

to another exchange which, in the case of NYSE Arca, is currently under common ownership with the Exchange, and, in the case of NYSE Alternext U.S. will, upon consummation of the acquisition, be under the same ownership as the Exchange. The Exchange believes that the fee waiver is not unfairly discriminatory and does not constitute an inequitable allocation of fees because the same regulatory staff will review securities on all three markets and the Exchange will therefore benefit from regulatory efficiencies arising out of NYSE Regulation's prior examination of any companies that transfer. The Exchange believes that the application of the waiver to companies transferring to the NYSE from Amex prior to the Merger is not unfairly discriminatory and does not constitute an inequitable allocation of fees because the annual fee revenue collected by the Amex from these companies will be available to NYSE Regulation to finance its regulatory oversight of those companies after the Merger.

#### *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 purpose of the Exchange Act.

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

The Exchange has neither solicited nor received written comments on 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-74 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-NYSE-2008-74. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2008-74 and should be submitted by September 5, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58332; File No. SR-NYSEArca-2008-51]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Adopt Generic Listing and Trading Rules for Commodity-Based Trust Shares, Currency Trust Shares, and Commodity Index Trust Shares**

August 8, 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 June 13, 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 5, 2008, NYSE Arca filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend NYSE Arca Equities Rules 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), and 8.203 (Commodity Index Trust Shares) to adopt generic listing and trading rules for such 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.

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

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

<sup>5</sup> 17 CFR 200.30-3(a)(12).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange currently has rules permitting the listing and trading, including trading pursuant to unlisted trading privileges ("UTP"), of Commodity-Based Trust Shares (NYSE Arca Equities Rule 8.201),<sup>3</sup> Currency Trust Shares (NYSE Arca Equities Rule 8.202),<sup>4</sup> and Commodity Index Trust Shares (NYSE Arca Equities Rule 8.203).<sup>5</sup> The Exchange proposes to amend NYSE Arca Equities Rules 8.201, 8.202, and 8.203 to include provisions for the listing and trading (including trading pursuant to UTP) of Commodity-Based Trust Shares, Currency Trust Shares, and Commodity Index Trust Shares, respectively (collectively, the "Shares"), pursuant to Rule 19b-4(e) under the Act.<sup>6</sup>

Generic Listing Standards

Rule 19b-4(e) under the 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, pursuant to section (c)(1) of Rule 19b-4,<sup>7</sup> if the Commission has approved, pursuant to section 19(b) of the Act,<sup>8</sup> the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. The Exchange proposes to adopt generic listing standards under amended NYSE Arca Equities Rules 8.201, 8.202, and 8.203 for the Shares pursuant to which it would be able to trade such securities without Commission approval of each individual product pursuant to section 19(b)(2) of the Act.<sup>9</sup> The Exchange represents that any securities it lists and/or trades pursuant to NYSE Arca

Equities Rule 8.201, 8.202, or 8.203 will satisfy the standards set forth therein. The Exchange states that, within five business days after commencement of trading of a security pursuant to NYSE Arca Equities Rule 8.201, 8.202 or 8.203, as proposed to be amended, the Exchange will file a Form 19b-4(e).<sup>10</sup>

Commodity-Based Trust Shares

The Exchange proposes to amend Commentary .04 to NYSE Arca Equities Rule 8.201 to incorporate generic listing and trading standards for Commodity-Based Trust Shares.<sup>11</sup> In addition to the general requirements of NYSE Arca Equities Rule 8.201, Commodity-Based Trust Shares listed on the Exchange pursuant to Rule 19b-4(e) must satisfy the following initial listing criteria. For a series of Commodity-Based Trust Shares listed on the Exchange, a minimum of 100,000 shares is required to be outstanding at the commencement of trading.<sup>12</sup> In addition, for both listed Commodity-Based Trust Shares and those traded pursuant to UTP: (1) The value of the commodity held by the applicable trust must be disseminated

by one or more major market data vendors on at least a 15-second delayed basis; (2) the Indicative Trust Value must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Core Trading Session as defined in NYSE Arca Equities Rule 7.34;<sup>13</sup> and (3) the Exchange will implement written surveillance procedures applicable to Commodity-Based Trust Shares.

The Exchange proposes to amend NYSE Arca Equities Rule 8.201(c)(1) to provide that Commodity-Based Trust Shares may be redeemed at the request of an Authorized Participant (as defined in the trust's prospectus) by the trust, which will deliver to the redeeming Authorized Participant the quantity of the underlying commodity.<sup>14</sup> The references to redemption "at the holder's request" and delivery of the underlying commodity to the "holder" would be deleted. This amendment reflects the fact that it is the Authorized Participant that actually makes the redemption request and receives the specified proceeds upon redemption, and that a beneficial holder other than an Authorized Participant must utilize an Authorized Participant to effect a redemption. This rationale also applies to insertion of the term "Authorized Participant" in NYSE Arca Equities Rules 8.202 and 8.203, as described below.

The Exchange also proposes to delete the provision in NYSE Arca Equities Rule 8.201(e)(2)(iv) which provides that the Exchange will consider the suspension of trading or removal from listing of a series of Commodity-Based Trust Shares if the Exchange stops providing a hyperlink on its Web site to the updated value of the underlying

<sup>10</sup> See 17 CFR 240.19b-4(e)(2)(ii); 17 CFR 249.820.

<sup>11</sup> The Commission has previously approved issues of Commodity-Based Trust Shares for listing and trading. See, e.g., Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (approving the listing and trading of shares of the streetTRACKS Gold Trust); 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38) (approving the listing and trading of shares of the iShares COMEX Gold Trust); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR-Amex-2005-072) (approving the listing and trading of shares of the iShares Silver Trust); and 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (granting accelerated approval to list and trade shares of the iShares COMEX Gold Trust). E-mail from Michael Cavalier, Associate General Counsel, NYSE Euronext, to Edward Cho, Special Counsel, and Steven Varholik, Staff Attorney, Division of Trading and Markets, Commission, dated June 18, 2008 (confirming the types of securities that were approved for listing and trading under NYSE Arca Equities Rule 8.201).

<sup>12</sup> The Exchange notes that the proposed 100,000-share minimum is the same as the requirement in Commentary .01(d) of NYSE Arca Equities Rule 5.2(j)(3) applicable to Investment Company Units ("Units"), which provides that a minimum of 100,000 shares of a series of Units is required to be outstanding at the commencement of trading. In addition, the 100,000-share minimum is comparable to requirements previously applied to series of Units approved by the Commission for exchange listing pursuant to section 19(b)(2) of the Act. See, e.g., Securities Exchange Act Release No. 52816 (November 21, 2005), 70 FR 71574, 71578 n.19 and accompanying text (November 29, 2005) (SR-NYSE-2005-70) (approving the listing and trading of shares of the iShares Index Funds and noting that the Exchange has required a minimum number of 100,000 shares of Units to be outstanding in connection with the initial listing of shares of the iShares FTSE/Xinhua China 25 Index Fund, which the Commission noted to be comparable to requirements previously applied to other listed series of Units).

<sup>13</sup> Pursuant to NYSE Arca Equities Rule 7.34(a), the NYSE Arca Marketplace will have three trading sessions each day the Exchange is open for business unless otherwise determined by the Exchange:

Opening Session—begins at 1:00:00 a.m. (Pacific Time) and concludes at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction shall occur during the Opening Session.

Core Trading Session—begins at 6:30:00 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and concludes at 1:00:00 p.m. (Pacific Time).

Late Trading Session—begins following the conclusion of the Core Trading Session and concludes at 5:00:00 p.m. (Pacific Time).

<sup>14</sup> The term "Authorized Participant" generally is defined in prospectuses for issues of Commodity-Based Trust Shares, Currency Trust Shares, and Commodity Index Trust Shares as an entity that (1) is a registered broker-dealer, or other securities market participant such as a bank or other financial institution that is not required to register as a broker-dealer to engage in securities transactions; (2) is a Depository Trust Company participant; and (3) has entered into an Authorized Participant Agreement with the trust.

<sup>3</sup> See Securities Exchange Act Release No. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR-PCX-2004-132) (approving NYSE Arca Equities Rule 8.201 and the trading of shares of the iShares® COMEX Gold Trust pursuant to UTP).

<sup>4</sup> See Securities Exchange Act Release No. 53253 (February 8, 2006), 71 FR 8029 (February 15, 2006) (SR-PCX-2005-123) (approving NYSE Arca Equities Rule 8.202 and the trading of shares of the Euro Currency Trust pursuant to UTP).

<sup>5</sup> See Securities Exchange Act Release No. 54025 (June 21, 2006), 71 FR 36856 (June 28, 2006) (SR-NYSEArca-2006-12) (approving NYSE Arca Equities Rule 8.203 and the trading of shares of the iShares® GSCI Commodity-Indexed Trust pursuant to UTP).

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

<sup>7</sup> 17 CFR 240.19b-4(c)(1).

<sup>8</sup> 17 U.S.C. 78s(b).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

commodity. The Exchange believes such information is widely available from market data vendors and an Exchange hyperlink is not necessary to provide investors with access to such information.

Proposed Commentary .05 to NYSE Arca Equities Rule 8.201 provides that Commodity-Based Trust Shares will be subject to the Exchange's equity trading rules. Proposed Commentary .06 to NYSE Arca Equities Rule 8.201 provides that if the Indicative Trust Value or value of the commodity applicable to a series of Commodity-Based Trust Shares is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If the Exchange becomes aware that the net asset value ("NAV") applicable to a series of Commodity-Based Trust Shares is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants.

#### Currency Trust Shares

The Exchange proposes to amend the definition of the term "Currency Trust Shares" in NYSE Arca Equities Rule 8.202(c) to provide that such shares may be issued by a trust that holds more than one non-U.S. currency. In addition, NYSE Arca Equities Rule 8.202(c) would be amended to provide that Currency Trust Shares may be surrendered by an Authorized Participant (as defined in the trust's prospectus) to the trust, which will deliver to the redeeming Authorized Participant the specified non-U.S. currency or currencies. The reference to the surrender of Currency Trust Shares by the beneficial owner would be deleted. NYSE Arca Equities Rule 8.202(d), relating to the designation of the non-U.S. currency, is proposed to be amended to clarify the rule's application to an issue of Currency Trust Shares that holds more than one non-U.S. currency. Commentary .01 to NYSE Arca Equities Rule 8.202 also would be amended to clarify that Currency Trust Shares are Trust Issued Receipts that can hold multiple currencies.

The Exchange proposes to amend Commentary .04 to NYSE Arca Equities Rule 8.202 to incorporate generic listing and trading standards for Currency Trust Shares.<sup>15</sup> In addition to the

general requirements of NYSE Arca Equities Rule 8.202, Currency Trust Shares listed on the Exchange must satisfy the following initial listing criteria. For each series of Currency Trust Shares, a minimum of 100,000 shares of a series of Currency Trust Shares is required to be outstanding at the commencement of trading.<sup>16</sup> In addition, for both listed Currency Trust Shares and those traded pursuant to UTP: (1) The value of the applicable non-U.S. currency must be disseminated by one or more major market data vendors on at least a 15-second delayed basis; (2) the Indicative Trust Value must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Core Trading Session as defined in NYSE Arca Equities Rule 7.34; and (3) the Exchange will implement written surveillance procedures applicable to Currency Trust Shares.

Proposed Commentary .05 to NYSE Arca Equities Rule 8.202 provides certain "firewall" requirements where the value of a Currency Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, as well as requirements on any advisory committee, supervisory board, or similar entity that advises or that makes certain decisions regarding the index, similar to the requirements currently specified in Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3).

Proposed Commentary .06 to NYSE Arca Equities Rule 8.202 provides that Currency Trust Shares will be subject to the Exchange's equity trading rules. Proposed Commentary .07 to NYSE Arca Equities Rule 8.202 provides that, if the Indicative Trust Value or the value of the currency, currencies, or currency index applicable to a series of Currency Trust Shares is not being disseminated as required, the Exchange may halt

listing and trading. *See, e.g.,* Securities Exchange Act Release Nos. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR-NYSE 2005-65) (granting accelerated approval for the listing and trading of shares of the CurrencyShares Euro Trust); 54020 (June 20, 2006), 71 FR 36579 (June 27, 2006) (SR-NYSE-2006-35) (granting accelerated approval for the listing and trading of shares of the CurrencyShares Australian Dollar Trust, CurrencyShares British Pound Sterling Trust, CurrencyShares Canadian Dollar Trust, CurrencyShares Mexican Peso Trust, CurrencyShares Swedish Krona Trust, and CurrencyShares Swiss Franc Trust); 55268 (February 9, 2007), 72 FR 7793 (February 20, 2007) (SR-NYSE-2007-03) (granting accelerated approval for the listing and trading of shares of the CurrencyShares Japanese Yen Trust); and 56131 (July 25, 2007), 72 FR 42212 (August 1, 2007) (SR-NYSEArca-2007-57) (granting accelerated approval for the listing and trading of shares of the CurrencyShares Trusts).

<sup>16</sup> *See supra* note 12.

trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If the Exchange becomes aware that the NAV applicable to a series of Currency Trust Shares is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants.

#### Commodity Index Trust Shares

The Exchange proposes to amend the definition of the term "Commodity Index Trust Shares" in NYSE Arca Equities Rule 8.203(c) to accommodate shares issued by a trust that holds commodities included in an index or portfolio, as well as a trust that holds commodity futures on a specified index or portfolio, or that holds interests in a commodity pool that holds commodity futures or interests in a commodity pool as defined in the Commodity Exchange Act, and is managed by a commodity pool operator registered with the Commodity Futures Trading Commission. In addition, NYSE Arca Equities Rule 8.203(c) would be amended to provide that Commodity Index Trust Shares may be surrendered to the trust by an Authorized Participant (as defined in the trust's prospectus), which will deliver to the redeeming Authorized Participant the specified proceeds. The reference to surrender of Commodity Index Trust Shares by the beneficial owner would be deleted.

The Exchange also proposes to amend Commentary .01 to NYSE Arca Equities Rule 8.203 to provide that a Commodity Index Trust Share is a Trust Issued Receipt that holds commodities included in, or long positions in futures contracts on a specified commodity index or portfolio, or interests in a commodity pool which, in turn, holds such commodities or long positions, deposited with the applicable trust. Commentary .04 to NYSE Arca Equities Rule 8.203 would be amended to incorporate generic listing and trading standards for Commodity Index Trust Shares.<sup>17</sup>

<sup>17</sup> The Commission has previously approved a number of issues of Commodity Index Trust Shares for listing and trading. *See, e.g.,* Securities Exchange Act Release Nos. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (SR-NYSE-2006-17) (approving the listing and trading of shares of the iShares GSCI Trust); 55585 (April 5, 2007), 72 FR 18500 (April 12, 2007) (SR-NYSE-2006-75) (approving the listing and trading of shares of the iShares GS Commodity Light Energy Indexed Trust; iShares GS Commodity Industrial Metals Indexed Trust; iShares GS Commodity Livestock Indexed

<sup>15</sup> The Commission has previously approved a number of issues of Currency Trust Shares for

In addition to the general requirements of NYSE Arca Equities Rule 8.203, Commodity Index Trust Shares listed on the Exchange must satisfy the following initial listing criteria: (1) A minimum of 100,000 shares of a series of Commodity Index Trust Shares is required to be outstanding at the commencement of trading;<sup>18</sup> and (2) the issue must meet one of the following initial listing standards: (a) The commodities included in a specified commodity index, long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions held by the applicable trust shall have been reviewed or approved for the trading of Commodity-Linked Securities, Commodity Index Trust Shares or options or other derivatives by the Commission under section 19(b)(2) of the Act<sup>19</sup> and rules thereunder, and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or (b) with respect to trusts holding long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions, the pricing information for index components must be derived from a market which is an Intermarket Surveillance Group ("ISG") member or with which the Exchange has a comprehensive surveillance sharing agreement. An index may include components representing not more than 10% of the dollar weight of such index for which the pricing information is derived from markets that do not meet such requirements; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the applicable index.

In addition, for both listed Commodity Index Trust Shares and those traded pursuant to UTP: (1) The value of the applicable underlying index

or portfolio must be disseminated by one or more major market data vendors on at least a 15-second delayed basis and, with respect to trusts holding commodities included in a specified index or portfolio, the applicable commodity spot price or prices must be disseminated by one or more major market data vendors on at least a 15-second delayed basis; (2) the Indicative Trust Value must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Core Trading Session as defined in NYSE Arca Equities Rule 7.34; and (3) the Exchange will implement written surveillance procedures applicable to Commodity Index Trust Shares.

Proposed Commentary .05 to NYSE Arca Equities Rule 8.203 provides certain "firewall" requirements where the value of a Commodity Index Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, as well as requirements on any advisory committee, supervisory board, or similar entity that advises or that makes certain decisions regarding the index, similar to the requirements specified in Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3). Proposed Commentary .06 to NYSE Arca Equities Rule 8.203 provides that Commodity Index Trust Shares will be subject to the Exchange's equity trading rules. Proposed Commentary .07 to NYSE Arca Equities Rule 8.203 provides that, if the Indicative Trust Value, the value of the underlying index or portfolio, or the commodity spot price or prices applicable to a series of Commodity Index Trust Shares is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If the Exchange becomes aware that the NAV applicable to a series of Commodity Index Trust Shares is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants.

Proposed NYSE Arca Equities Rules 8.201(j), 8.202(j), and 8.203(j) each also provide that the Exchange may submit a rule filing pursuant to Section 19(b)(2) of the Act<sup>20</sup> to permit the listing and trading of Commodity-Based Trust Shares, Currency Trust Shares, and Commodity Based Trust Shares,

respectively, that do not otherwise meet the standards set forth in proposed Commentary .04 to each such rule.

#### Trading Rules Applicable to the Shares

The Shares will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules will apply to transactions in the Shares. Shares will trade during trading hours set forth in NYSE Arca Equities Rule 7.34(a).<sup>21</sup>

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Commodity-Based Trust Shares, Currency Trust Shares, and Commodity Index Trust Shares, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules or applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange notes that components underlying Commodity-Based Trust Shares, Currency Trust Shares, and Commodity Index Trust Shares are based on spot prices of the relevant commodity or currency, as the case may be, and such underlying commodities or currencies are traded in over-the-counter markets rather than on exchanges. In addition, as noted above, with respect to Commodity Index Trust Shares, where the trust holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions, the pricing information for index components must be derived from a market which is an ISG member or with which the Exchange has a comprehensive surveillance sharing agreement. An index may include components representing not more than 10% of the dollar weight of such index for which the pricing information is derived from markets that do not meet such requirements; provided, however, that no single component subject to this exception can exceed 7% of the dollar weight of the applicable index.

Trust; and iShares GS Commodity Non-Energy Indexed Trust); 56932 (December 7, 2007), 72 FR 71178 (December 14, 2007) (SR-NYSEArca-2007-112) (granting accelerated approval for the listing and trading of shares of the S&P GSCI Commodity-Indexed Trust); and 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR-NYSEArca-2007-91) (granting accelerated approval for the listing and trading of shares of the iShares S&P GSCI Energy Commodity-Indexed Trust; iShares S&P GSCI Natural Gas Commodity-Indexed Trust; iShares S&P GSCI Industrial Metals Commodity-Indexed Trust; iShares S&P GSCI Light Energy Commodity-Indexed Trust; iShares S&P GSCI Livestock Commodity-Indexed Trust; and iShares S&P GSCI Non-Energy Commodity-Indexed Trust).

<sup>18</sup> See *supra* note 12.

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

<sup>20</sup> 17 U.S.C. 78s(b)(2).

<sup>21</sup> See *supra* note 13.

The Exchange states that it may also obtain information via ISG from other exchanges who are members of the ISG.<sup>22</sup> In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders<sup>23</sup> in an Information Bulletin of the special characteristics and risks associated with trading an issue of Commodity-Based Trust Shares, Currency Trust Shares, or Commodity Index Trust Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) NYSE Arca Equities Rule 9.2(a),<sup>24</sup> which imposes a duty of due diligence on ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Shares; (3) how information regarding the Indicative Trust Value is disseminated; (4) the risks involved in trading an issue of Shares during the Opening and Late Trading Sessions when an updated Indicative Trust Value will not be calculated or publicly disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the relevant issue of Shares. The Exchange notes that investors purchasing Shares directly from the applicable trust will receive a prospectus; ETP Holders purchasing Shares from the trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that an issue of Shares is subject to various fees and expenses described in the applicable prospectus

and that there is no regulated source of last sale information regarding physical commodities or non-U.S. currencies, and that the Commission has no jurisdiction over the trading of physical commodities, currencies, or futures contracts on which the value of an issue of Shares may be based.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>25</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>26</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, 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. The Exchange further believes that the proposed rules will enhance market competition by assisting in bringing Commodity-Based Trust Shares, Currency Trust Shares, and Commodity Index Trust Shares to the market more quickly, consistent with the Commission's adoption of Rule 19b-4(e) under the Act.

#### 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 it has neither solicited nor received written comments on 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 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-2008-51 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-2008-51. 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

<sup>22</sup> For a list of current members of the ISG, see <http://www.isgportal.org>.

<sup>23</sup> See NYSE Arca Equities Rule 1.1(n).

<sup>24</sup> NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts) provides that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that the ETP Holder believes would be useful to make a recommendation.

<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

Number SR-NYSEArca-2008-51 and should be submitted on or before September 5, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-18853 Filed 8-14-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58334; File No. SR-Phlx-2008-59]

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

August 8, 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 August 1, 2008, Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On August 8, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to amend its equity option fees as follows: (1) Reduce its equity option transaction charge to \$0.01 per contract for Registered Options Traders ("ROT's")<sup>5</sup> and specialists for contract

volume above 4.5 million contracts per month ("Volume Threshold"); (2) delete the ROT equity option comparison charge for contract volume above the Volume Threshold; and (3) delete the \$0.08 per contract side rebate for ROT's and \$0.07 per contract side rebate for specialists in connection with trades occurring as part of a dividend, merger, and short stock interest strategy.

This proposal is scheduled to become effective for trades settling on or after August 1, 2008.

The text of the proposed rule change is available on the Exchange's Web site at [http://www.phlx.com/regulatory/reg\\_rulefilings.aspx](http://www.phlx.com/regulatory/reg_rulefilings.aspx).

#### 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 Phlx 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 purpose of the proposed rule change is to revise the Exchange's fee schedule in order to remain competitive and encourage additional order flow to the Exchange. Pursuant to this proposal, the Exchange intends to amend its equity option transaction charges for ROT's and specialists. For contract volume below the Volume Threshold, ROT's would continue to be assessed the current equity option transaction charge of \$0.19 per contract and specialists would be assessed the current equity option transaction charge of \$0.21 per contract. Thereafter, both ROT's and specialists would be assessed an equity option transaction charge of \$0.01 per contract for contract volume over the Volume Threshold for that month. ROT's would not be charged the current \$0.03 per contract equity option comparison charge for any transactions over the Volume Threshold.<sup>6</sup> Thus, the total equity option transaction and comparison charge for both specialists and ROT's would be \$0.01 per contract

for contract volume over the Volume Threshold for that month.

Currently, a fee credit of \$0.21 per contract is given to specialists that incur equity option transaction charges when a customer order is delivered electronically via Phlx XL<sup>7</sup> or via the Exchange's Options Floor Broker Management System ("FBMS"),<sup>8</sup> and is then executed via the Intermarket Option Linkage ("Linkage")<sup>9</sup> as a Principal Acting as Agent Order ("P/A Order"). In connection with decreasing the equity option transaction charge for specialists as described above, the fee credit would now be equal to the applicable equity option transaction charge per contract (i.e. \$0.21 per contract or \$0.01 per contract), in order not to give a credit that is greater than the equity option transaction charge that is imposed.

To determine the Volume Threshold, the Exchange would aggregate the trading activity of separate ROT's and specialist member organizations if there is at least 75% common ownership between the member organizations as reflected on each member organizations' Form BD, Schedule A.<sup>10</sup> Contract volume resulting from dividend, merger, and short stock interest strategies<sup>11</sup> and contract volume resulting from specialists that incur Phlx equity option transaction charges when a customer order is delivered electronically via Phlx XL<sup>12</sup> or via FBMS and is then executed via Linkage as a P/A Order would not be included in the Volume Threshold calculation. In addition, currently, the Exchange does not assess ROT equity option transaction and comparison charges and specialist equity option transaction charges on additional qualifying transactions on

<sup>7</sup> See Exchange Rule 1080.

<sup>8</sup> FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. See Exchange Rule 1080, Commentary .06.

<sup>9</sup> Linkage is governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Plan") approved by the Commission. The registered U.S. options markets are linked together on a real-time basis through a network capable of transporting orders and messages to and from each market.

<sup>10</sup> An ROT's or a specialist's monthly contract volume is determined at the member organization affiliation level, e.g., if five ROT's are affiliated with member organization ABC as reflected by Exchange records for the entire month, all of the volume from those five ROT's counts towards member organization ABC's Volume Threshold for that month.

<sup>11</sup> The current equity option comparison and transaction caps of \$1,000 and \$25,000 that are imposed in connection with dividend, merger and short stock interest strategies would continue to apply.

<sup>12</sup> See Exchange Rule 1080.

<sup>27</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> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> ROT equity option transaction charges are referred to on the Exchange's fee schedule as "Registered Option Trader (on floor)." This charge applies to ROT's, Streaming Quote Traders ("SQT's"), and Remote Streaming Quote Traders ("RSQT's"). SQT's and RSQT's are considered to be ROT's pursuant to Exchange Rule 1014. ROT transactions entered from off-floor would continue to be included in the broker/dealer equity option transaction charges for billing purposes, as set forth in footnote 3 of the Exchange's Summary of Equity Option, and MNX, NDX, RUT and RMN Charges fee schedule.

<sup>6</sup> Specialists are not currently assessed a comparison charge.