

across all tapes on NSX for the period beginning October 9, 2008 and ending October 31, 2008, the period when the new Fee Schedule (after effectiveness of the instant modification) was in effect. Thereafter, Liquidity Adding ADV will be calculated based on the number of shares an ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days and securities under one dollar) across all tapes on NSX for the calendar month in which the executions occurred. Notice will be provided to ETP Holders respecting the calculation of the Liquidity Adding ADV.

For purposes of clarity, the proposed rule change proposes no modifications to the fees and rebates relating to any trades in Order Delivery Mode.

#### Rationale

The Exchange has determined that these changes are necessary to increase the revenue of the Exchange and to adequately fund its regulatory and general business functions. The proposed modification is reasonable and equitably allocated to those ETP Holders that opt to take liquidity in AutoEx Mode, and is not discriminatory because ETP Holders are free to elect whether to send orders in all tapes through the AutoEx Mode as liquidity taking trades and quotes. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

#### Notice

Pursuant to Exchange Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange" through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will provide a copy of the rule filing on the Exchange's Web site ([www.nsx.com](http://www.nsx.com)).

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed fee and rebate structure is not discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity taking trades

and quotes in AutoEx Mode in all tapes and may do so at their discretion.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### 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 proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because, as provided in (f)(2), it "changes a due, fee or other charge applicable only to a member" (known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such 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.

#### 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-NSX-2008-18 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-NSX-2008-18. 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 Number SR-NSX-2008-18 and should be submitted on or before November 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58799; File No. SR-NYSEArca-2008-108]

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

October 16, 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 October 9, 2008, 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

<sup>10</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>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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 proposes to revise NYSE Arca Rule 5.3 to enable the listing and trading of options on Managed Fund Shares. 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 purpose of the proposed rule change is to revise NYSE Arca Rule 5.3 to enable the listing and trading of options on managed fund shares ("Managed Fund Shares") that are listed and traded on a national securities exchange and are considered to be an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities and Exchange Act of 1934 (the "Act")).

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 will apply to Managed Fund Shares.

##### **Listing Criteria**

The Exchange will consider listing and trading options on Managed Fund

Shares provided the Managed Fund Shares meet (1) the criteria for underlying securities set forth in NYSE Arca Rule 5.3(a)<sup>3</sup> –(b),<sup>4</sup> or (2) the Managed Fund Shares are available for creation and redemption each business day as set forth in NYSE Arca Rule 5.3(g)(1)(B). The Exchange proposes that Managed Fund Shares deemed appropriate for options trading represent an interest in an open-end management investment company or similar entity, as described below:

Managed Fund Shares are securities that represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV.

For the purposes of NYSE Arca Rule 5.3(g)(v), Managed Fund Shares are a class of exchange-traded fund shares that are actively managed as defined in NYSE Arca Equities Rule 8.600.<sup>5</sup>

##### **Continued Listing Requirements**

Options on Managed Fund Shares will be subject to all Exchange rules governing the trading of equity options and furthermore, the rules pertaining to position and exercise limits<sup>6</sup> or margin<sup>7</sup>

<sup>3</sup> See NYSE Arca Rule 5.3(a) which sets forth minimum requirements for the underlying security which include, but are not limited to, 7,000,000 underlying shares, 2,000 shareholders, and trading volume of 2,400,000 shares over the preceding twelve months.

<sup>4</sup> See NYSE Arca Rule 5.3(b) which states that the underlying securities shall be registered and be an "NMS Stock" as defined in Rule 600 of Regulation NMS under the Act.

<sup>5</sup> See NYSE Arca Equities Rule 8.600 and Securities and Exchange Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25) approving rules permitting the listing and trading of Managed Fund Shares.

<sup>6</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>7</sup> See NYSE Arca Rules 4.15(a)–4.16(d), the Exchange's rules governing margin.

shall apply. The current continuing or maintenance listing standards for options traded on NYSE Arca will continue to apply.

The Exchange will utilize its existing surveillance procedures applicable to options on exchange traded funds (which will include Managed Fund Shares) to monitor trading. In addition, the Exchange will 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>8</sup> as applicable. Also, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG")<sup>9</sup> from other exchanges who are members or affiliates of the ISG. NYSE Arca represents that these procedures will be adequate to properly monitor Exchange trading of options on these the securities and to deter and detect violations of Exchange rules.

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

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Securities Exchange Act of 1934 ("Act") in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</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 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.

<sup>8</sup> See NYSE Arca Rule 5.3(g)(2), the Exchange's rule governing the applicable CSSA requirements for options on exchange-traded funds. We note that any non-U.S. component securities (including fixed-income) in an index or portfolio of securities on which the Fund Shares are based that are not subject to comprehensive surveillance agreements may in the aggregate represent an amount equal to 50% of the weight of the index or portfolio.

<sup>9</sup> A complete list of the current members of the ISG, is available at <http://www.isgportal.org>.

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

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

### *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 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-2008-108 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-2008-108. 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 Number SR-NYSEArca-2008-108 and should be submitted on or before November 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58800; File No. SR-NYSEArca-2008-109]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Adopt Rules To Permit the Trading of Rate-Modified Foreign Currency Options**

October 16, 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 October 10, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "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 to solicit comments on the proposed rule change from interested persons.

<sup>12</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.

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

The Exchange proposes to adopt rules to permit the trading of Rate-Modified Foreign Currency Options ("FCOs"). The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and [www.nyse.com](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 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 purpose of the proposed rule change is to adopt rules enabling the Exchange to list and trade FCOs. The Exchange proposes to adopt rules for the listing and trading of cash-settled FCOs on the following currencies: the euro, the British pound, the Australian dollar, the New Zealand dollar, the Japanese yen, the Canadian dollar, the Swiss franc, the Chinese renminbi, the Mexican peso, the Swedish krona, the Russian ruble, the South African rand, the Brazilian real, the Israeli shekel, the Norwegian krone, the Polish zloty, the Hungarian forint, the Czech koruna, and the Korean won (individually, a "currency" and collectively, the "Currencies").<sup>3</sup>

The Exchange notes that the Philadelphia Stock Exchange ("PHLX") currently has rules that permit the listing and trading of both physically-settled FCOs and U.S. Dollar-settled FCOs on a number of foreign currencies.<sup>4</sup> FCOs listed and traded by the Exchange pursuant to this proposed rule change will not be fungible with

<sup>3</sup> Except as noted herein, FCO's would, in all other respects, be traded pursuant to the Exchange's existing trading rules and procedures and be covered under the Exchange's existing surveillance program.

<sup>4</sup> See Securities Exchange Act release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR-PHLX-2006-34). See also PHLX rules 1000-1093.