

Exchange believes that the proposed rule change will provide more specific continued listing criteria for securities listed under NYSE Arca Equities Rules 5.2(j)(1) and 5.2(j)(2), and provides an adequate minimum threshold for the dollar principal amount of derivatively-priced securities such as those listed under Rules 5.2(j)(1) and 5.2(j)(2) to permit sufficient market liquidity.

#### *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 self-regulatory organization 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 Number SR-NYSEArca-2008-104 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-2008-104. 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-2008-104 and should be submitted on or before October 31, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58717; File No. SR-NYSEArca-2008-106]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 6.87—Obvious Errors and Catastrophic Errors**

October 2, 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 October

<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.

2, 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 and II below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposed rule change as a "non-controversial" proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal 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**

The Exchange proposes to amend Rule 6.87—Obvious Errors and Catastrophic Errors. The text of the proposed rule change is available at the principal office of the Exchange, the Commission's Public Reference Room, and at [www.nyse.com](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 self-regulatory organization 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 those 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 parts 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 Exchange rules governing obvious and catastrophic errors, by adding provisions which will allow for the nullification of trades that are a result of either an erroneous quote, or print, in the underlying security. Specifically, NYSE Arca is proposing new Rule 6.87(a)(4) Erroneous Print in the Underlying, and new Rule 6.87(a)(5) Erroneous Quote in the Underlying.

Market participants on NYSE Arca base the value of their quotes and orders off of the price of underlying security. These two proposed provisions cover

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

instances where the information the market participants are using to price options is erroneous, through no fault of their own. An erroneous quote or print in an underlying security, which is disseminated by the primary market<sup>5</sup> for that security, means that market participants are receiving erroneous information which they then incorporate into trading decisions. In these instances, market participants have little if any chance of pricing options accurately. In order to provide relief from transactions that occur as a result of these erroneous prints and/or quotes, the Exchange proposes the following provisions.

#### Rule 6.87(a)(4) Erroneous Print in Underlying

An electronic trade resulting from an erroneous print disseminated by the underlying market which is later cancelled or corrected by that underlying market may be nullified. In order to be nullified, however, the trade must be the result of an erroneous print that is higher or lower than the average trade in the underlying security during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for such underlying security during the same period.

For purposes of this Rule, the average trade in the underlying security shall be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question). For purposes of this Rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).

#### Rule 6.87(a)(5) Erroneous Quote in Underlying

Electronic trades resulting from an erroneous quote in the underlying security may be adjusted or nullified as set forth in section (a)(3) of Rule 6.87. An erroneous quote occurs when the underlying security has a width of at least \$1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market (as defined in Rule 6.1(b)(27)) during the time period

encompassing two minutes before and after the dissemination of such quote. For purposes of this Rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).

These proposed rule changes will provide market participants on NYSE Arca the same opportunities for price adjustment or trade nullification that are available on other options exchanges. The Exchange notes that these provisions are similar in all respects to rules already approved for use at The Chicago Board Options Exchange ("CBOE")<sup>6</sup> and The American Stock Exchange ("Amex").<sup>7</sup>

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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. NYSE Arca believes that this proposal is appropriate given that it provides for the adjustment or nullification of trades, which are executed at clearly erroneous prices due to no fault of the participants on the trade.

#### 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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay as well as the five business-day pre-filing requirement to allow the Exchange to immediately offer market participants on NYSE Arca the same potential for relief that is available at other option exchanges, when an erroneous print, or quote, in an underlying security occurs on the primary market. The Exchange argued that such flexibility is increasingly important in light of recent market volatility. The Commission believes that waiving the 30-day operative delay<sup>12</sup> is consistent with the protection of investors and the public interest.<sup>13</sup> Given that the Exchange's proposed rule change is substantially similar to the rules of other exchanges previously approved by the Commission,<sup>14</sup> the proposal does not appear to present any novel regulatory issues. Therefore, the Commission

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> The Commission is also waiving the five business-day pre-filing requirement.

<sup>14</sup> See Amex Rule 936-ANTE(a)(4)-(5) and CBOE Rule 6.25(a)(4)-(5).

<sup>5</sup> NYSE Arca Rule 6.1(b)(27) defines *Primary Market* as the principal market in which the underlying stock or Exchange-Traded Fund Share is traded.

<sup>6</sup> See CBOE Rules 6.25(a)(4)-(5).

<sup>7</sup> See Amex Rules 936-ANTE(a)(4)-(5).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

designates the proposal operative upon filing.

At any time within 60 days of the filing of the 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-NYSEArca-2008-106 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-2008-106. 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-2008-106 and should be submitted on or before October 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58734; File No. SR-NYSEArca-2008-105]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing Certain Derivative Products Pursuant to Continued Listing Criteria

October 6, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 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 prepared by NYSE Arca. 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, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to adopt Commentary .01 to Rule 5.2(b) to allow NYSE Arca to list Derivative Products (as defined in the proposed Commentary .01 to Rule 5.2(b)) that (1) were originally listed on another registered national securities exchange on an initial listing basis and continue to be listed on such other registered national securities exchange, and (2) satisfy the Exchange's continued listing criteria. The text of the proposed rule change is set forth below (new language is in italics):

Rule 5.2(b)

\* \* \* \* \*

*Commentary:*

*.01 The Exchange is permitted to list any Derivative Product, as described*

<sup>15</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.

*below, 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 that are applicable to the product class that would include such Derivative Product. For the purposes of this rule, the term "Derivative Product" shall include securities described in NYSE Arca Equities Rules 5.2(j)(2) (Equity Linked Notes); 5.2(j)(3) (Investment Company Units); 5.2(j)(4) (Index-Linked Exchangeable Notes); 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); 8.100 (Portfolio Depository Receipts); and Commentary .01 to Rule 8.200 (Trust Issued Receipts).*

#### 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 self-regulatory organization 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 those 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 parts 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 is proposing to adopt Commentary .01 to NYSE Arca Equities Rule 5.2(b) to allow NYSE Arca to list Derivative Products (as defined in the proposed Commentary .01 to Rule 5.2(b))<sup>3</sup> that (1) were originally listed on

<sup>3</sup> For purposes of proposed Rule 5.2(b), Commentary .01, the term "Derivative Products" includes securities described in Rule 5.2(j)(2) (Equity-Linked Notes); Rule 5.2(j)(3) (Investment Company Units); Rule 5.2(j)(4) (Index-Linked Exchangeable Notes); and Rule 5.2(j)(6) (Index-Linked Securities); and the following securities enumerated in provisions of section 2 to Rule 8: Portfolio Depository Receipts; and Trust Issued Receipts to be listed pursuant to Rule 8.200, Commentary .01. Exchange rules relating to listing and trading, including trading pursuant to unlisted trading privileges, of "Derivative Products" as described above permit listing and trading pursuant to Rule 19b-4(e) under the Exchange Act. Rule 19b-4(e) under the Exchange 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,