(a), or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset. In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

##### **Continued Listing Requirements**

Options on Index-Linked Securities would be subject to all Exchange rules governing the trading of equity options. The current continuing or maintenance listing standards for options traded on NYSE Arca would continue to apply.

<sup>3</sup> Telephone conversation between Glenn Gsell, Director, Options Regulation, Exchange, and Michou H.M. Nguyen and Brian Trackman, Special Counsels, Division of Trading and Markets, Commission, on June 10, 2008 (correcting the description of Index Linked Securities to conform to language in the proposed rule text stating that the payment at maturity is a cash amount) ("June 10 Teleconference").

<sup>4</sup> See NYSE Arca Equities Rule 8.202(c). The term "Currency Trust Shares" is defined as a security that: (a) Is issued by a trust ("Trust") that holds a specified non-U.S. currency deposited with the Trust; (b) when aggregated in some specified minimum number may be surrendered to the Trust by the beneficial owner to receive the specified non-U.S. currency; and (c) pays beneficial owners interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the Trust.

<sup>5</sup> See June 10 Teleconference *supra* note 3.

The Exchange proposes to establish NYSE Arca Rule 5.4(m) which would include criteria related to the continued listing of options on Index-Linked Securities.

Under the applicable continued listing criteria in proposed NYSE Arca Rule 5.4(m), options on Index Linked Securities initially approved for trading pursuant to proposed NYSE Arca Rule 5.3(j) may be subject to the suspension of opening transactions as follows: (1) Non-compliance with the terms of NYSE Arca Rule 5.3(j); (2) non-compliance with the terms of NYSE Arca Rule 5.4(b), except that in the case of options covering Index-Linked Securities approved pursuant to NYSE Arca Rule 5.3(j)(3)(B) that are redeemable at the option of the holder at least on a weekly basis, then option contracts of the class covering such Securities may only continue to be open for trading as long as the Securities are listed on a national securities exchange and are an "NMS stock" as defined in Rule 600 of Regulation NMS;<sup>6</sup> (3) in the case of any Index-Linked Security trading pursuant to NYSE Arca Rule 5.3(j), the value of the Reference Asset is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

The Exchange represents that the listing and trading of options on Index-Linked Securities under proposed NYSE Arca Rule 5.3(j) will not have any effect on the rules pertaining to position and exercise limits<sup>7</sup> or margin.<sup>8</sup>

The Exchange states that it will implement surveillance procedures for options on Index-Linked Securities, including adequate comprehensive surveillance sharing agreements with markets trading in non-U.S. components, as applicable. NYSE Arca represents that these procedures will be adequate to properly monitor Exchange trading of options on these securities and to deter and detect violations of Exchange rules.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> 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, 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

The Exchange states that 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 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 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](mailto:rule-comments@sec.gov). Please include File

Number SR-NYSEArca-2008-57 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-NYSEArca-2008-57. 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 the 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-2008-57 and should be submitted on or before July 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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<sup>6</sup> See June 10 Teleconference, *supra* note 3 (correcting the description of Index Linked Securities to conform with proposed NYSE Arca Rule 5.4(m)(2)).

<sup>7</sup> See NYSE Arca Rules 6.8 and 6.9.

<sup>8</sup> See NYSE Arca Rule 5.25.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 17 CFR 200.30-3(a)(12).