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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2007 - 36
Amendment No. 1

Proposed Rule Change by NYSE Arca

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial	Amendment	Withdrawal	Section 19(b)(2)	Section 19(b)(3)(A)	Section 19(b)(3)(B)
☐	☑	☐	☑	☐	☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name: Andrew
Last Name: Stevens
Title: Assistant General Counsel
E-mail: astevens@nyse.com
Telephone: (312) 442-7632
Fax:

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date: 05/17/2007

By: Mary Yeager (Name)

Corporate Secretary (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Mary Yeager, myeager@nyse.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) NYSE Arca, Inc. (the "Exchange"), through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), proposes to amend its rules governing NYSE Arca, LLC (also referred to as the "NYSE Arca Marketplace"), the equities trading facility of NYSE Arca Equities. The Exchange proposes to amend NYSE Arca Equities Rules 5.2(j)(3) and 8.100 to include generic listing and trading standards for series of Investment Company Units ("Units") and Portfolio Depositary Receipts ("PDRs") that are based on fixed income indexes or indexes consisting of both equity and fixed income securities or indexes. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's website at www.nyse.com, at the Exchange's Office of the Secretary, and at the Commission.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule is being submitted by Exchange staff to the Securities and Exchange Commission (the "Commission" or the "SEC") pursuant to authority delegated by the Exchange's Board of Directors and the NYSE Arca Equities Board of Directors.

(b) Questions and comments regarding the proposed rule change may be directed to the following:

Andrew Stevens Assistant General Counsel NYSE Group, Inc. (312) 442-7632	Timothy J. Malinowski Director NYSE Group, Inc. (312) 442-7886

3. Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

This Amendment No. 1 makes changes to SR-NYSEArca-2007-36, as filed with Commission on April 4, 2007. This Amendment No. 1 supersedes and replaces the original filing in its entirety.

The Exchange proposes to add Commentaries .02 and .03 to each of NYSE Arca Equities Rules 5.2(j)(3) and 8.100 to include generic listing and trading standards for series of Units and PDRs (Units and PDRs together are referred to herein as "exchange-traded funds" or "ETFs") that are based on either fixed income indexes or a combination of indexes comprised of equity and fixed income securities (the "combination indexes"). These generic listing standards would be applicable to fixed income indexes and combination indexes that the Commission has yet to review as well as those fixed income indexes that have previously been approved by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 (the "1934 Act")[1] for the trading of ETFs, options or other index-based securities. This proposal will enable the Exchange to list and trade exchange-traded funds pursuant to Rule 19b-4(e)[2] of the 1934 Act if each of the conditions set forth in Commentaries .02 or .03 to Rule 5.2(j)(3) or 8.100, as applicable, are satisfied. A similar proposal by the American Stock Exchange LLC (the "Amex") has been approved by the Commission.[3]

Background of Exchange-Traded Funds

NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) provide standards for initial and continued listing of Units, which are securities representing interests in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. The investment company must hold securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities, or the investment company must hold securities in another registered investment company that holds securities in such a manner.[4] NYSE Arca Equities Rule 8.100 allows for the listing and trading on the Exchange of PDRs. PDRs represent securities based on a unit investment trust that holds the securities that comprise an index or portfolio underlying a series of PDRs. Pursuant to Rules 5.2(j)(3) and 8.100, Units and PDRs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount. When aggregated in the same specified minimum number, Units and PDRs must be redeemed by the issuer for the securities and/or cash.

To meet the investment objective of providing investment returns that correspond to the price, dividend and yield performance of the underlying index, ETFs may use a "replication" strategy or a "representative sampling" strategy with respect to the ETF portfolio. An ETF using a replication strategy will invest in each security found in the underlying index in about the same proportion as that stock is represented in the index itself. An ETF using a representative sampling strategy will generally invest in a significant number of the component securities of the underlying index, but it may not invest in all of the component securities of its

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1 15 U.S.C. 78s(b)(2).

2 17 CFR 240.19b-4.

3 *See* Securities Exchange Act Release No. 55437 (March 9, 2007), 72 FR 12233 (March 15, 2007) (SR-Amex-2006-118).

4 NYSE Arca Equities Rule 5.2(j)(3)(A)(i)(a)-(b).

underlying index and will hold securities that, in the aggregate, are intended to approximate the full index in terms of key characteristics. In the context of a fixed income index, such characteristics may include liquidity, duration, maturity and yield.

In addition, ETF portfolios may be adjusted in accordance with changes in the composition of the underlying indexes or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code ("IRC").[5]

<u>Background of Generic Listing Standards for Exchange-Traded Funds</u>

The Exchange notes that the Commission has previously approved generic listing standards pursuant to Rule 19b-4(e) under the Exchange Act for ETFs based on indexes that consist of stocks listed on U.S. and non-US exchanges.[6] This proposal seeks to similarly adopt generic listing standards for fixed income and combination indexes that generally reflect existing generic listing standards for equities tailored for the fixed income markets.

The Commission has previously approved listing and trading of ETFs based on certain fixed income indexes.[7] The Commission has also approved listing standards for other index-based derivatives that permit the listing pursuant to Rule 19b-4(e) of such securities where the Commission had previously approved the trading of specified index-based derivatives on the same index, on the condition

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5 In order for an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC, including requirements with respect to the nature and the value of the ETF's assets.

6 *See* Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), Commentary .01 to NYSE Arca Equities Rule 8.100, and Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (approving generic listing standards for Units and PDRs) and Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca 2006-86) (approving foreign generic listing standards for Units and PDRs).

7 *See* Securities Exchange Act Release No. 55102 (January 12, 2007), 72 FR 2916 (January 23, 2007) (SR-NYSEArca-2006-63) (approving pursuant to unlisted trading privileges ("UTP") trading of certain iShares Lehman Bond Funds on a UTP basis); Securities Exchange Act Release No. 48662 (October 20, 2003), 68 FR 61535 (October 28, 2003) (SR-PCX-2003-41) (approving the listing and UTP trading of fixed income funds and the UTP trading of certain iShares fixed income funds).

that all of the standards set forth in the original order are satisfied by the exchange employing generic listing standards.[8]

In approving ETFs for Exchange trading, the Commission thoroughly considered the structure of the ETFs, their usefulness to investors and to the markets, and NYSE Arca Equities Rules that govern their trading. The Exchange believes that adopting additional generic listing standards for ETFs based on fixed income indexes and applying Rule 19b-4(e) thereto should fulfill the intended objective of that Rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading without the need for the public comment period and Commission approval. The proposed rules have the potential to reduce the timeframe for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the proposed generic listing standards under Rule 19b-4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular ETF.

Requirements for Listing and Trading ETFs Based on Fixed Income Indexes

Exchange-traded funds listed pursuant to these proposed generic standards for fixed income indexes would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to ETFs[9] and would be covered under the Exchange's surveillance procedures for derivative products. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units and PDRs listed and/or traded pursuant to the proposed new listing and trading standards. Specifically, the Exchange will rely on its existing surveillance procedures governing derivative products.[10] The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from exchanges who are members or affiliates of the ISG.[11] In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

In order to list Units or PDRs pursuant to the proposed generic initial listing standards for fixed income indexes, the index underlying the Units or PDRs must

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8 *See* NYSE Arca Equities Rule 5.2(j)(6) and Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63) (approving generic listing standards for index-linked securities).

9 *See* NYSE Arca Equities Rules 5.2(j)(3), 5.5(g)(2) and 8.100.

10 The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

11 We note that not all of the underlying securities trade on exchanges that are members or affiliate members of the ISG.

satisfy all the conditions contained in proposed Commentary .02 to Rule 5.2(j)(3) (for Units) or Rule 8.100 (for PDRs). However, for Units traded on the Exchange pursuant to UTP, only the provisions of paragraphs (c), (e), (f), (g) and (h) of Commentary .02 to Rule 5.2(j)(3), stating that the Exchange will apply disseminated information, minimum price variation, hours of trading, written surveillance procedures and disclosures, respectively. However, for PDRs traded on the Exchange pursuant to UTP, only the provisions of the criteria set forth in Rule 8.100(c) and paragraphs (c), (e), (f) and (g) and of Commentary .02 to Rule 8.100, stating that the Exchange will apply disclosures, disseminated information, minimum price variation, hours of trading and written surveillance procedures, respectively.

As with the existing generic standards for ETFs based on indexes, these generic listing standards are intended to ensure that fixed income securities with substantial market distribution and liquidity account for a substantial portion of the weight of an index or portfolio. While the standards in this proposal are based on the standards contained in SEC and Commodity Futures Trading Commission ("CFTC") rules regarding the application of the definition of narrow-based security index to debt security indexes[12] as well as existing fixed income ETFs, they have been adapted as appropriate to apply generally to fixed income indexes for ETFs.

<u>Fixed Income Securities</u>

As proposed, Commentary .02 to each of Rule 5.2(j)(3) and Rule 8.100 define the term "Fixed Income Securities" to include, notes, bonds (including convertible bonds), debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities,[13] supranational debt[14] and debt of a foreign country or

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12 *See* Securities Exchange Act Release No. 54106 (July 6, 2006), 71 FR 39534 (July 13, 2006)(File No. S7-07-06)(the "Joint Rules").

13 Trust preferred securities are undated cumulative securities issued from a special purpose trust in which a bank or bank holding company owns all of the common securities. The trust's sole asset is a subordinated note issued by the bank or bank holding company. Trust preferred securities are treated as debt for tax purposes so that the distributions or dividends paid are a tax deductible interest expense.

14 Supranational debt represents the debt of international organizations such as the World Bank, the International Monetary Fund, regional multilateral development banks and multilateral financial institutions. Examples of regional multilateral development banks include the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development and the Inter-American Development Bank. In addition, examples of multilateral financial institutions include the European Investment Bank and the International Fund for Agricultural Development.

subdivision thereof. This new definition is designed to create a category of ETFs based on fixed income indexes that may be listed and traded pursuant to Rule 19b-4(e) under the 1934 Act.

For purposes of the proposed definition, convertible bonds are deemed to be Fixed Income Securities up until the time that such convertible is converted into its underlying common or preferred stock.[15] Once converted, the equity security may no longer continue as a component of a fixed income index under the proposed rules, and accordingly, would be removed from such index.

The Exchange proposes that in order to list a Unit or a PDR based on a fixed income index pursuant to the generic standards, the index must meet the following criteria:

- The index or portfolio must consist of Fixed Income Securities;

- Component fixed-income securities that in aggregate account for at least 75% of the weight of the index or portfolio each must have a minimum original principal amount outstanding of $100 million or more;

- No component Fixed Income Security (excluding Treasury Securities or GSE Securities) will represent more than 30% of the weight of the index, and the five most heavily weighted component fixed-income securities in the index do not in the aggregate account for more than 65% of the weight of the index;

- An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and

- Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either:

    - From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the 1934 Act;

    - From issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more;

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15 The Exchange notes that under the 1934 Act, a convertible security is defined as an equity security. See Section 3(a)(11) of the 1934 Act, 15 U.S.C. 78c(a)(11). However, for the purpose of the proposed generic listing criteria, we believe that defining a convertible security (prior to its conversion) as a Fixed Income Security is consistent with the objectives and intention of the generic listing standards for fixed income based ETFs as well as the 1934 Act.

- From issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion;

- Exempted securities as defined in Section 3(a)(12) of the 1934 Act; or

- From issuers that are a government of a foreign country or a political subdivision of a foreign country.

The Exchange believes that these proposed component criteria standards are reasonable for fixed income indexes, and, when applied in conjunction with the other listing requirements, will result in ETFs that are sufficiently broad-based in scope.

The Exchange notes that the proposed standards are similar to the standards set forth by the Commission and the CFTC in the Joint Rules as well as existing fixed-income based ETFs. For example, in the proposed standards, the most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, which is consistent with the standard for U.S. equity ETFs set forth in Commentary .01(a)(A) to each of Rule 5.2(j)(3) and Rule 8.100. In addition, this standard is identical to the standard set forth by the Commission and the CFTC in the Joint Rules.[16] In addition, in the proposed standards, the five most heavily weighted component securities shall not exceed 65% of the weight of the index or portfolio, which is consistent with the standard for U.S. equity ETFs set forth in Commentary .01(a)(A) to each of Rule 5.2(j)(3) and Rule 8.100 as well as the Joint Rules. Also, the minimum number of fixed income securities (except for portfolios consisting entirely of exempted securities, such as Treasury Securities or GSE Securities) from unaffiliated[17] issuers in the proposed standards is consistent with the standard for U.S. equity ETFs set forth in Commentary .01(a)(A) to each of Rule 5.2(j)(3) and Rule 8.100 and the Joint Rules. This requirement together with the diversification standards set forth above provide assurance that the fixed income securities comprising an index will not be overly dependant on the price behavior of a single component or small group of components.

Finally, the proposed standards require that at least 90% of the weight of the index or portfolio must be either (i) from issuers that are required to file reports

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16 *See* note 11, *supra*.

17 Rule 405 under the Securities Act of 1933 defines an affiliate as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with such person. Control, for this purpose, is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

pursuant to Sections 13 and 15(d) of the 1934 Act; (ii) from issuers that each have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (iii) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (iv) exempted securities as defined in Section 3(a)(12) of the 1934 Act; or (v) from issuers that are a government of a foreign country or a political subdivision of foreign country. This proposal standard is consistent with a similar standard in the Joint Rules and is designed to ensure that the component fixed income securities have sufficient publicly available information.

The proposed generic listing requirements for fixed income ETFs do not require that component securities in an underlying index have an investment grade rating.[18] In addition, the proposed requirements do 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. In all cases, however, ETFs that seek to provide investment results that exceed the index daily performance (Multiple) or (Inverse) opposite of the index daily performance may not be the subject of these proposed generic listing standards, pursuant to Rule 5.2(j)(3).

<u>Requirements for Listing and Trading ETFs Based on Combination Indexes</u>

The Exchange also seeks to list and trade ETFs based on a combination of equity and fixed income securities or a composite index that would consist of an equity index and fixed income index (collectively, "combination indexes"). ETFs listed pursuant to the generic standards for combination indexes would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to ETFs and would be covered under the Exchange's surveillance program for derivative products. In order to list a Unit or a PDR pursuant to the proposed generic listing standards for combination indexes, the index underlying the Unit or PDR must satisfy all the conditions contained in proposed Commentary .03 to each of Rule 5.2(j)(3) (for Units) and Rule 8.100 (for PDRs). However, for Units traded on the Exchange pursuant to UTP, only the provisions of paragraphs (c), (e), (f), (g) and (h) of Commentary .01 to Rule 5.2(j)(3), stating that the Exchange will apply disseminated information, minimum price variation, hours of trading, written surveillance procedures and disclosures, respectively. However, for PDRs traded on the Exchange pursuant to UTP, only the provisions of the criteria set forth in Rule 8.100(c) and paragraphs (c), (e), (f) and (g) and of Commentary .01 to Rule 8.100, stating that the Exchange will apply disclosures, disseminated information, minimum price variation, hours of trading and written surveillance procedures, respectively. These generic listing standards are intended to ensure that securities with substantial market distribution and liquidity account for a substantial portion of the weight of both the equity and fixed income portions of an index or portfolio.

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18 *See supra* note 10 at 71 39534, 30538.

Proposed Commentary .03 to each of Rule 5.2(j)(3) and Rule 8.100 provides that the Exchange may approve a series of Units and PDRs based on a combination of indexes or a series 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 1934 Act. The standards that an ETF must comply with are as follows: (i) such portfolio or combination of indexes has been reviewed and approved for the trading of options, Units, PDRs, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the 1934 Act, and the conditions set forth in the Commission's approval order continue to be satisfied or (ii) the equity portion and fixed income portion of the component securities separately meet the criteria set forth in Commentary .01(a) (equities) and proposed Commentary .02(a) (fixed income) for Units and PDRs. In all cases, Multiple or Inverse ETFs listed pursuant to Rule 5.2(j)(3) may not be the subject of these proposed generic listing standards.

Index Methodology and Dissemination

The Exchange proposes to adopt Commentary .02(b) to each of Rule 5.2(j)(3) and Rule 8.100 for the purpose of establishing requirements for index methodology and dissemination in connection with fixed income and combination indexes.

If a broker-dealer or fund advisor is responsible for maintaining (or has a role in maintaining) the underlying index, such broker-dealer or fund advisor is required to erect and maintain a "firewall," in a form satisfactory to the Exchange, to prevent the flow of non-public information regarding the underlying index from the personnel involved in the development and maintenance of such index to others such as sales and trading personnel.

With respect to index dissemination, the Exchange proposes to adopt Commentary .02(b)(ii) to each of Rule 5.2(j)(3) and Rule 8.100 to require that the index value for ETFs listed pursuant to the proposed standards for ETFs based on fixed income securities be widely disseminated by one or more major market data vendors at least once a day during the time when the ETF shares trade on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. This reflects the nature of the fixed income markets as well as the frequency of intra-day trading information with respect to fixed income indexes. To the extent that an ETF is based on a combination index, the index will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the ETF shares trade on the Exchange to reflect updates for the prices of the equity securities included in the combination index. The non-U.S. component stock portion of the combination index will be updated at least every 60 seconds, and the fixed income portion of the combination index will be updated at least daily.

If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours.

The Corporation may designate each series of Units or PDRs for trading during the Opening Session (as defined in NYSE Arca Equities Rule 7.34) and/or Late Trading Session (as defined in NYSE Arca Equities Rule 7.34); provided, however that the Corporation will not designate a series of Units or PDRs for trading in the Opening Session or Late Trading Session unless the requirements of Commentary .01(b)(2) and (c) to Rule 5.2(j)(3) or Commentary .01(b)(3) and (c) to Rule 8.100 are satisfied for Units or PDRs, respectively. If there is no overlap with the trading hours of the primary market(s) trading the underlying components of a series of Units, the Corporation may designate such series for trading in the Opening Session as long as the last official calculated Intraday Indicative Value remains available.

Application of General Rules

Commentary .02(c)-(h) to each of Rule 5.2(j)(3) and Rule 8.100 are being added to identify those characteristics of ETFs that will apply to all such series of Units or PDRs based on fixed income or combination indexes. This will include the dissemination of the Intraday Indicative Value, an estimate of the value of a share of each ETF updated at least every 15 seconds. In addition, proposed Commentary .02(d)-(h) to each of Rule 5.2(j)(3) and Rule 8.100 set forth the requirements for Units or PDRs relating to initial shares outstanding, minimum price variation and surveillance procedures.

The Commission has approved generic standards providing for the listing pursuant to Rule 19b-4(e) of other derivative products based on indexes previously approved by the Commission under Section 19(b)(2) of the Exchange Act. The Exchange proposes to include in the generic standards for the listing of fixed income and combination indexes based Units and PDRs, in new Commentary .02 and .03 to each of Rule 5.2(j)(3) and Rule 8.100, indexes that have been approved by the Commission in connection with the listing of options, Investment Company Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities. The Exchange believes that the application of that standard to ETFs is appropriate because the underlying index will have been subject to detailed and specific Commission review in the context of the approval of listing of other derivatives.[19]

The Exchange notes that existing Rules 5.5(g)(2) and 8.100 provide continued listing standards for all Units and PDRs. For example, where the value of the underlying index or portfolio of securities on which the ETF is based is no longer calculated or available, the Exchange would commence delisting proceedings.

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19 *See* note 7, *supra*.

The Exchange notes that pending Rules 5.2(j)(3)(A)(v) and 8.100(e)(1)(ii) provide that prior to approving an ETF for listing, the Exchange will obtain a representation from the ETF issuer that the net asset value per share will be calculated daily and made available to all market participants at the same time.[20]

The trading halt requirements for existing ETFs will similarly apply to fixed income and combination index ETFs. In particular, Rules 5.5(g)(2)(b) and 8.100(e)(2)(ii) provide if the Intraday Indicative Value or the index value applicable to that series of ETFs is not being disseminated as required when the Exchange is the listing market, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[21]

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b)[22] of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5)[23] 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.

4. 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 Exchange Act.

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20 These amendments have been proposed by the Exchange to the Commission. *See* Amendment No. 2 to SR-NYSEArca-2006-86 (March 20, 2007).

21 If an ETF is traded on the Exchange pursuant to UTP, the Exchange will halt trading if the primary listing market halts trading in such ETF because the Intraday Indicative Value and/or the index value is not being disseminated. See NYSE Arca Equities Rule 7.34.

22 15 U.S.C. 78f(b).

23 15 U.S.C. 78f(b)(5).

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange requests the Commission to find good cause to accelerate effectiveness of this rule proposal pursuant to Section 19(b)(2) of the Exchange Act for approving the proposed rule change prior to the 30th day after publication of the proposed rule change in the Federal Register. The Exchange's listing and trading standards in this proposal are based on the rule proposal of Amex, which was recently approved by the Commission.[24] The Exchange requests accelerated approval of the proposal in order to facilitate the prompt listing and trading of ETFs based on fixed income indexes or indexes consisting of both equity and fixed income securities.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on the rule proposal of the Amex, which was recently approved by the Commission.[25]

9. Exhibits

Exhibit 1 -- Form of Notice of Proposed Rule Change for Federal Register

Exhibit 4 – Revisions to Text of Proposed Rule Change

Exhibit 5 -- Text of Proposed Rule Change

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[24] *See* note 3, *supra*.

[25] *Id.*

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; Amendment No. 1 to File No. SR-NYSEArca-2007-36)

[DATE]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by NYSE Arca, Inc. Relating to Generic Listing Standards for Exchange-Traded Funds Based on Fixed Income Indexes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 17, 2007, NYSE Arca, Inc. (the "Exchange"), through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), filed with the Securities and Exchange Commission (the "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 and order to solicit comment 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, through its wholly-owned subsidiary NYSE Arca Equities, proposes to amend its rules governing NYSE Arca, LLC (also referred to as the "NYSE Arca Marketplace"), the equities trading facility of NYSE Arca Equities. The Exchange proposes to amend NYSE Arca Equities Rules 5.2(j)(3) and 8.100 to include generic listing and trading standards for series of Investment Company Units ("Units") and Portfolio Depositary Receipts ("PDRs") that are based on fixed income indexes or indexes consisting of both equity and fixed income securities or indexes. The text of the

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

proposed rule change is available on the Exchange's website at www.nyse.com, at the Exchange's Office of the Secretary, and at the Commission.

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 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

This Amendment No. 1 makes changes to SR-NYSEArca-2007-36, as filed with Commission on April 4, 2007. This Amendment No. 1 supersedes and replaces the original filing in its entirety.

The Exchange proposes to add Commentaries .02 and .03 to each of NYSE Arca Equities Rules 5.2(j)(3) and 8.100 to include generic listing and trading standards for series of Units and PDRs (Units and PDRs together are referred to herein as "exchange-traded funds" or "ETFs") that are based on either fixed income indexes or a combination of indexes comprised of equity and fixed income securities (the "combination indexes"). These generic listing standards would be applicable to fixed income indexes and combination indexes that the Commission has yet to review as well as those fixed income indexes that have previously been approved by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 (the "1934 Act")[3] for the trading of ETFs, options or other index-based securities. This proposal will enable the Exchange to list and trade exchange-traded funds pursuant to Rule 19b-4(e)[4] of the 1934 Act if each of the conditions set forth in Commentaries .02 or .03 to Rule 5.2(j)(3) or 8.100, as applicable, are satisfied. A similar proposal by the American Stock Exchange LLC (the "Amex") has been approved by the Commission.[5]

Background of Exchange-Traded Funds

NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) provide standards for initial and continued listing of Units, which are securities representing interests in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. The investment company must hold securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities, or the investment company must hold securities in another registered investment company that holds securities in such a manner.[6] NYSE Arca Equities Rule 8.100 allows for the listing and trading on the Exchange of PDRs. PDRs represent securities based on a unit investment trust that holds the securities that comprise an index or portfolio underlying a series of PDRs. Pursuant to Rules 5.2(j)(3) and 8.100, Units and PDRs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount. When aggregated in the same

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3 15 U.S.C. 78s(b)(2).

4 17 CFR 240.19b-4.

5 *See* Securities Exchange Act Release No. 55437 (March 9, 2007), 72 FR 12233 (March 15, 2007) (SR-Amex-2006-118).

6 NYSE Arca Equities Rule 5.2(j)(3)(A)(i)(a)-(b).

specified minimum number, Units and PDRs must be redeemed by the issuer for the securities and/or cash.

To meet the investment objective of providing investment returns that correspond to the price, dividend and yield performance of the underlying index, ETFs may use a "replication" strategy or a "representative sampling" strategy with respect to the ETF portfolio. An ETF using a replication strategy will invest in each security found in the underlying index in about the same proportion as that stock is represented in the index itself. An ETF using a representative sampling strategy will generally invest in a significant number of the component securities of the underlying index, but it may not invest in all of the component securities of its underlying index and will hold securities that, in the aggregate, are intended to approximate the full index in terms of key characteristics. In the context of a fixed income index, such characteristics may include liquidity, duration, maturity and yield.

In addition, ETF portfolios may be adjusted in accordance with changes in the composition of the underlying indexes or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code ("IRC").[7]

<u>Background of Generic Listing Standards for Exchange-Traded Funds</u>

The Exchange notes that the Commission has previously approved generic listing standards pursuant to Rule 19b-4(e) under the Exchange Act for ETFs based on indexes that consist of stocks listed on U.S. and non-US exchanges.[8] This proposal seeks to

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7 In order for an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC, including requirements with respect to the nature and the value of the ETF's assets.

8 *See* Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), Commentary .01 to NYSE Arca Equities Rule 8.100, and Securities Exchange Act Release No. 44551

similarly adopt generic listing standards for fixed income and combination indexes that generally reflect existing generic listing standards for equities tailored for the fixed income markets.

The Commission has previously approved listing and trading of ETFs based on certain fixed income indexes.[9] The Commission has also approved listing standards for other index-based derivatives that permit the listing pursuant to Rule 19b-4(e) of such securities where the Commission had previously approved the trading of specified index-based derivatives on the same index, on the condition that all of the standards set forth in the original order are satisfied by the exchange employing generic listing standards.[10]

In approving ETFs for Exchange trading, the Commission thoroughly considered the structure of the ETFs, their usefulness to investors and to the markets, and NYSE Arca Equities Rules that govern their trading. The Exchange believes that adopting additional generic listing standards for ETFs based on fixed income indexes and applying Rule 19b-4(e) thereto should fulfill the intended objective of that Rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading without the

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(July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (approving generic listing standards for Units and PDRs) and Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca 2006-86) (approving foreign generic listing standards for Units and PDRs).

9 *See* Securities Exchange Act Release No. 55102 (January 12, 2007), 72 FR 2916 (January 23, 2007) (SR-NYSEArca-2006-63) (approving pursuant to unlisted trading privileges (“UTP”) trading of certain iShares Lehman Bond Funds on a UTP basis); Securities Exchange Act Release No. 48662 (October 20, 2003), 68 FR 61535 (October 28, 2003) (SR-PCX-2003-41) (approving the listing and UTP trading of fixed income funds and the UTP trading of certain iShares fixed income funds).

10 *See* NYSE Arca Equities Rule 5.2(j)(6) and Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63) (approving generic listing standards for index-linked securities).

need for the public comment period and Commission approval. The proposed rules have the potential to reduce the timeframe for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the proposed generic listing standards under Rule 19b-4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular ETF.

Requirements for Listing and Trading ETFs Based on Fixed Income Indexes

Exchange-traded funds listed pursuant to these proposed generic standards for fixed income indexes would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to ETFs[11] and would be covered under the Exchange's surveillance procedures for derivative products. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units and PDRs listed and/or traded pursuant to the proposed new listing and trading standards. Specifically, the Exchange will rely on its existing surveillance procedures governing derivative products.[12] The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from exchanges who are members or affiliates of the ISG.[13] In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

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11 *See* NYSE Arca Equities Rules 5.2(j)(3), 5.5(g)(2) and 8.100.

12 The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

13 We note that not all of the underlying securities trade on exchanges that are members or affiliate members of the ISG.

In order to list Units or PDRs pursuant to the proposed generic initial listing standards for fixed income indexes, the index underlying the Units or PDRs must satisfy all the conditions contained in proposed Commentary .02 to Rule 5.2(j)(3) (for Units) or Rule 8.100 (for PDRs). However, for Units traded on the Exchange pursuant to UTP, only the provisions of paragraphs (c), (e), (f), (g) and (h) of Commentary .02 to Rule 5.2(j)(3), stating that the Exchange will apply disseminated information, minimum price variation, hours of trading, written surveillance procedures and disclosures, respectively. However, for PDRs traded on the Exchange pursuant to UTP, only the provisions of the criteria set forth in Rule 8.100(c) and paragraphs (c), (e), (f) and (g) and of Commentary .02 to Rule 8.100, stating that the Exchange will apply disclosures, disseminated information, minimum price variation, hours of trading and written surveillance procedures, respectively.

As with the existing generic standards for ETFs based on indexes, these generic listing standards are intended to ensure that fixed income securities with substantial market distribution and liquidity account for a substantial portion of the weight of an index or portfolio. While the standards in this proposal are based on the standards contained in SEC and Commodity Futures Trading Commission ("CFTC") rules regarding the application of the definition of narrow-based security index to debt security indexes[14] as well as existing fixed income ETFs, they have been adapted as appropriate to apply generally to fixed income indexes for ETFs.

<u>Fixed Income Securities</u>

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14 *See* Securities Exchange Act Release No. 54106 (July 6, 2006), 71 FR 39534 (July 13, 2006)(File No. S7-07-06)(the "Joint Rules").

As proposed, Commentary .02 to each of Rule 5.2(j)(3) and Rule 8.100 define the term “Fixed Income Securities” to include, notes, bonds (including convertible bonds), debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities,[15] supranational debt[16] and debt of a foreign country or subdivision thereof. This new definition is designed to create a category of ETFs based on fixed income indexes that may be listed and traded pursuant to Rule 19b-4(e) under the 1934 Act.

For purposes of the proposed definition, convertible bonds are deemed to be Fixed Income Securities up until the time that such convertible is converted into its underlying common or preferred stock.[17] Once converted, the equity security may no longer continue as a component of a fixed income index under the proposed rules, and accordingly, would be removed from such index.

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15 Trust preferred securities are undated cumulative securities issued from a special purpose trust in which a bank or bank holding company owns all of the common securities. The trust’s sole asset is a subordinated note issued by the bank or bank holding company. Trust preferred securities are treated as debt for tax purposes so that the distributions or dividends paid are a tax deductible interest expense.

16 Supranational debt represents the debt of international organizations such as the World Bank, the International Monetary Fund, regional multilateral development banks and multilateral financial institutions. Examples of regional multilateral development banks include the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development and the Inter-American Development Bank. In addition, examples of multilateral financial institutions include the European Investment Bank and the International Fund for Agricultural Development.

17 The Exchange notes that under the 1934 Act, a convertible security is defined as an equity security. See Section 3(a)(11) of the 1934 Act, 15 U.S.C. 78c(a)(11). However, for the purpose of the proposed generic listing criteria, we believe that defining a convertible security (prior to its conversion) as a Fixed Income Security is consistent with the objectives and intention of the generic listing standards for fixed income based ETFs as well as the 1934 Act.

The Exchange proposes that in order to list a Unit or a PDR based on a fixed income index pursuant to the generic standards, the index must meet the following criteria:

- The index or portfolio must consist of Fixed Income Securities;
- Component fixed-income securities that in aggregate account for at least 75% of the weight of the index or portfolio each must have a minimum original principal amount outstanding of $100 million or more;
- No component Fixed Income Security (excluding Treasury Securities or GSE Securities) will represent more than 30% of the weight of the index, and the five most heavily weighted component fixed-income securities in the index do not in the aggregate account for more than 65% of the weight of the index;
- An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and
- Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either:
    - From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the 1934 Act;
    - From issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more;
    - From issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion;
    - Exempted securities as defined in Section 3(a)(12) of the 1934 Act; or
    - From issuers that are a government of a foreign country or a political subdivision of a foreign country.

The Exchange believes that these proposed component criteria standards are reasonable for fixed income indexes, and, when applied in conjunction with the other listing requirements, will result in ETFs that are sufficiently broad-based in scope.

The Exchange notes that the proposed standards are similar to the standards set forth by the Commission and the CFTC in the Joint Rules as well as existing fixed-income based ETFs. For example, in the proposed standards, the most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, which is consistent with the standard for U.S. equity ETFs set forth in Commentary .01(a)(A) to each of Rule 5.2(j)(3) and Rule 8.100. In addition, this standard is identical to the standard set forth by the Commission and the CFTC in the Joint Rules.[18] In addition, in the proposed standards, the five most heavily weighted component securities shall not exceed 65% of the weight of the index or portfolio, which is consistent with the standard for U.S. equity ETFs set forth in Commentary .01(a)(A) to each of Rule 5.2(j)(3) and Rule 8.100 as well as the Joint Rules. Also, the minimum number of fixed income securities (except for portfolios consisting entirely of exempted securities, such as Treasury Securities or GSE Securities) from unaffiliated[19] issuers in the proposed standards is consistent with the standard for U.S. equity ETFs set forth in Commentary .01(a)(A) to each of Rule 5.2(j)(3) and Rule 8.100 and the Joint Rules. This requirement together with the diversification standards set forth above provide assurance that the fixed income securities comprising an index will not be overly dependant on the price behavior of a single component or small group of components.

Finally, the proposed standards require that at least 90% of the weight of the index or portfolio must be either (i) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the 1934 Act; (ii) from issuers that each have a worldwide

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18 *See* note 11, *supra*.

19 Rule 405 under the Securities Act of 1933 defines an affiliate as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with such person. Control, for this purpose, is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

market value of its outstanding common equity held by non-affiliates of $700 million or more; (iii) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (iv) exempted securities as defined in Section 3(a)(12) of the 1934 Act; or (v) from issuers that are a government of a foreign country or a political subdivision of foreign country. This proposal standard is consistent with a similar standard in the Joint Rules and is designed to ensure that the component fixed income securities have sufficient publicly available information.

The proposed generic listing requirements for fixed income ETFs do not require that component securities in an underlying index have an investment grade rating.[20] In addition, the proposed requirements do 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. In all cases, however, ETFs that seek to provide investment results that exceed the index daily performance (Multiple) or (Inverse) opposite of the index daily performance may not be the subject of these proposed generic listing standards, pursuant to Rule 5.2(j)(3).

<u>Requirements for Listing and Trading ETFs Based on Combination Indexes</u>

The Exchange also seeks to list and trade ETFs based on a combination of equity and fixed income securities or a composite index that would consist of an equity index and fixed income index (collectively, “combination indexes”). ETFs listed pursuant to the generic standards for combination indexes would be traded, in all other respects, under the Exchange’s existing trading rules and procedures that apply to ETFs and would be

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[20] *See supra* note 10 at 71 39534, 30538.

covered under the Exchange's surveillance program for derivative products. In order to list a Unit or a PDR pursuant to the proposed generic listing standards for combination indexes, the index underlying the Unit or PDR must satisfy all the conditions contained in proposed Commentary .03 to each of Rule 5.2(j)(3) (for Units) and Rule 8.100 (for PDRs). However, for Units traded on the Exchange pursuant to UTP, only the provisions of paragraphs (c), (e), (f), (g) and (h) of Commentary .01 to Rule 5.2(j)(3), stating that the Exchange will apply disseminated information, minimum price variation, hours of trading, written surveillance procedures and disclosures, respectively. However, for PDRs traded on the Exchange pursuant to UTP, only the provisions of the criteria set forth in Rule 8.100(c) and paragraphs (c), (e), (f) and (g) and of Commentary .01 to Rule 8.100, stating that the Exchange will apply disclosures, disseminated information, minimum price variation, hours of trading and written surveillance procedures, respectively. These generic listing standards are intended to ensure that securities with substantial market distribution and liquidity account for a substantial portion of the weight of both the equity and fixed income portions of an index or portfolio.

Proposed Commentary .03 to each of Rule 5.2(j)(3) and Rule 8.100 provides that the Exchange may approve a series of Units and PDRs based on a combination of indexes or a series 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 1934 Act. The standards that an ETF must comply with are as follows: (i) such portfolio or combination of indexes has been reviewed and approved for the trading of options, Units, PDRs, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the 1934 Act, and the conditions set forth in the Commission's approval order continue to be satisfied or (ii) the equity portion and fixed income portion of the component securities separately meet the criteria set forth in Commentary .01(a) (equities) and proposed Commentary .02(a) (fixed income) for Units and PDRs. In all cases, Multiple or Inverse ETFs listed pursuant to Rule 5.2(j)(3) may not be the subject of these proposed generic listing standards.

Index Methodology and Dissemination

The Exchange proposes to adopt Commentary .02(b) to each of Rule 5.2(j)(3) and Rule 8.100 for the purpose of establishing requirements for index methodology and dissemination in connection with fixed income and combination indexes.

If a broker-dealer or fund advisor is responsible for maintaining (or has a role in maintaining) the underlying index, such broker-dealer or fund advisor is required to erect and maintain a "firewall," in a form satisfactory to the Exchange, to prevent the flow of non-public information regarding the underlying index from the personnel involved in the development and maintenance of such index to others such as sales and trading personnel.

With respect to index dissemination, the Exchange proposes to adopt Commentary .02(b)(ii) to each of Rule 5.2(j)(3) and Rule 8.100 to require that the index value for ETFs listed pursuant to the proposed standards for ETFs based on fixed income securities be widely disseminated by one or more major market data vendors at least once a day during the time when the ETF shares trade on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. This reflects the nature of the fixed income markets as well as the frequency of intra-day trading information with respect to fixed income indexes. To the extent that an ETF is based on a combination index, the index will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the ETF shares trade on the Exchange to reflect updates for the prices of the equity securities included in the combination index. The non-U.S. component stock portion of the combination index will be updated at least every 60 seconds, and the fixed income portion of the combination index will be updated at least daily. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours.

The Corporation may designate each series of Units or PDRs for trading during the Opening Session (as defined in NYSE Arca Equities Rule 7.34) and/or Late Trading Session (as defined in NYSE Arca Equities Rule 7.34); provided, however that the Corporation will not designate a series of Units or PDRs for trading in the Opening Session or Late Trading Session unless the requirements of Commentary .01(b)(2) and (c) to Rule 5.2(j)(3) or Commentary .01(b)(3) and (c) to Rule 8.100 are satisfied for Units or PDRs, respectively. If there is no overlap with the trading hours of the primary market(s) trading the underlying components of a series of Units, the Corporation may designate such series for trading in the Opening Session as long as the last official calculated Intraday Indicative Value remains available.

Application of General Rules

Commentary .02(c)-(h) to each of Rule 5.2(j)(3) and Rule 8.100 are being added to identify those characteristics of ETFs that will apply to all such series of Units or

PDRs based on fixed income or combination indexes. This will include the dissemination of the Intraday Indicative Value, an estimate of the value of a share of each ETF updated at least every 15 seconds. In addition, proposed Commentary .02(d)-(h) to each of Rule 5.2(j)(3) and Rule 8.100 set forth the requirements for Units or PDRs relating to initial shares outstanding, minimum price variation and surveillance procedures.

The Commission has approved generic standards providing for the listing pursuant to Rule 19b-4(e) of other derivative products based on indexes previously approved by the Commission under Section 19(b)(2) of the Exchange Act. The Exchange proposes to include in the generic standards for the listing of fixed income and combination indexes based Units and PDRs, in new Commentary .02 and .03 to each of Rule 5.2(j)(3) and Rule 8.100, indexes that have been approved by the Commission in connection with the listing of options, Investment Company Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities. The Exchange believes that the application of that standard to ETFs is appropriate because the underlying index will have been subject to detailed and specific Commission review in the context of the approval of listing of other derivatives.[21]

The Exchange notes that existing Rules 5.5(g)(2) and 8.100 provide continued listing standards for all Units and PDRs. For example, where the value of the underlying index or portfolio of securities on which the ETF is based is no longer calculated or available, the Exchange would commence delisting proceedings. The Exchange notes that pending Rules 5.2(j)(3)(A)(v) and 8.100(e)(1)(ii) provide that prior to approving an ETF

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[21] *See* note 7, *supra*.

for listing, the Exchange will obtain a representation from the ETF issuer that the net asset value per share will be calculated daily and made available to all market participants at the same time.[22]

The trading halt requirements for existing ETFs will similarly apply to fixed income and combination index ETFs. In particular, Rules 5.5(g)(2)(b) and 8.100(e)(2)(ii) provide if the Intraday Indicative Value or the index value applicable to that series of ETFs is not being disseminated as required when the Exchange is the listing market, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[23]

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[24] of the Act, in general, and furthers the objectives of Section 6(b)(5)[25] 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

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[22] These amendments have been proposed by the Exchange to the Commission. *See* Amendment No. 2 to SR-NYSEArca-2006-86 (March 20, 2007).

[23] If an ETF is traded on the Exchange pursuant to UTP, the Exchange will halt trading if the primary listing market halts trading in such ETF because the Intraday Indicative Value and/or the index value is not being disseminated. See NYSE Arca Equities Rule 7.34.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

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.

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

Written comments on the proposed rule change were neither solicited nor received.

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 self-regulatory organization consents, the Commission will:

(A) by order approve such 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. Please include File No. SR-NYSEArca-2007-36 on the subject line.

Paper comments:

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

All submissions should refer to File No. SR-NYSEArca-2007-36. 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 website (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. Copies of such filing also will be available for inspection and copying at the principal offices 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 No. SR-NYSEArca-2007-36 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Nancy M. Morris
Secretary

[26] 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Text of the Proposed Rule Change:[1]

Rules of NYSE Arca Equities, Inc.

Rule 5
Listings

* * * * *

Rule 5.2(j)(3) Investment Company Units

* * * * *

(A) *Original Unit Listing Standards*

(i) -- No Change.

(ii) The Investment Company must issue Units in a specified aggregate number in return for a deposit (the "Deposit") consisting of either:

(a) a specified number of shares of securities (~~or~~ and, if applicable, a specified portfolio of fixed income securities) that comprise the index or portfolio, or are otherwise based on or represent an investment in securities comprising such index or portfolio, and/or a cash amount; or

(b) – No change.

(A)(iii) – (D) -- No Change.

(E) The Corporation may designate each series of Units for trading during the Opening Session (as defined in NYSE Arca Equities Rule 7.34) and/or Late Trading Session (as defined in NYSE Arca Equities Rule 7.34); provided, however that the Corporation will not designate a series of Units for trading in the Opening Session or Late Trading Session unless the requirements of Commentary .01(b)(~~3~~2) and (c) below are satisfied. If there is no overlap with the trading hours of the primary market(s) trading the underlying components of a series of Units, the Corporation may designate such series for trading in the Opening Session as long as the last official calculated Intraday Indicative Value remains available.

Commentary:

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1 Double underscore indicate text to be added to the proposed amendments to the Rules as originally filed and ~~single strikethrough~~ indicates text to be deleted.

.01 Equity. No change.

.02 Fixed Income. Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof. The Corporation may approve a series of Units based on Fixed Income Securities for listing and pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided such portfolio or index (i) has been reviewed and approved for the trading of options, Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission’s approval order, continue to be satisfied or (ii) the following criteria are satisfied, and provided further, that the Corporation may not so approve a series of Units that ~~is~~ are issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified index by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified index by a specified multiple. For Units based on Fixed Income Securities that are approved by the Corporation for trading pursuant to unlisted trading privileges, only paragraphs (c), (e), (f), (g), and (h) below ~~is~~are required to be satisfied.

(a) *Eligibility Criteria for Index Components.* Upon the initial listing of a series of Units pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 on the Corporation, the components of an index or portfolio underlying a series of Units shall meet the following criteria:

(1) The index or portfolio must consist of Fixed Income Securities;

(2) Components that in aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more;

(3) A component may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the index or portfolio;

(4) No component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio;

(5) An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and

(6) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934; b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; d) exempted securities as defined in Section 3(a)(12) of the Securities Exchange Act of 1934; or e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

(b) *Index Methodology and Calculation.*

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current index value for Units listed pursuant to Commentary .02(a) above will be widely disseminated by one or more major market data vendors at least once per day and if the index value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, the last official calculated index value must remain available throughout NYSE Arca Marketplace trading hours; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(c) *Disseminated Information*. One or more major market data vendors shall disseminate for each series of Units listed pursuant to Commentary .02(a) above an estimate, updated at least every 15 seconds, of the value of a share of each series (the “Intraday Indicative Value”). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by the Corporation or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, then the last official calculated Intraday Indicative Value must remain available throughout NYSE Arca Marketplace trading hours.

(d) *Initial Shares Outstanding.* The provisions of Commentary .01(d) above shall apply to series of Units listed pursuant to Commentary .02(a) above.

(e) Minimum Price Variation. The provisions of Commentary .01(e) above shall apply to series of Units listed pursuant to Commentary .02(a) above.

(f) *Hours of Trading.* The provisions of Commentary .01(f) above shall apply to series of Units listed pursuant to Commentary .02(a) above.

(g) *Surveillance Procedures.* The provisions of Commentary .01(g) above shall apply to series of Units based on Fixed Income Securities that are listed and/or traded pursuant to UTP.

(h) *Disclosures*. The provisions of Commentary .01(h) above will apply to series of Units based on Fixed Income Securities.

.03 The Corporation may approve a series of Units based on a combination of indexes or an index or 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 provided (i) such portfolio or combination of indexes have been reviewed and approved for the trading of options, Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied or (ii) each index or portfolio of equity and fixed income component securities separately meet either the criteria set forth in Commentary .01(a) or .02(a) above, and provided further, that the Corporation may not so approve a series of Units that is issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified index by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified index by a specified multiple. For such Units that are approved by the Corporation for trading pursuant to unlisted trading privileges, only paragraphs (c), (e), (f), (g), and (h) of Commentary .01 above ~~is~~are required to be satisfied.

(a) *Index Methodology and Calculation*

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value for Units listed pursuant to Commentary .01(a) or .02(a) above shall be widely disseminated by one or more major market data vendors at least once every 15 seconds during the time the Units trade on the Corporation, provided however, that (a) with respect to the Non-US Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the time the Units trade on the NYSE Arca Marketplace, and (b) with respect to the fixed income components of the combination index, the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(b) *Other Applicable Provisions*. The provisions of Commentary .01(c)-(h) shall also apply to series of Units based on a combination of indexes or an index or portfolio of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market.

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Rule 8

Trading of Certain Equity Derivatives

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Rule 8.100 Portfolio Depositary Receipts

(a) **Definitions.**

(1) *Portfolio Depositary Receipt*. The term "Portfolio Depositary Receipt" means a security (a) that is based on a unit investment trust ("Trust") that holds the securities that comprise an index or portfolio underlying a series of Portfolio Depositary Receipts; (b) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock [plus a cash amount] and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above; (c) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof [and cash] then comprising the "Portfolio Deposit"; and (d) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the [stock index] securities index or portfolio of securities underlying the Portfolio Depositary Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

(2) - (4) -- No change.

(b) - (f) -- No change.

Commentary:

.01 Equity. No change.

.02 Fixed Income. Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof. The Corporation may approve a series of Portfolio Depositary Receipts based on Fixed Income Securities for listing and pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided such portfolio or index (i) has been reviewed and approved for the trading of options, Investment Company Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission’s approval order, continue to be satisfied or (ii) the following criteria is satisfied. For Portfolio Depositary Receipts based on Fixed Income Securities that are approved by the Corporation for trading pursuant to unlisted trading privileges, only the criteria set forth in Rule 8.100(c) and paragraphs (c), (e), (f), and (g) below ~~is~~are required to be satisfied.

(a) *Eligibility Criteria for Index Components.* Upon the initial listing of a series of Portfolio Depositary Receipts pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 on the Corporation, the components of an index or portfolio underlying a series of Portfolio Depositary Receipts shall meet the following criteria:

(1) The index or portfolio must consist of Fixed Income Securities;

(2) Components that in aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more;

(3) A component may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the index or portfolio;

(4) No component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio;

(5) An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and

(6) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934; b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; d) exempted securities as defined in Section 3(a)(12) of the Securities Exchange Act of 1934; or e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

(b) *Index Methodology and Calculation.*

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current index value for Portfolio Depositary Receipts listed pursuant to Commentary .02(a) above will be widely disseminated by one or more major market data vendors at least once per day and if the index value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, the last official calculated index value must remain available throughout NYSE Arca Marketplace trading hours; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(c) *Disseminated Information*. One or more major market data vendors shall disseminate for each series of Portfolio Depositary Receipts listed pursuant to Commentary .02(a) above an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value"). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by the Corporation or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, then the last official calculated Intraday Indicative Value must remain available throughout NYSE Arca Marketplace trading hours.

(d) *Initial Shares Outstanding.* The provisions of Commentary .01(d) above shall apply to series of Portfolio Depositary Receipts listed pursuant to Commentary .02(a) above.

(e) *Minimum Price Variation*. The provisions of Commentary .01(e) above shall apply to series of Portfolio Depositary Receipts listed pursuant to Commentary .02(a) above.

(f) *Hours of Trading.* The provisions of Commentary .01(f) above shall apply to series of Portfolio Depositary Receipts listed pursuant to Commentary .02(a) above.

(g) *Surveillance Procedures.* The provisions of Commentary .01(g) above shall apply to series of Portfolio Depositary Receipts based on Fixed Income Securities that are listed and/or traded pursuant to UTP.

~~(h) *Disclosures*. The provisions of Commentary .01(h) above will apply to series of Portfolio Depositary Receipts based on Fixed Income Securities.~~

.03 The Corporation may approve a series of Portfolio Depositary Receipts based on a combination of indexes or an index or 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 provided (i) such portfolio or combination of indexes have been reviewed and approved for the trading of options, Investment Company Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied or (ii) each index or portfolio of equity and fixed income component securities separately meet either the criteria set forth in Commentary .01(a) or .02(a) above. For such Portfolio Depositary Receipts that are approved by the Corporation for trading pursuant to unlisted trading privileges, only the criteria set forth in Rule 8.100(c) and paragraphs (c), (e), (f), and (g) of Commentary .01 above ~~is~~are required to be satisfied.

(a) *Index Methodology and Calculation*

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value for Portfolio Depositary Receipts listed pursuant to Commentary .01(a) or .02(a) above shall be widely disseminated by one or more major market data vendors at least once every 15 seconds during the time the Portfolio Depositary Receipts trade on the Corporation, provided however, that (a) with respect to the Non-US Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the time the Portfolio Depositary Receipts trade on the NYSE Arca Marketplace, and (b) with respect to the fixed income components of the combination index, the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(b) *Other Applicable Provisions.* The provisions of Commentary .01(c)-(g) shall also apply to series of Portfolio Depositary Receipts based on a combination of indexes or an index or portfolio of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market.

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EXHIBIT 5

Text of the Proposed Rule Change:[1]

Rules of NYSE Arca Equities, Inc.

Rule 5
Listings

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Rule 5.2(j)(3) Investment Company Units

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(A) *Original Unit Listing Standards*

(i) -- No Change.

(ii) The Investment Company must issue Units in a specified aggregate number in return for a deposit (the "Deposit") consisting of either:

(a) a specified number of shares of securities ([or] <u>and</u>, if applicable, a specified portfolio of fixed income securities) that comprise the index or portfolio, or are otherwise based on or represent an investment in securities comprising such index or portfolio, and/or a cash amount; or

(b) – No change.

(A)(iii) – (D) -- No Change.

(E) The Corporation may designate each series of Units for trading during the Opening Session (as defined in NYSE Arca Equities Rule 7.34) and/or Late Trading Session (as defined in NYSE Arca Equities Rule 7.34); provided, however that the Corporation will not designate a series of Units for trading in the Opening Session or Late Trading Session unless the requirements of Commentary .01(b)([3]<u>2</u>) and (c) below are satisfied. If there is no overlap with the trading hours of the primary market(s) trading the underlying components of a series of Units, the Corporation may designate such series for trading in the Opening Session as long as the last official calculated Intraday Indicative Value remains available.

Commentary:

.01 <u>Equity.</u> No change.

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[1] New text is underscored; deleted text is in brackets.

.02 Fixed Income. Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof. The Corporation may approve a series of Units based on Fixed Income Securities for listing and pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided such portfolio or index (i) has been reviewed and approved for the trading of options, Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order, continue to be satisfied or (ii) the following criteria are satisfied, and provided further, that the Corporation may not so approve a series of Units that are issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified index by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified index by a specified multiple. For Units based on Fixed Income Securities that are approved by the Corporation for trading pursuant to unlisted trading privileges, only paragraphs (c), (e), (f), (g), and (h) below are required to be satisfied.

(a) *Eligibility Criteria for Index Components.* Upon the initial listing of a series of Units pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 on the Corporation, the components of an index or portfolio underlying a series of Units shall meet the following criteria:

(1) The index or portfolio must consist of Fixed Income Securities;

(2) Components that in aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more;

(3) A component may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the index or portfolio;

(4) No component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio;

(5) An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and

(6) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either a) from issuers that are required to file reports pursuant

to Sections 13 and 15(d) of the Securities Exchange Act of 1934; b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; d) exempted securities as defined in Section 3(a)(12) of the Securities Exchange Act of 1934; or e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

(b) *Index Methodology and Calculation.*

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current index value for Units listed pursuant to Commentary .02(a) above will be widely disseminated by one or more major market data vendors at least once per day and if the index value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, the last official calculated index value must remain available throughout NYSE Arca Marketplace trading hours; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(c) *Disseminated Information*. One or more major market data vendors shall disseminate for each series of Units listed pursuant to Commentary .02(a) above an estimate, updated at least every 15 seconds, of the value of a share of each series (the “Intraday Indicative Value”). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by the Corporation or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, then the last official calculated Intraday Indicative Value must remain available throughout NYSE Arca Marketplace trading hours.

(d) *Initial Shares Outstanding.* The provisions of Commentary .01(d) above shall apply to series of Units listed pursuant to Commentary .02(a) above.

(e) Minimum Price Variation. The provisions of Commentary .01(e) above shall apply to series of Units listed pursuant to Commentary .02(a) above.

(f) *Hours of Trading.* The provisions of Commentary .01(f) above shall apply to series of Units listed pursuant to Commentary .02(a) above.

(g) *Surveillance Procedures.* The provisions of Commentary .01(g) above shall apply to series of Units based on Fixed Income Securities that are listed and/or traded pursuant to UTP.

(h) *Disclosures*. The provisions of Commentary .01(h) above will apply to series of Units based on Fixed Income Securities.

.03 The Corporation may approve a series of Units based on a combination of indexes or an index or 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 provided (i) such portfolio or combination of indexes have been reviewed and approved for the trading of options, Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission’s approval order continue to be satisfied or (ii) each index or portfolio of equity and fixed income component securities separately meet either the criteria set forth in Commentary .01(a) or .02(a) above, and provided further, that the Corporation may not so approve a series of Units that is issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified index by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified index by a specified multiple. For such Units that are approved by the Corporation for trading pursuant to unlisted trading privileges, only paragraphs (c), (e), (f), (g), and (h) of Commentary .01 above are required to be satisfied.

(a) *Index Methodology and Calculation*

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value for Units listed pursuant to Commentary .01(a) or .02(a) above shall be widely disseminated by one or more major market data vendors at least once every 15 seconds during the time the Units trade on the Corporation, provided however, that (a) with respect to the Non-US Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the time the Units trade on the NYSE Arca Marketplace, and (b) with respect to the fixed income components of the combination index, the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(b) *Other Applicable Provisions*. The provisions of Commentary .01(c)-(h) shall also apply to series of Units based on a combination of indexes or an index or portfolio of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market.

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Rule 8

Trading of Certain Equity Derivatives

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Rule 8.100 Portfolio Depositary Receipts

(a) **Definitions.**

(1) *Portfolio Depositary Receipt*. The term "Portfolio Depositary Receipt" means a security (a) that is based on a unit investment trust ("Trust") that holds the securities that comprise an index or portfolio underlying a series of Portfolio Depositary Receipts; (b) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock [plus a cash amount] and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above; (c) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof [and cash] then comprising the "Portfolio Deposit"; and (d) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the [stock index] securities index or portfolio of securities underlying the Portfolio Depositary Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

(2) - (4) -- No change.

(b) - (f) -- No change.

Commentary:

.01 Equity. No change.

.02 Fixed Income. Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof. The Corporation may approve a series of Portfolio Depositary Receipts based on Fixed Income Securities for listing and pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided such portfolio or index (i) has been reviewed and approved for the trading of options, Investment Company Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order, continue to be satisfied or (ii) the following criteria is satisfied. For Portfolio Depositary Receipts based on Fixed Income Securities that are approved by the Corporation for trading pursuant to unlisted trading privileges, only the criteria set forth in Rule 8.100(c) and paragraphs (c), (e), (f), and (g) below are required to be satisfied.

(a) *Eligibility Criteria for Index Components.* Upon the initial listing of a series of Portfolio Depositary Receipts pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 on the Corporation, the components of an index or portfolio underlying a series of Portfolio Depositary Receipts shall meet the following criteria:

(1) The index or portfolio must consist of Fixed Income Securities;

(2) Components that in aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more;

(3) A component may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the index or portfolio;

(4) No component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio;

(5) An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and

(6) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934; b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; d) exempted securities as defined in Section 3(a)(12) of the Securities Exchange Act of 1934; or e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

(b) *Index Methodology and Calculation.*

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current index value for Portfolio Depositary Receipts listed pursuant to Commentary .02(a) above will be widely disseminated by one or more major market data vendors at least once per day and if the index value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, the last official calculated index value must remain available throughout NYSE Arca Marketplace trading hours; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(c) *Disseminated Information*. One or more major market data vendors shall disseminate for each series of Portfolio Depositary Receipts listed pursuant to Commentary .02(a) above an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value"). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by the Corporation or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, then the last official calculated Intraday Indicative Value must remain available throughout NYSE Arca Marketplace trading hours.

(d) *Initial Shares Outstanding.* The provisions of Commentary .01(d) above shall apply to series of Portfolio Depositary Receipts listed pursuant to Commentary .02(a) above.

(e) *Minimum Price Variation*. The provisions of Commentary .01(e) above shall apply to series of Portfolio Depositary Receipts listed pursuant to Commentary .02(a) above.

(f) *Hours of Trading.* The provisions of Commentary .01(f) above shall apply to series of Portfolio Depositary Receipts listed pursuant to Commentary .02(a) above.

(g) *Surveillance Procedures.* The provisions of Commentary .01(g) above shall apply to series of Portfolio Depositary Receipts based on Fixed Income Securities that are listed and/or traded pursuant to UTP.

.03 The Corporation may approve a series of Portfolio Depositary Receipts based on a combination of indexes or an index or 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 provided (i) such portfolio or combination of indexes have been reviewed and approved for the trading of options, Investment Company Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied or (ii) each index or portfolio of equity and fixed income component securities separately meet either the criteria set forth in Commentary .01(a) or .02(a) above. For such Portfolio Depositary Receipts that are approved by the Corporation for trading pursuant to unlisted trading privileges, only the criteria set forth in Rule 8.100(c) and paragraphs (c), (e), (f), and (g) of Commentary .01 above are required to be satisfied.

(a) *Index Methodology and Calculation*

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value for Portfolio Depositary Receipts listed pursuant to Commentary .01(a) or .02(a) above shall be widely disseminated by one or more major market data vendors at least once every 15 seconds during the time the Portfolio Depositary Receipts trade on the Corporation, provided however, that (a) with respect to the Non-US Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the time the Portfolio Depositary Receipts trade on the NYSE Arca Marketplace, and (b) with respect to the fixed income components of the combination index, the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(b) *Other Applicable Provisions.* The provisions of Commentary .01(c)-(g) shall also apply to series of Portfolio Depositary Receipts based on a combination of indexes or an index or portfolio of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market.

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