

foregoing, while a significant number of listed equity securities meet the minimum market capitalization and trading volume requirements for components of equity indexes under NYSE Arca Equities Rule 5.2(j)(6), the Exchange represents that many do not meet the current criteria for standardized options trading. The Exchange believes that the explicit market capitalization and trading volume requirements of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(i) and (ii), respectively, are sufficient to ensure that any component security comprising an Equity Reference Asset underlying a series of Equity Index-Linked Securities will have an adequate liquid trading market. In addition, the Exchange believes that, by requiring that both proposed conditions to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(v) (*i.e.*, enhancing concentration limits for component securities and increasing the minimum number of component securities) be met in order to avail of the proposed exemption to such rule, the proposal would significantly reduce the possibility of manipulation of the index. Based on the foregoing, the Exchange believes that the protection of requiring such securities to be qualified for options trading is unnecessary.

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

After careful review and based on the Exchange's representations, 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>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>11</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

the lowest dollar weighted component securities in the index that, in the aggregate, account for no more than 10% of the dollar weight of the index, the trading volume shall be at least 500,000 shares per month in each of the last six months. In contrast, the options criteria for underlying securities generally require a minimum trading volume (in all markets in which the underlying security is traded) of 2,400,000 shares in the preceding twelve months, as stated above.

<sup>10</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>11</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest.

With respect to the proposal to permit the inclusion of Closed-End Fund Securities and ETF Securities in an underlying index of a series of Equity Index-Linked Securities, the Commission notes that issuers of Closed-End Fund Securities and ETF Securities must register under the 1940 Act, and such securities must be listed on a national securities exchange. The Commission also notes that Closed-End Securities and ETF Securities trade on the same platforms as equity securities and are generally subject to the same exchange trading rules as equity securities. In addition, in order for such securities to be included in an underlying index of an issue of Equity Index-Linked Securities, it must be an NMS stock, as defined in Rule 600(b)(47) of Regulation NMS.<sup>12</sup> The Commission believes that this proposal should benefit investors by creating additional alternatives to investing in such regulated products and competition in the market for Equity Index-Linked Securities, while maintaining transparency of the underlying components comprising an index.

The Commission further believes that the proposal to provide for a limited exception to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(v) reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in Section 6(b)(5) of the Act. The Commission notes that the minimum trading volume standard relating to the eligibility of securities underlying options overlaps with, and is less stringent than, the equivalent trading volume standards provided in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(2)(ii) and (iii). Because the overall purpose of the current criteria for standardized options trading is to ensure proper liquidity of the underlying security, the Commission believes that the minimum market value thresholds of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(i), the minimum trading volume requirements provided in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(2)(ii) and (iii), together with the enhanced concentration limits and increased minimum number of component securities needed in order to avail of the proposed exemption to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(v), will help ensure adequate liquidity of

<sup>12</sup> See *supra* note 6.

each component comprising an underlying index of Equity Index-Linked Securities. As such, the Commission believes it is reasonable and consistent with the Act for the Exchange to modify the listing standards for Equity Index-Linked Securities in the manner described in the proposal.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSEArca-2007-110), be, and it hereby is, approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56885; File No. SR-NYSEArca-2007-123]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Relating to the Extension of the Pilot Program for Initial and Continued Financial Listing Standards for Common Stock of Operating Companies Until May 31, 2008

December 3, 2007.

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 November 29, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On November 30, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders

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

<sup>14</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> In Amendment No. 1, the Exchange corrected a typographical error on the proposed Pilot Program (as defined below) extension date and explained the amendment to the Pilot Program.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

the proposed rule change 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, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), has amended the rules governing NYSE Arca, LLC (also referred to as the "NYSE Arca Marketplace"), which is the equities trading facility of NYSE Arca Equities, on a pilot program basis ("Pilot Program") to amend the initial and continued financial listing standards for common stock of operating companies. The Pilot Program expires on November 30, 2007. The Exchange proposes to extend the Pilot Program until May 31, 2008.

### **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. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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**

NYSE Arca has amended on a pilot program basis the rules governing the NYSE Arca Marketplace to amend the financial listing standards for common stock of operating companies.<sup>6</sup> On October 3, 2007, the Commission approved the Exchange's proposal to amend the Pilot Program to, among other things, make the initial listing standards more restrictive and to exclude from qualification some companies that qualified to list but whose size or financial performance is not consistent with the kind of issuer

<sup>6</sup>The Commission initially approved the Pilot Program for six months, until May 29, 2007. See Securities Exchange Act Release No. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (SR-NYSEArca-2006-85). The Pilot Program was subsequently extended for an additional six months, until November 30, 2007. See Securities Exchange Act Release No. 55838 (May 31, 2007), 72 FR 31642 (June 7, 2007) (SR-NYSEArca-2007-51).

the Exchange intended to list.<sup>7</sup> Based on the results of the Pilot Program, the Exchange has determined that the Pilot Program has met its expectations. As a result, the Exchange intends to file a proposal to permanently adopt the Pilot Program.

The Pilot Program expires on November 30, 2007. The Exchange proposes to extend the Pilot Program until May 31, 2008. This extension will permit Exchange staff to prepare the rule filing proposing to permanently adopt the Pilot Program.

##### **2. Statutory Basis**

The proposed rule change 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, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

#### **B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the

<sup>7</sup> See Securities Exchange Act Release No. 56606, 72 FR 57982 (October 11, 2007) (SR-NYSEArca-2007-69).

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

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

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

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

protection of investors and the public interest, provided that the Exchange has given the Commission 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would allow the Pilot Program to continue without any interruption, until May 31, 2008.<sup>13</sup> The Commission further notes that no comments were received on the Pilot Program.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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.<sup>14</sup>

### **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-2007-123 on the subject line.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on November 30, 2007, the date on which the Exchange submitted Amendment No. 1.

### Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2007-123. 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-NYSEArca-2007-123 and should be submitted on or before December 28, 2007.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56875; File No. SR-OCC-2007-08]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Binary Options

November 30, 2007.

#### I. Introduction

On June 28, 2007, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2007-08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on September 26, 2007.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The proposed rule change permits OCC to clear and settle binary options, including fixed return options ("FROs") to be listed and traded by Amex<sup>3</sup> and binary options on broad-based indexes proposed to be listed and traded by CBOE.<sup>4</sup> Binary options (sometimes referred to as "digital" options) are all-or-nothing options that pay a fixed amount if exercised in the money and otherwise pay nothing. Until recently, OCC did not clear any binary options other than credit default options ("CDOs") traded on CBOE. The Commission recently granted approval of proposed rule changes filed by OCC and CBOE so that CBOE could trade and OCC could clear related products called credit default basket options ("CDBOs").<sup>5</sup> General characteristics of binary options, excluding features unique to CDOs and/or CDBOs that were already described in OCC's prior rule filings, are described below followed by an explanation of the specific rule changes now being made by OCC.

*Description of Binary Options.* Binary options are cash-settled options that have only two possible payoff outcomes,

either a fixed exercise settlement amount or nothing at all. They are subject to automatic exercise. The underlying interest of a binary option may be one or more securities, an index of securities, or some other measure; however, OCC presently intends to clear only binary options that are within the definition of a "security" as determined by the Commission. In its capacity as a "derivatives clearing organization" regulated by the Commodity Futures Trading Commission ("CFTC"), OCC may in the future propose to clear binary options that are commodity options subject to the jurisdiction of the CFTC.

A binary option, other than a CDO or CDBO, is in the money and will be automatically exercised if its underlying interest value as measured against its exercise price is determined to meet the criteria for automatic exercise as specified in the Exchange Rules of the listing Exchange.<sup>6</sup> For example, in the case of a "finish high fixed return option," such option will be automatically exercised and settled for a fixed amount of cash if its underlying interest value is above its exercise price at expiration. In the case of a "finish low fixed return option," such option will be automatically exercised and settled for a fixed amount of cash if its underlying interest value is below its exercise price at expiration. The rule changes in this current filing for binary options are intended to be sufficiently generic to be the basis for clearing binary options to be listed by Amex and proposed to be listed by CBOE as well as other binary options in the future.

*By-Law and Rule Amendments Applicable to Binary Options.* In order to provide a framework of rules that can accommodate the clearance and settlement of various kinds of binary option products, OCC is broadening the By-Law Article and Rule Chapter covering CDOs and CDBOs.

(1) *Terminology—Article I, Section 1 and Article XIV, Section 1*

"Binary option" is defined in Article XIV, Section 1 of the By-Laws, and the definition is cross-referenced in Article I of the By-Laws.

The definitions of "option contract" and "type of option" in Article I of the By-Laws is amended to include a binary option.

OCC is redefining the term "class" in Article XIV, Section 1 so that it will apply to binary options generally. To be within the same class, binary options

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

<sup>2</sup> Securities Exchange Act Release No. 56471 (September 19, 2007), 72 FR 54705.

<sup>3</sup> Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (File No. SR-Amex-2004-27).

<sup>4</sup> File No. SR-CBOE-2006-105.

<sup>5</sup> Securities Exchange Act Release Nos. 56275 (August 17, 2007), 72 FR 47097 (August 22, 2007) (File No. SR-CBOE-2007-026) and 56288 (August 20, 2007), 72 FR 49034 (August 27, 2007) (File No. SR-OCC-2007-06).

<sup>6</sup> CDOs and CDBOs, on the other hand, do not have exercise prices. A CDO or CDBO is deemed to be in the money and is automatically exercised if a "credit event" occurs at any time prior to the last day of trading.