

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59459; File No. SR–NYSEArca–2009–12]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to SPDR Barclays Capital Convertible Bond ETF

February 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on February 18, 2009, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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” or “Corporation”), proposes to list and trade shares of the following exchange-traded fund: SPDR® Barclays Capital Convertible Bond ETF. The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nyse.com>, at the Exchange’s principal office 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 IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to list and trade the shares (“Shares”) of the

following fund under NYSE Arca Equities Rule 5.2(j)(3), the Exchange’s listing standards for Investment Company Units (“Units”);<sup>3</sup> SPDR® Barclays Capital Convertible Bond ETF (the “Fund”).<sup>4</sup>

According to the Fund’s Registration Statement, the Fund’s investment objective is to provide investment results that, before fees and expenses, correspond generally to the price and yield performance of the Barclays Capital U.S. Convertible Bond \$500MM Index (the “Index”), which aims to track the performance of the U.S. dollar-denominated convertibles markets with outstanding issue sizes greater than \$500 million. The Index includes the following major classes of convertible securities—cash pay bonds, zero-coupon/Original Issue Discount bonds, preferred securities, and mandatories.

The Fund uses a passive management strategy designed to track the price and yield performance of the Index.

According to the Registration Statement, the Index represents the market of U.S. convertible bonds. As of December 31, 2008, there were 156 issues included in the Index. Convertible bonds are bonds that can be exchanged, at the option of the holder, for a specific number of shares of the issuer’s preferred stock or common stock.

The Exchange is submitting this proposed rule change because the Index does not meet all of the “generic” listing requirements of Commentary .03 to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of Units based on an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market.<sup>5</sup> The

<sup>3</sup> An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

<sup>4</sup> See the Registration Statement on Form N–1A of the SPDR Series Trust, dated January 15, 2009 (File Nos. 333–57793 and 811–08839) (the “Registration Statement”).

<sup>5</sup> Commentary .03 to Rule 5.2(j)(3) provides that the Corporation may list a series of Units based on a combination of indexes or a portfolio of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market for listing and trading pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 (“Act”) provided each index or portfolio of equity and fixed income component securities separately meet either the criteria set forth in Commentary .01(a) of Rule 5.2(j)(3) (applicable to Units based on U.S., international or global equity indexes or portfolios) or Commentary .02(a) (applicable to Units based on a fixed income index or portfolio).

Index includes U.S. convertible bonds and convertible preferred equity securities. The Index components consisting of U.S. convertible bonds separately meet the criteria set forth in Commentary .02(a) of Rule 5.2(j)(3) applicable to Units based on a fixed income index or portfolio. However, the Index components consisting of convertible preferred stocks do not separately meet the criteria set forth in Commentary .01(a) of Rule 5.2(j)(3) applicable to Units based on U.S. indexes or portfolios. As of November 30, 2008, 20.94% of the Index weight consisted of convertible preferred stocks. The Index does not meet the requirements of Commentary .01(a)(A)(2) in that convertible preferred stocks accounting for 78.56% of the weight of the convertible preferred portion of the Index each had a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares, as of November 30, 2008.<sup>6</sup> In addition, the Index does not meet the requirements of Commentary .01(a)(A)(5) in that six of the 31 convertible preferred stocks in the Index as of November 30, 2008 are not listed on a national securities exchange.<sup>7</sup> The Exchange represents that (1) except for Commentary .01(a)(A)(2) and .01(a)(A)(5) to Rule 5.2(j)(3), the Shares currently satisfy all other of the generic listing standards under Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3<sup>8</sup> under the Act for the initial and continued listing of the Shares.

The Exchange notes that, notwithstanding the fact that the Index does not satisfy all criteria of Rule 5.2(j)(3)(A) applicable to U.S. equity indexes, the Index components include issues with substantial market capitalization. As noted above, the Index aims to track the performance of the U.S. convertibles markets with

<sup>6</sup> Commentary .01(a)(A)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares.

<sup>7</sup> Commentary .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3) provides that all securities in the Index or portfolio shall be US Component Stocks, as defined in Rule 5.2(j)(3) listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of regulation NMS under the Act. The Index does not include non-U.S. securities. As of November 30, 2008, six convertible preferred securities in the Index, accounting for 8% of the Index weight, were traded over-the-counter.

<sup>8</sup> 17 CFR 240.10A–3.

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

<sup>2</sup> 17 CFR 240.19b–4.

outstanding issue sizes greater than \$500 million, and Index components representing 97.24% of the Index weight had a market capitalization of \$100 million or more as of November 30, 2008. In addition, convertible preferred stocks have certain characteristics of fixed income securities (e.g., pricing influenced by changes in interest rates). The Exchange notes that the provisions in Rule 5.2(j)(3), Commentary .02(a) applicable to Units based on fixed income indexes include a requirement relating to minimum principal amount outstanding, but not a requirement of minimum trading volume.<sup>9</sup> The Exchange believes that market capitalization is an appropriate measure of liquidity for such issues. Finally, with respect to the six convertible preferred stocks in the Index that are not exchange-listed, the Exchange notes that the parent companies for these issues are listed on the New York Stock Exchange.

Detailed descriptions of the Fund, the Underlying Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (<http://www.SPDRETFs.com>), as applicable.

In addition, the Exchange represents that the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls and Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.<sup>10</sup>

<sup>9</sup> Rule 5.2(j)(3), Commentary .02(a)(2) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each have a minimum original principal amount outstanding of \$100 million or more. As noted above, Index components representing 97.24% of the Index weight had a market capitalization of \$100 million or more as of November 30, 2008. The Exchange also notes that, in its proposed rule change proposing to adopt Commentary .02 to Rule 5.2(j)(3) (generic listing requirements for Units based on fixed income indexes), the Exchange represented that the provisions of Commentary .02 "would not require a minimum trading volume, due to the lower trading volume that generally occurs in the fixed income markets as compared to the equity markets." See Securities Exchange Release No. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR-NYSEArca-2007-36).

<sup>10</sup> See, e.g., Securities Exchange Act Release No. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR-NYSEArca-2007-36) (order approving generic

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>11</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>12</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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.<sup>13</sup>

### 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

No written comments were solicited or received with respect to 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

listing standards for Units based on fixed income indexes); Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (order approving generic listing standards for Units and Portfolio Depository Receipts); Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (order approving rules for listing and trading of Units).

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> E-mail from Sudhir Bhattacharyya, Vice President, NYSE Euronext, to Brian O'Neill, Attorney, Division of Trading and Markets, Commission, dated February 26, 2009.

## 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 No. SR-NYSEArca-2009-12 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-12. 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 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-2009-12 and should be submitted on or before March 27, 2009.

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. 34-59471; File No. SR-NYSEArca-2009-13]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Listing and Trading of Shares of the iShares® MSCI All Peru Index Fund

February 27, 2009.

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 February 20, 2009, 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 and II below, which Items have been substantially prepared by the Exchange. NYSE Arca filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal 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

NYSE Arca proposes to list and trade shares (“Shares”) of the iShares® MSCI All Peru Index Fund (“Fund”). 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.

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

##### 1. Purpose

The Exchange proposes to list and trade the Shares of the following fund under NYSE Arca Equities Rule 5.2(j)(3), the Exchange’s listing standards for Investment Company Units (“ICUs”):<sup>5</sup> iShares® MSCI All Peru Index Fund.<sup>6</sup> According to the Registration Statement, the Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the MSCI All Peru Index (the “Index”). The Index is sponsored by MSCI, Inc., the Index Provider, that is independent of the Fund and Barclays Global Fund Advisors, the investment adviser to the Fund. The Index Provider determines the composition and relative weightings of the securities in the Index and publishes information regarding the market value of the Index. The Index is a free float-adjusted market capitalization index designed to measure the performance of the “Broad Peru Equity Universe.” MSCI defines the Broad Peru Equity Universe by identifying Peruvian equity securities that are classified in Peru according to the MSCI Global Investable Market Indices Methodology (a methodology employed by MSCI to construct its Global Investable Market Indices, which classifies eligible securities according to their country of listing) as well as securities of companies that are headquartered in Peru and have the majority of their operations based in Peru. As of August 31, 2008, the Index’s three largest constituents were Cia Minera Milpo SAA, Credicorp Ltd., and Southern Copper Corporation.

The Exchange is submitting this proposed rule change because the Index

<sup>5</sup> An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

<sup>6</sup> See the Trust’s Registration Statement for the Fund on Form N-1A, dated October 6, 2008 (File Nos. 333-92935 and 811-09729).

for the Fund does not meet all of the “generic” listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on international or global indexes. The Index meets all such requirements except for those set forth in Commentary .01(a)(B)(2).<sup>7</sup> The Exchange represents that: (1) Except for the requirement under Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) that component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares, the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A-3<sup>8</sup> under the Act<sup>9</sup> for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, the rules governing the trading of equity securities, trading hours, trading halts, surveillance,<sup>10</sup> and the Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to ICUs and in prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.<sup>11</sup> Detailed descriptions of the

<sup>7</sup> The Exchange states that the Index fails to meet the requirement of Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) that component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum monthly trading volume of at least 250,000 shares. The Exchange states that, as of January 30, 2009 component stocks that in the aggregate account for 89.12% of the Index weight had a minimum monthly trading volume of at least 250,000 shares.

<sup>8</sup> 17 CFR 240.10A-3.

<sup>9</sup> 15 U.S.C. 78a.

<sup>10</sup> The Exchange may obtain information for surveillance purposes via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members of ISG. The Exchange notes that the Index component stocks do not trade on markets that are ISG members and the Exchange does not have a comprehensive surveillance agreement with such markets. For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>11</sup> See, e.g., Securities Exchange Act Release Nos. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86) (order approving generic listing standards for ICUs based on international or global indexes); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (order approving generic listing standards for ICUs and Portfolio Depository Receipts); and 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999)

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

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