

## 2. Statutory Basis

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)(5) of the Act,<sup>7</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 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. Specifically, the proposal will align the Exchange's independent director standards with those of Nasdaq and NYSE, as well as with the Commission's disclosure requirements, thereby providing a uniform standard for issuers to understand and apply.

### 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.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, as required under Rule 19b-4(f)(6)(iii),<sup>8</sup> the Amex provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to filing the proposal, or such shorter time as designated by the Commission.<sup>9</sup> Therefore, 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>

The Amex has further requested the Commission to waive the 30-day operative delay. The Commission hereby grants Amex's request.<sup>12</sup> Waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Amex proposal is consistent with a proposal by Nasdaq that recently was approved by the Commission.<sup>13</sup> The Commission notes that no comments were received on the Nasdaq proposal. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as 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-Amex-2008-67 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-Amex-2008-67. 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 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-Amex-2008-67 and should be submitted on or before September 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-19551 Filed 8-21-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58376; File No. SR-NYSEArca-2008-70]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Amending NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Generic Listing Standard for Equity Index-Linked Securities

August 18, 2008.

## I. Introduction

On June 27, 2008, 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

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement under Rule 19b-4(f)(6)(iii) given that the instant rule filing was originally made pursuant to Section 19(b)(2) of the Act on August 13, 2008, and Commission staff requested on August 14, 2008

that the filing be re-submitted pursuant to Section 19(b)(3)(A). The Commission grants such waiver.

<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 of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> See Release No. 34-58335, *supra* note 3.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Exchange's generic listing standard for equity index-linked securities ("Equity Index-Linked Securities") to: (1) Eliminate initial and continued listing capitalization weighted and modified capitalization weighted index requirements; and (2) to adjust certain equity index weighting criteria and adopt notional volume traded per month to both initial listing standards and continued listing standards. The proposed rule change was published for comment in the **Federal Register** on July 17, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

NYSE Arca proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Exchange's generic listing standard for Equity Index-Linked Securities to: (1) Eliminate initial and continued listing capitalization weighted and modified capitalization weighted index requirements; and (2) to adjust certain equity index weighting criteria and adopt notional volume traded per month to both the initial listing standards and continued listing standards.

The Exchange proposes that capitalization weighted index or modified capitalization weighted indexes comply with the initial and continued listing requirements currently applicable to all other equity indexes under NYSE Arca Equities Rule 5.2(j)(6)(B)(I) regardless of the index methodology.

For Equity Index-Linked Securities, the Exchange proposes to eliminate NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(iii), the current initial listing requirement that, in the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest dollar weighted component securities in the index or the highest dollar weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, must have an average monthly trading volume of at least 2,000,000 shares over the previous six months. The Exchange also proposes to eliminate NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(iii), the current continued listing requirement, that in the case of a capitalization weighted

index or modified capitalization weighted index, the lesser of the five highest dollar weighted component securities in the index or the highest dollar weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have an average monthly trading volume of at least 1,000,000 shares over the previous six months.

The Exchange is also proposing to: (i) Remove the requirement that each of the lowest weighted component securities in the index that in the aggregate account for 10% of the weight of the index have trading volume of at least 500,000 shares per month for each of the last six months; and (ii) adopt minimum global notional volume ("Global Notional Volume")<sup>4</sup> traded per month of \$25,000,000 averaged over of the last six months as an option for meeting the listing requirements.

With respect to the continued listing criteria, Rule 5.2(j)(6)(B)(I)(2)(a)(ii) currently sets forth that the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months.

The Exchange is proposing to: (i) Remove the requirement that the lowest weighted component securities in the index that in the aggregate accounting for no more than 10% of the weight of the index have trading volume of at least 400,000 shares for each of the last six months; and (ii) adopt minimum Global Notional Volume traded per month of \$12,500,000 averaged over the last six months as an option for satisfying the continued listing requirements.

## III. Commission's Findings and Order Granting Approval of the Proposed Rule Change

After careful review, 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>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>6</sup> 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, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal to eliminate the above-described initial and continued listing requirements for Equity-Index Linked Securities based upon capitalization weighted and modified capitalization weighted indexes would subject all Equity Index-Linked Securities to the same listing requirements, regardless of the methodology upon which a product's underlying index is based. The Commission believes that the proposal should facilitate the listing and trading of Equity Index-Linked Securities with different index methodologies, thus benefiting investors by providing them with a wider selection of derivative products.

The Exchange also proposes to adjust the index weighting criteria in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(ii) and 5.2(j)(6)(B)(I)(2)(a)(ii) and to adopt an averaged minimum global notional volume traded per month as an option for meeting these initial and continued listing requirements. The Commission believes that focusing the listing requirements on measuring component stocks that in the aggregate account for 90% of the weight of an index should be sufficient to evaluate the liquidity of an index underlying a given Equity-Index Linked Security. The Commission further believes that the use of global notional volume as an alternative measure to global trading volume is acceptable in that it should mitigate the volume discrepancies between low- and high-priced stocks. Finally, the Exchange's proposal to adopt an average of trading or notional volume, as the case may be, should help to eliminate seasonal volume fluctuations that may occur in the trading of an Equity-Index Linked Security in a given month. The Commission believes that the proposal should promote competition and benefit investors, Equity Index-Linked Securities issuers, and third-party index sponsors by expediting the Exchange's ability to list and trade Equity Index-Linked Securities based on a broader group of indexes.

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 58142 (July 11, 2008), 73 FR 41147.

<sup>4</sup> Global Notional Volume is defined as the total shares traded globally times the price per share.

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NYSEArca-2008-70) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-19474 Filed 8-21-08; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58379; File No. SR-NYSEArca-2008-47]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change To Waive Retroactively as of June 24, 2008, Initial Listing Fees for Companies Who Apply To List Securities Currently Listed on Another National Securities Exchange

August 18, 2008.

#### I. Introduction

On June 24, 2008, NYSE Arca, Inc. ("NYSE Arca" 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 proposed rule change to waive retroactively as of June 24, 2008, initial listing fees for companies who apply to list securities currently listed on another national securities exchange. The proposed rule change was published in the **Federal Register** on July 14, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to waive initial listing fees for companies who apply to list securities currently listed on another national securities exchange. The waiver would apply to all classes of securities. The proposed fee waiver would be applied retroactively to any companies that apply to list after June 24, 2008. The Exchange had previously waived initial listing fees for all companies that transferred from the New York Stock Exchange ("NYSE") at any time or from Nasdaq Stock Market

("Nasdaq") or the American Stock Exchange prior to December 31, 2007, or had applied to list prior to that date.<sup>4</sup>

#### III. Discussion

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 and, in particular, the requirements of Section 6(b) of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)<sup>5</sup> and 6(b)(5) of the Act,<sup>6</sup> which require that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities, and are designed, among other things, 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, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>7</sup>

The Commission notes that an issuer seeking to transfer to the Exchange has already paid initial listing fees to another national securities exchange when it became a publicly traded company. In addition, the Commission notes that the Exchange does not expect the loss of initial listing fees to be material and has stated that the fee waiver will not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory program. The Exchange would continue to assess annual fees and listing of additional shares fees from these issuers. Further, the Exchange believes that there will be lower burdens associated with its eligibility review of issuers transferring from another national securities exchange. However, the Commission expects, and the Exchange has represented, that a full and independent review of compliance with the listing standards will be conducted for any company seeking to take advantage of the fee waiver, just as for any company that applies for listing on the Exchange. Finally, the Commission also notes that

The Nasdaq Stock Market and the New York Stock Exchange have similar provisions.<sup>8</sup> The Commission believes that the proposed waiver could enhance competition among the markets, as the Exchange seeks to become a more attractive listing venue and a viable alternative to listing on other national securities exchanges.

Based on the above, the Commission believes the proposed fee waiver, which is retroactively effective to June 24, 2008, the date of the filing of the proposed rule change,<sup>9</sup> does not constitute an inequitable allocation of reasonable dues, fees, and other charges under Section 6(b)(4) of the Act,<sup>10</sup> does not permit unfair discrimination between issuers under Section 6(b)(5) of the Act,<sup>11</sup> and is otherwise consistent with the requirements of the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSEArca-2008-47) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58380; File No. SR-Phlx-2008-61]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Changing Its Name

August 18, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 15, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 the Phlx. The

<sup>4</sup> See Securities Exchange Act Release No. 54007 (June 16, 2006), 71 FR 36155 (June 23, 2006) (SR-PCX-2006-16).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> See Nasdaq Rule IM-4500-4 and NYSE Listed Company Manual Section 902.02.

<sup>9</sup> See *supra* note 3.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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> See Securities Exchange Act Release No. 58109 (July 7, 2008), 73 FR 40415.