

during the last 20 minutes of trading, the member organization is prohibited from buying such stock as principal on a “plus tick” if the transaction would take place at a price above the lowest price at which it acquired the long position. The Exchange states that Rule 97 was originally adopted to address concerns that a member firm might engage in manipulative practices by attempting to “mark-up” the price of a stock to enable the position acquired in the course of block positioning to be liquidated at a profit, or to maintain the market at the price at which the position was acquired. The rule has been since amended to reduce its scope and provide certain exceptions.⁶

The Rule was last amended in July 2007 to resolve a conflict between Regulation NMS under the Act (“Regulation NMS”) ⁷ and NYSE Rule 97, to add an exemption to Rule 97 so that when facilitating a customer order that would otherwise require the firm to either violate Rule 97 or trade through protected quotations, member organizations can comply with their Regulation NMS obligations without also violating Rule 97.⁸ The Exchange now proposes to rescind Rule 97 in its entirety.

III. Summary of Comments

The Commission received one letter on the proposed rule change.⁹ The commenter supports the proposed rule change, agreeing with the Exchange’s rationale for rescinding NYSE Rule 97. Specifically, the commentator agrees with the Exchange’s view that the rule “no longer serves a useful purpose and may in fact hinder legitimate trading activity.”¹⁰ Furthermore, SIFMA believes that changes in the markets and new regulations, such as Regulation NMS, render the rule no longer viable.¹¹

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

a national securities exchange.¹² In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹³ which requires, among other things, that the rules of an exchange be designed to 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, protect investors and the public interest. The Commission notes that other venues are available for market participants to effect block position transactions without the restrictions currently imposed by NYSE Rule 97. The Commission further notes that NYSE Regulation, Inc. will continue to surveil in NYSE-listed securities for possible manipulative activity, including marking the close, which could be in violation of federal securities laws or Exchange Rules.¹⁴

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR–NYSE–2008–03), as modified by Amendment No. 1 thereto, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57460; File No. SR–NYSEArca–2008–12]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Pricing Information for Components Underlying Currency-Linked Securities

March 10, 2008.

I. Introduction

On January 17, 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”) ¹ and Rule 19b–4 thereunder,² a proposed rule

change relating to pricing information for components underlying Currency-Linked Securities.³ The proposed rule change was published for comment in the **Federal Register** on February 5, 2008.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(III)(1) to permit the listing of Currency-Linked Securities where the pricing information for some or all of the components of the Currency Reference Asset is the generally accepted forward price for the currency exchange rate in question. The ability for an issuer to use forward pricing information under proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(III)(1)(b) for any component of a Currency Reference Asset would be restricted to the following currencies, based on high volumes of forward contract transactions in such currencies: U.S. Dollar, Euro, Japanese Yen, British Pound Sterling, Swiss Franc, Canadian Dollar, Australian Dollar, Brazilian Real, Chinese Renminbi, Czech Koruna, Danish Krone, Hong Kong Dollar, Hungarian Forint, Indian Rupee, Indonesian Rupiah, Korean Won, Mexican Peso, Norwegian Krone, New Zealand Dollar, Philippine Peso, Polish Zloty, Russian Ruble, Swedish Krona, South African Rand, Singapore Dollar, Taiwan Dollar, Thai Baht or New Turkish Lira (collectively, the “High Volume Global Currencies”).⁵

In addition, the forward price will be used for pricing purposes only to the extent that the Currency Reference Asset

³ Currency-Linked Securities are securities that provide for payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in NYSE Arca Equities Rule 8.202), or a basket or index of any of the foregoing (“Currency Reference Asset” See NYSE Arca Equities Rule 5.2(j)(6)).

⁴ See Securities Exchange Act Release No. 57227 (January 29, 2008), 73 FR 6759 (“Notice”).

⁵ See Bank for International Settlements (“BIS”), *Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2007*, Statistical Annex Tables—Foreign Exchange Markets (2007) (“2007 BIS Report”); BIS, *Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2004*, Statistical Annex Tables—Foreign Exchange Markets (2004); and BIS, *Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2001*, Statistical Annex Tables—Foreign Exchange Markets (2001). Additional information regarding the over-the-counter (“OTC”) foreign exchange market, global geographic foreign exchange trading centers, calculation of the generally accepted forward price, and regulation and oversight of the foreign exchange markets, among other, can be found in the Notice. See *id.*

⁶ See, e.g., Securities Exchange Act Release No. 46566 (September 27, 2002), 67 FR 62278 (October 4, 2002) (SR–NYSE–2001–24) (narrowing the scope of the prohibitions to transactions executed within the last 20 minutes of the trading day, and providing exceptions to the rule for member organizations that establish information barriers and certain hedging transactions).

⁷ 17 CFR 242.600 *et. seq.*

⁸ See Securities Exchange Act Release No. 56024 (July 6, 2007), 72 FR 38643 (July 13, 2007) (SR–NYSE–2007–61).

⁹ See SIFMA Letter, *supra* note 5.

¹⁰ See SIFMA Letter, *supra* note 5, at 1.

¹¹ See *id.* at 2.

¹² In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See Notice, *supra* note 3, at 7023.

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

is based on the forward price. In the event a Currency Reference Asset is based on the forward price, and the forward price becomes unavailable due to a holiday, the spot price may be used for calculating the price of the component(s) comprising the Currency Reference Asset. The pricing information of such Currency Reference Asset on the following business day must be the forward price. This exception is intended to permit certain hedged products that use forward pricing information to use the spot price, which is quoted in the United States, when the forward price, which is derived from the spot price, is unavailable due to a foreign holiday.

III. Discussion and Commission's Findings

After careful consideration, 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.⁶ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,⁷ which requires, among other things, that the Exchange's rules be 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 open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that opportunities to invest in derivative securities products based not only on the spot value, but also on the forward price, of a foreign currency provide additional choices to accommodate particular investment needs and objectives, should benefit investors. The Commission notes that the foreign exchange market as a whole, which is predominantly OTC, is a highly liquid market.⁸ The Commission also notes that outright forward transactions account for a material percentage of reported daily volume on the foreign exchange markets.⁹

⁶ 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).

⁷ 15 U.S.C. 78f(b)(5).

⁸ The Exchange states that, in 2007, the average daily spot turnover accounted for over US\$1 trillion, and the average daily forward turnover accounted for US\$362 billion. See *supra* notes 4 and 5.

⁹ See *id.*

In the interest of assuring sufficient liquidity of the underlying components and thereby protecting investors of Currency-Linked Securities that are based on the generally accepted forward price for the currency exchange rate in question, the use of forward pricing information for any such component of a Currency Reference Asset would be limited to the High Volume Global Currencies. The Commission notes that Currency-Linked Securities that satisfy the applicable requirements under NYSE Arca Equities Rule 5.2(j)(6) would be able to be listed and traded pursuant to Rule 19b-4(e) under the Act.¹⁰ The Commission believes that, to list and trade Currency-Linked Security products based on forward prices of foreign currencies pursuant to Rule 19b-4(e) under the Act, limiting such foreign currencies to the High Volume Global Currencies is an appropriate measure to assure sufficient liquidity in the underlying components.¹¹ In addition, the forward price should be used for pricing purposes only to the extent that the Currency Reference Asset is based on the forward price.¹² The Commission believes that the proposed rule change, which seeks to expand the types of components on which Currency-Linked Securities are based, should promote the listing and trading of additional Currency-Linked Securities and thereby support greater options and competition in such products, to the benefit of investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the

¹⁰ See 17 CFR 240.19b-4(e)(1). Rule 19b-4(e)(1) 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 paragraph (c)(1) of Rule 19b-4 under the Act (17 CFR 240.19b-4(c)(1)), if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), 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.

¹¹ The Commission further notes that, if the Exchange seeks to list and trade a Currency-Linked Security product based on forward prices of non-High Volume Global Currencies, it can do so by filing a proposed rule change pursuant to Sections 19(b)(1) of the Act.

¹² The proposal also states that, with respect to a Currency-Linked Security that is based on the forward price of a foreign currency, if the forward price is not available due to a holiday, the spot price may be used for calculating the pricing information on the Currency Reference Asset. The pricing information on the following business day must be based on the forward price. See proposed Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6)(B)(III).

¹³ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSEArca-2008-12) be, and it hereby is, approved.

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

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E8-5099 Filed 3-13-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

In the Matter of Beverage Creations, Inc.; Order of Suspension of Trading

Date: March 12, 2008.

It appears to the Securities and Exchange Commission that the market for the securities of Beverage Creations, Inc. ("BCI"), quoted on the Pink Sheets under the ticker symbol BVRG, may be reacting to manipulative forces or deceptive practices and that there is a lack of current and accurate information about BCI upon which an informed investment decision can be made. For example, it appears that BCI distributed a press release falsely disclaiming its affiliation with a company that has been touting BCI's stock through a widely distributed promotional mailer. In addition to the promotional mailer, several stock promotion Web sites have featured BCI's stock, including one that has touted the stock through numerous e-mail alerts.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, March 12, 2008 through 11:59 p.m. EDT, on March 26, 2008.

By the Commission.

Nancy M. Morris,
Secretary.

[FR Doc. 08-1033 Filed 3-12-08; 10:19am]

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SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 11162; Kansas Disaster Number KS-00025

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

¹⁴ 17 CFR 200.30-3(a)(12).