

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-12 and should be submitted on or before February 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57226; File No. SR-NYSEArca-2008-03]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, Relating to Rules 5.3 and 5.4 To Enable Listing and Trading of Options on Multiple Fund and Inverse Fund Shares

January 29, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 8, 2008, NYSE Arca, Inc. (the "Exchange"), through its wholly-owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items

have been substantially prepared by the Exchange. The Commission hereby provides notice of filing of the proposed rule change and approves the proposed rule change on an accelerated basis.

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

The Exchange proposes to revise NYSE Arca Rules 5.3 and 5.4 to enable listing and trading on the Exchange of options on Multiple Fund Shares and Inverse Fund Shares. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

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

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

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

###### 1. Purpose

The purpose of the proposed rule change is to revise NYSE Arca Rules 5.3 and 5.4 to enable the listing and trading on the Exchange of options on Multiple Fund Shares<sup>3</sup> and Inverse Fund Shares.<sup>4</sup> Multiple and Inverse Fund Shares differ from traditional exchange-traded fund shares ("Exchange-Traded Fund Shares" or "Fund Shares") in that they do not merely correspond to the performance of a given index, but rather attempt to match a multiple or inverse of such underlying index performance. Currently, Multiple Fund Shares issued by ProShares Trust and Rydex ETF Trust trade on the Exchange pursuant to unlisted trading privileges ("UTP")

<sup>3</sup> Multiple Fund Shares seek to provide investment results, before fees and expenses, that correspond to a specific multiple of the percentage performance on a given day of a particular foreign or domestic stock index.

<sup>4</sup> Inverse Fund Shares seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic stock index by a specified multiple.

under NYSE Arca Equities Rule 5.2(j)(3).<sup>5</sup>

In order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Multiple Fund Shares or Inverse Fund Shares may hold a combination of financial instruments, including among other things: stock index future contracts; options on futures; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (the "Financial Instruments"). The underlying portfolios of Multiple Fund Shares generally will hold at least 85% of their assets in the component securities of the underlying relevant benchmark index. The remainder of any assets is devoted to Financial Instruments that are intended to create the additional needed exposure to such underlying index necessary to pursue its investment objective. Normally, 100% of the value of the underlying portfolios of Inverse Fund Shares will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the "Money Market Instruments"). Currently, NYSE Arca Rule 5.3(g) provides securities deemed appropriate for options trading shall include shares or other securities that are traded on a national securities exchange and are defined as an "NMS Stock" under Rule 600 of Regulation NMS, and that (i) represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities, or (ii) represent interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or a similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on the deposited U.S. currency, if any, declared and paid by the trust; or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or

<sup>5</sup> See Securities Exchange Act Release Nos. 56763 (November 7, 2007), 72 FR 94103 (November 14, 2007) (SR-NYSEArca-2007-81); 56601 (October 2, 2007), 72 FR 57625 (October 10, 2007) (SR-NYSEArca-2007-79); 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR-NYSEArca-2006-87); 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR-PCX-2005-115).

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

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

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

managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool Units").

The Exchange proposes to amend Rule 5.3(g) to expand the type of options eligible for listing and trading to include options based on Multiple Fund Shares and Inverse Fund Shares that may hold or invest in any combination of securities, Financial Instruments and/or Money Market Instruments. Multiple Fund Shares and Inverse Fund Shares will continue to otherwise satisfy the listing standards in Rule 5.3(g). In addition, the Exchange proposes minor amendments to Rule 5.3(g)(1)(B).

As set forth in proposed NYSE Arca Rule 5.3(g), Multiple Fund Shares and Inverse Fund Shares must be traded on a national securities exchange and must be an "NMS stock" as defined under Rule 600 of Regulation NMS. In addition, Multiple Fund Shares and Inverse Fund Shares must meet either: (i) The criteria and guidelines for underlying securities set forth in Rule 5.3(a) and (b); or (ii) be available for creation or redemption each business day in cash or in kind from or through the issuing trust, investment company, commodity pool or other issuer at a price related to the net asset value. In addition, the issuing trust, investment company, commodity pool, or other issuer is obligated to issue Fund Shares in a specified aggregate number even though some or all of the investment assets needed to be deposited have not been received by the issuing trust, investment company, commodity pool, or other issuer, provided the authorized creation participant has undertaken to deliver the investment assets as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the Fund Shares which underlie the option as described in the Fund Shares' prospectus; and (iii) for Commodity Pool Units, the Exchange has entered into a comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in such commodity futures contracts on the specified commodities or non-U.S. currency, which are utilized by the national securities exchange where the underlying Commodity Pool Units are listed and traded.

The current continuing or maintenance listing standards for

options on Exchange Traded Fund Shares will continue to apply.

The Exchange proposes to amend NYSE Arca Rule 5.4 to indicate that the index or portfolio may consist of securities, Financial Instruments and/or Money Market Instruments. Under the applicable continued listing criteria in Rule 5.4, options on Exchange-Traded Fund Shares may be subject to the suspension of opening transactions as follows: (1) Non-compliance with Rule 5.4(k)(1)-(4); (2) following the initial 12-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares, there are fewer than 50 record and/or beneficial holders of the Exchange-Traded Fund Shares for 30 or more consecutive days; (3) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities and/or Financial Instruments and Money Market Instruments on which the Exchange-Traded Fund Shares are based is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable. Additionally, the Exchange-Traded Fund Shares will not be deemed to meet the requirement for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Multiple Fund Shares or Inverse Fund Shares, if the Fund Shares are halted from trading on their primary market or if the Fund Shares are delisted in accordance with the terms of NYSE Arca Rule 5.4(k).

The Exchange represents that the expansion of the types of investments that may be held by Multiple Fund Shares or Inverse Fund Shares under Rule 5.3(g) will not have any effect on the rules pertaining to position and exercise limits<sup>6</sup> or margin.<sup>7</sup>

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in Multiple Fund Shares options and Inverse Fund Shares Options.

## 2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> in particular,

<sup>6</sup> See NYSE Arca Rules 5.49 and 6.9.

<sup>7</sup> See NYSE Arca Rule 5.25.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-03 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 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2008-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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 Number SR-NYSEArca-2008-03 and should be submitted on or before February 26, 2008.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, 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.

#### Surveillance

The Commission notes that the Exchange has represented that its existing surveillance procedures applicable to trading options are adequate to properly monitor trading in Multiple Fund Shares options and Inverse Fund Shares options. In addition, the Exchange represented that the expansion of the types of investments that may be held by Multiple Fund Shares or Inverse Fund Shares under NYSE Arca Rules 5.3(g) and 5.4 will not have any effect on the rules pertaining to position and exercise limits<sup>12</sup> or margin.<sup>13</sup>

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>12</sup> See NYSE Arca Rules 5.49 and 6.9.

<sup>13</sup> See NYSE Arca Rule 5.25.

#### Listing and Trading Options on Fund Shares

The Commission notes that, pursuant to the proposed rule change, the Exchange represented that the current continuing or maintenance listing standards for options on Exchange Traded Fund Shares will continue to apply. These provisions include requirements regarding initial and continued listing standards, suspension of opening transactions, and trading halts. Proposed amended NYSE Arca Rule 5.3(g), would require that Multiple Fund Shares and Inverse Fund Shares be traded on a national securities exchange and must be an "NMS stock" as defined under Rule 600 of Regulation NMS.<sup>14</sup>

The Commission believes that this proposal is necessary to enable the Exchange to list and trade options on Multiple Fund Shares and Inverse Fund Shares such as those currently issued by ProShares Trust and Rydex ETF Trust that trade on the Exchange pursuant to unlisted trading privileges under NYSE Arca Equities Rule 5.2(j)(3).<sup>15</sup> The Commission believes that the ability to trade options on the Multiple and Inverse Fund Shares will provide investors with additional risk management tools. The Commission further believes that the proposed amendment to the Exchange's listing criteria for options on Exchange Traded Fund Shares will ensure that the Exchange will be able to list options on the Funds of the ProShares Trust and Rydex ETF Trust as well as other Multiple Fund Shares or Inverse Fund Shares that may be introduced in the future, thereby affording investors greater investment choices.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. The Commission notes that it has previously approved substantially similar proposals by other national securities exchanges.<sup>16</sup> The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the listing and trading of the options on Multiple Fund and Inverse Fund Shares on the Exchange. Accelerating approval of this proposed rule change would allow the

<sup>14</sup> 17 CFR 242.600(b)(47).

<sup>15</sup> See *supra* note 5.

<sup>16</sup> See Securities Exchange Act Release Nos. 56871 (November 30, 2007), 72 FR 68924 (December 6, 2007) (approving SR-ISE-2007-87 on an accelerated basis); 56715 (October 29, 2007), 72 FR 62287 (November 2, 2007) (approving SR-CBOE-2007-119 on an accelerated basis); 56650 (October 12, 2007), 72 FR 59123 (October 18, 2007) (SR-Amex-2007-35).

options on Multiple Fund and Inverse Fund Shares to be listed on the Exchange without undue delay and continuously traded without interruption, to the benefit of investors.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NYSEArca-2008-03) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57221; File No. SR-NYSEArca-2008-11]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Fees Applicable to Certain Exchange Traded Funds and Rebates for Tape B Securities

January 29, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 16, 2008, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to amend the section of its Schedule of Fees and Charges for

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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