are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues and that the various changes it has proposed to reduce its fees will benefit Members both due to the obvious economic savings and due to the potential of increased available liquidity at the Exchange. For those proposed changes that will result in increased fees charged to Members or lower rebates received by Members, such as the reduction of the rebate in Tape A and C securities, the Exchange believes that any additional revenue it receives will allow the Exchange to devote additional capital to its operations, which may, in turn, benefit Members of the Exchange. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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–BATS–-2009–008 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–BATS–2009–008. 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 changes 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 office of BATS. 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–BATS–2009–008 and should be submitted on or before May 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8323 Filed 4–10–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59708; File No. SR–NYSEArca–2009–12]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Relating to SPDR Barclays Capital Convertible Bond ETF

April 6, 2009.

I. Introduction

On February 18, 2009, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the SPDR® Barclays Capital Convertible Bond ETF. The proposed rule change was published for comment in the **Federal Register** on March 6, 2009.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the SPDR® Barclays Capital Convertible Bond ETF (''Fund'')[4] under NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units (''Units'').[5]

---

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(6) [sic].

[11] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59459 (February 26, 2009), 74 FR 9860 (''Notice'').

[4] *See* the Registration Statement on Form N–1A of the SPDR Series Trust, dated January 15, 2009 (File Nos. 333–57793 and 811–08839) (''Registration Statement'').

[5] An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment

Continued

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

The Index includes both U.S. convertible bonds and convertible preferred equity securities.[6] The Index components consisting of U.S. convertible bonds separately meet the criteria set forth in Commentary .02(a) of Rule 5.2(j)(3) applicable to Units based on a fixed income index or portfolio. However, the Index components consisting of convertible preferred stocks do not separately meet the criteria set forth in Commentary .01(a) of Rule 5.2(j)(3) applicable to Units based on U.S. indexes or portfolios.

The Exchange represents that: (i) except for Commentaries .01(a)(A)(2) [7] and .01(a)(A)(5) [8] to NYSE Arca Equities Rule 5.2(j)(3), the Shares currently satisfy all other of the generic listing standards under the rule; (ii) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares; and (iii) the Trust is required to comply with Rule 10A–3 [9] under the Act for the initial and continued listing of the Shares. Additionally, the Exchange represents that the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls and Information Bulletins to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.[10] Detailed descriptions of the Fund, the Underlying Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*http://www.SPDRETFs.com*).[11]

company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). *See* NYSE Arca Equities Rule 5.2(j)(3)(A).

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

[7] Commentary .01(a)(A)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares. According to the Exchange, the Index does not meet the requirements of Commentary .01(a)(A)(2) in that convertible preferred stocks accounting for 78.56% of the weight of the convertible preferred portion of the Index each had a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares, as of November 30, 2008.

[8] Commentary .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3) provides that all securities in the Index or portfolio shall be US Component Stocks, as defined in Rule 5.2(j)(3) listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act. The Exchange states that, while the Index does not include any non-U.S. securities, as of November 30, 2008, six of the 31 convertible preferred securities in the Index, accounting for 8% of the Index weight, were not listed on a national securities exchange; those issues were traded over-the-counter.

[9] 17 CFR 240.10A–3.

[10] *See, e.g.,* Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36) (order approving generic listing standards for Units based on fixed income indexes); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); and 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).

[11] *See also* Notice, *supra,* note 3.

[12] 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).

[13] 15 U.S.C. 78f(b)(5).

III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] 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, 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.

NYSE Arca Equities Rule 5.2(j)(3) permits the Exchange to consider qualifying Units for listing and trading pursuant to Rule 19b–4(e) under the Act. The Shares, however, do not qualify for generic listing under the Exchange's rule because, although the Index components consisting of U.S. convertible bonds separately meet the criteria set forth in Commentary .02(a) of Rule 5.2(j)(3) applicable to Units based on a fixed income index or portfolio, the Index components consisting of convertible preferred stocks do not separately meet the criteria set forth in Commentaries .01(a)(A)(2) and .01(a)(A)(5) of the rule applicable to Units based on U.S. indexes or portfolios.[14]

The Commission believes that the listing and trading of the Shares is consistent with the Act. The Shares currently satisfy all but two of the generic listing standards under the rule, and the Commission believes that the composition of the Index, despite failing to satisfy the requirements of Commentaries .01(a)(A)(2) and .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3), does not raise any regulatory concerns. Additionally, the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units will apply to the Shares, and the Trust is required to comply with Rule 10A–3 [15] under the Act for the initial and continued listing of the Shares. Finally, the Commission notes that it has not received any comments regarding the proposed rule change.

IV. Conclusion

For the foregoing reasons, the Commission believes that the Exchange's proposal to list and trade the Shares is consistent with the Act. This order is based on the Exchange's representations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSEArca–2009–12) be, and it hereby is, approved.

[14] *See* notes 7 and 8, *supra.*

[15] 17 CFR 240.10A–3.

[16] 15 U.S.C. 78s(b)(1).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8326 Filed 4–10–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59706; File No. SR–NASDAQ–2009–029]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

April 6, 2009.

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 March 25, 2009, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing.

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

NASDAQ proposes to modify pricing for NASDAQ members using the Nasdaq Market Center. NASDAQ will implement this rule change on April 1, 2009. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, NASDAQ 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. NASDAQ 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

NASDAQ is proposing to modify its pricing for order execution and routing. As detailed below, the effect of the fee changes varies with respect to the listing venue of the securities being traded and whether a member is accessing or providing liquidity or routing an order.

Execution of Orders for Securities Listed on NASDAQ or the New York Stock Exchange (''NYSE''); Routing of Orders for Securities Listed on NASDAQ or NYSE to Venues Other Than NYSE; Routing of Orders for Exchange-Traded Funds (''ETFs'') to NYSE

NASDAQ is reducing fees to access liquidity in securities listed on NASDAQ and NYSE by reducing the levels of market activity at which members qualify for reduced pricing and by reducing the fees charged to these qualifying members. Specifically, NASDAQ is introducing a new pricing tier for members with an average daily volume through the Nasdaq Market Center in all securities of (i) more than 50 million shares of liquidity provided, and (ii) more than 60 million shares of liquidity accessed and/or routed.[5] Members qualifying for this tier will pay $0.0026 per share executed when accessing liquidity (or 0.1% of the total transaction cost in the case of executions of securities priced at less than $1 per share). A second pricing tier will apply to members with an average daily volume through the Nasdaq Market Center in all securities of (i) more than 25 million shares of liquidity provided, and (ii) more than 40 million shares of liquidity accessed and/or routed. Members qualifying for this tier will pay $0.0028 per share executed when accessing liquidity (or 0.1% of the total transaction cost in the case of executions at less than $1 per share). By contrast, under the current pricing schedule, a member must have an average daily volume of (i) more than 35 million shares of liquidity provided and (ii) more than 55 million shares of liquidity accessed and/or routed in order to qualify for a fee to access liquidity of $0.0029. Thus, under the change, favorable pricing becomes available at lower levels of liquidity provision (25 million shares versus 35 million shares) and routing and/or accessing (40 million shares versus 55 million shares), and the reduced fees are themselves lower ($0.0026 or $0.0028 per share executed, versus $0.0029 per share executed). However, in order to simplify its schedule, NASDAQ is eliminating a reduced fee of $0.00295 per share executed for members that access a daily average of more than 55 million shares of liquidity during a month but that do not otherwise qualify for a lower rate. As is currently the case, members not qualifying for a reduced pricing tier will pay $0.0030 per share executed to access liquidity (or 0.1% of the total transaction cost in the case of executions at less than $1 per share).

NASDAQ is also instituting changes with respect to fees for routing orders that attempt to execute in the Nasdaq Market Center for the full size of the order before routing. These routing changes apply to orders in NASDAQ-listed securities, orders in NYSE-listed securities routed to venues other than NYSE, and routing of orders for ETFs to NYSE. With respect to such activity, NASDAQ is eliminating volume-based tiers, with fees that currently range from $0.0029 to $0.003, and instituting a lower fee of $0.0026 available to all members.[6] Fees for routing orders that do not check the Nasdaq Market Center for the full size of the order before routing remain unchanged, except with respect to orders in securities that are priced at $1 or more per share and listed on NASDAQ or NYSE, where the order is directed to NASDAQ OMX BX (''BX''). For securities listed on NASDAQ or NYSE, BX is replacing its fee to access liquidity with a credit of $0.0006.[7] Because that credit is designed to encourage direct use of BX by its members, NASDAQ will not be passing on the credit to NASDAQ members that use its routing facility to access BX. Nevertheless, NASDAQ believes that the change in BX pricing warrants eliminating the fee for routing orders to BX in circumstances where NASDAQ members choose to direct orders to BX. Similarly, NASDAQ is

[17] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] As is currently the case with respect to reduced pricing tiers, orders that do not attempt to execute in the Nasdaq Market Center for the full size of the order prior to routing are not counted in determining shares of liquidity routed.

[6] The fee remains 0.3% of the total transaction cost in the case of securities priced at less than $1 per share.

[7] SR–BX–2009–018 (March 25, 2009).