

Managed Fund Shares where conditions make further dealings in such options inadvisable.

Furthermore, the Exchange represented that options on Managed Fund Shares will be subject to all Exchange rules governing the trading of equity options and that the rules pertaining to position and exercise limits<sup>17</sup> or margin<sup>18</sup> shall apply as well.

#### Surveillance

The Commission notes that the Exchange has represented that it will utilize its existing surveillance procedures applicable to options on exchange traded funds, which would include Managed Fund Shares, to monitor trading. In addition, the Exchange would implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Managed Fund Shares, including adequate comprehensive surveillance sharing agreements (“CSSA”) with markets trading in non-U.S. components,<sup>19</sup> as applicable. Also, the Exchange may obtain trading information via the Intermarket Surveillance Group (“ISG”)<sup>20</sup> from other exchanges who are members or affiliates of the ISG. The Exchange represented that it believes that these procedures will be adequate to properly monitor Exchange trading of options on these securities and to deter and detect violations of Exchange rules. This order is based on these representations.

#### Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission notes this proposed rule change is substantively identical to that of NYSE Arca, Inc. being concurrently approved today, which was published for a 21-day comment period and generated no comments.<sup>22</sup> The Commission does not believe that this proposal raise any new regulatory issues. Therefore, the Commission believes that accelerating approval of this proposal should benefit investors by permitting, without undue

delay, options on Managed Fund Shares to trade on NYSE Alternext.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR–NYSEALTR–2008–08) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–28425 Filed 11–28–08; 8:45 am]

**BILLING CODE 8011–01–P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59004; File No. SR–NYSEArca–2008–108]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Revising NYSE Arca Rule 5.3 To Enable the Listing and Trading of Options on Managed Fund Shares

November 24, 2008.

On October 9, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change 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 to amend NYSE Arca Rule to list and trade options on Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on October 24, 2008 for a 21-day comment period.<sup>3</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

Managed Fund Shares represent an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity. Unlike traditional exchange traded funds Managed Fund Shares are actively managed. Managed Fund Shares, although based upon a publicly disclosed portfolio of securities, each trade as a single exchange-listed equity security. Accordingly, rules pertaining to the listing and trading of standard

equity options would apply to Managed Fund Shares.

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<sup>4</sup> and, in particular, the requirements of Section 6 of the Act.<sup>5</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of a national securities exchange be designed 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.

#### Listing and Trading of Options on Managed Fund Shares

As set out more fully in the Exchange’s notice of its proposal, NYSE Arca’s proposed rules include requirements regarding initial and continued listing standards, the creation/redemption process for Managed Fund Shares, and trading halts. Managed Fund Shares must be traded through a national securities exchange or through the facilities of a national securities association, and must be “NMS stock” as defined under Rule 600 of Regulation NMS.<sup>7</sup>

The Commission notes that, pursuant to NYSE Arca Rules 5.3(g)(1) and 5.4(k), Managed Fund Shares will be subject to the initial and continuing eligibility standards for underlying securities provided in NYSE Arca Rules 5.3 and 5.4, as applicable. In particular, to be options eligible, a Managed Fund Share must either meet the criteria and guidelines for underlying securities set forth in NYSE Arca Rule 5.3(a) and (b), or alternately, the Managed Fund Share must be available for creation or redemption each business day in cash or in kind from or through the issuing trust, investment company, commodity pool or other issuer at a price related to the net asset value. In addition, the issuing trust, investment company, commodity pool, or other issuer is obligated to issue Managed Fund Shares in a specified aggregate number even though some or all of the investment assets needed to be deposited have not been received by the issuing trust, investment company, commodity pool,

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.

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

<sup>7</sup> 17 CFR 242.600(b)(47).

<sup>17</sup> See NYSE Alternext Rules 904(a)(i) and 905.

<sup>18</sup> See NYSE Alternext Rule 462.

<sup>19</sup> See Commentary .06(b) to NYSE Alternext Rule 915, *supra*, note 9.

<sup>20</sup> A complete list of the current members of the ISG, is available at <http://www.isgportal.org>.

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> See Exchange Act Release No. 58799 (October 16, 2008), 73 FR 63534 (October 24, 2008) (SR–NYSEArca–2008–108).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</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. 58799 (October 16, 2008), 73 FR 63534.

or other issuer, provided the authorized creation participant has undertaken to deliver the investment assets as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the Managed Fund Shares which underlie the option as described in the Managed Fund Shares' prospectus.

To continue to be eligible to underlie options, the Managed Fund Share must remain an NMS stock listed on a national securities exchange. The Exchange will also consider the suspension of opening transactions in any series of options of the class covering Managed Fund Shares where the Managed Fund Share does not satisfy the requirements set out in NYSE Arca Rule 5.4(k). These include: (1) Continued compliance with paragraphs 1 through 4 of NYSE Arca Rule 5.4(b) in the case of options on Managed Fund Shares approved pursuant to Rule 5.3(g)(1)(A); (2) in the case of options on Managed Fund Shares approved pursuant to Rule 5.3(g)(1)(B), following the initial twelve-month period, beginning upon the commencement of trading of the Managed Fund Shares on a national securities exchange and being defined as an "NMS stock", there are fewer than 50 record and/or beneficial holders of such Managed Fund Shares for 30 or more consecutive trading days; (3) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities and/or Financial Instruments and Money Market Instruments on which the Managed Fund Shares are based is no longer calculated or available. In addition, the Exchange retains discretion to suspend opening transactions in options on Managed Fund Shares where conditions make further dealings in such options inadvisable.

Furthermore, the Exchange represented that options on Managed Fund Shares will be subject to all Exchange rules governing the trading of equity options and that the rules

pertaining to position and exercise limits<sup>8</sup> or margin<sup>9</sup> shall apply as well.

### Surveillance

The Commission notes that the Exchange has represented that it will utilize its existing surveillance procedures applicable to options on exchange traded funds, which would include Managed Fund Shares, to monitor trading. In addition, the Exchange would implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Managed Fund Shares, including adequate comprehensive surveillance sharing agreements ("CSSA") with markets trading in non-U.S. components,<sup>10</sup> as applicable. Also, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG")<sup>11</sup> from other exchanges who are members or affiliates of the ISG. The Exchange represented that it believes that these procedures will be adequate to properly monitor Exchange trading of options on these securities and to deter and detect violations of Exchange rules. This order is based on these representations.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSEArca-2008-108) 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.*

[FR Doc. E8-28423 Filed 11-28-08; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>8</sup> Pursuant to NYSE Arca Rule 6.8, Commentary .05 and .06, Managed Fund Shares are subject to the same position limits applicable to options on stocks and Exchange-Traded Fund Shares. NYSE Arca Rule 6.9 stipulates that exercise limits for options on stocks and other securities, including Managed Fund Shares, shall be the same as the position limits applicable under NYSE Arca Rule 6.8.

<sup>9</sup> See NYSE Arca Rules 4.15(a)-4.16(d), the Exchange's rules governing margin.

<sup>10</sup> See NYSE Arca Rule 5.3(g)(2), the Exchange's rule governing the applicable CSSA requirements for options on exchange-traded funds.

<sup>11</sup> A complete list of the current members of the ISG, is available at <http://www.isgportal.org>.

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

<sup>13</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59005; File No. SR-CBOE-2008-113]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Amending CBOE Rule 5.3 To Enable the Listing and Trading of Options on Managed Fund Shares

November 24, 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 November 18, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The Exchange proposes to revise Rule 5.3 to enable the listing and trading on the Exchange of options on Managed Fund Shares. The text of the rule proposal is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

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