

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62737; File No. SR-NYSEArca-2010-64)

August 17, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Relating to Listing of the Wilshire Micro-Cap ETF

I. Introduction

On July 1, 2010, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 Wilshire Micro-Cap ETF. The proposed rule change was published for comment in the Federal Register on July 15, 2010.³ 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 Shares of the Wilshire Micro-Cap ETF (the “Fund”)⁴ under NYSE Arca Equities Rule 5.2(j)(3), the Exchange’s listing standards for Investment Company Units (“Units”).⁵ The Fund is a series of the Claymore Exchange-Traded Fund Trust.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62471 (July 8, 2010), 75 FR 41252 (“Notice”).

⁴ See the Claymore Exchange-Traded Fund Trust’s registration statement on Form N-1A, dated May 18, 2010 (File Nos. 333-134551; 811-21906) (“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 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).

The Fund seeks investment results that correspond generally to the performance, before fees and expenses, of the Wilshire US Micro-Cap IndexSM (“Index”). The Index is designed to represent micro-sized companies and is a subset of the Wilshire 5000 Total Market IndexSM (the “Wilshire 5000”). The Index represents a float-adjusted, market capitalization-weighted index of the issues ranked below 2500 by market capitalization of the Wilshire 5000. As of March 31, 2010, the Index was comprised of approximately 1,564 securities of micro-capitalization companies.

The Exchange represents that: (i) except for Commentaries .01(a)(A)(1)⁶ and .01(a)(A)(5)⁷ to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Fund currently satisfy all of the other generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (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-3⁸ 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 value of the Index

⁶ Commentary .01(a)(A)(1) to NYSE Arca Equities Rule 5.2(j)(3) provides that component stocks (excluding Units and securities defined in Section 2 of NYSE Arca Equities Rule 8, collectively, “Derivative Securities Products”) that in the aggregate account for at least 90% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum market value of at least \$75 million. The Exchange has represented that, as of April 21, 2010, 76.93% of the weight of the Index components had a market capitalization greater than \$75 million.

⁷ 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 listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act. The Exchange has represented that, as of April 21, 2010, 201 of approximately 1,564 components in the Index, accounting for approximately 12.8% of the total stocks in the Index and approximately 3.7% of the Index weight, were non-NMS stocks that trade either on the OTC Bulletin Board or the Pink OTC Markets.

⁸ 17 CFR 240.10A-3.

and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.⁹

Detailed descriptions of the Fund, the Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, 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 (www.claymore.com), as applicable.¹⁰

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange'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.¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² 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

⁹ See, e.g., Securities Exchange Act Release Nos. 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).

¹⁰ See also Notice, *supra*, note 3.

¹¹ 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).

¹² 15 U.S.C. 78f(b)(5).

listing and trading pursuant to Rule 19b-4(e) under the Act. Commentary .01(a)(A) of Rule 5.2(j)(3) sets forth the generic listing requirements applicable to Units based on U.S. indexes or portfolios.¹³ These generic listing standards are designed to ensure that the securities composing the indexes and portfolios underlying the Units are well capitalized and actively traded, and serve to prevent fraudulent and manipulative acts.¹⁴ As discussed above, the Shares do not qualify for generic listing under the Exchange's rule because the Index does not meet the criteria set forth in Commentaries .01(a)(A)(1) and .01(a)(A)(5) of NYSE Arca Equities Rule 5.2(j)(3) applicable to Units based on U.S. indexes or portfolios.¹⁵

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)(1) and .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3), does not raise any regulatory concerns. The capitalization criterion of Commentary .01(a)(A)(1), together with the liquidity requirement applicable to the Index components, are

¹³ In addition to the requirements set forth in Commentaries .01(a)(A)(1) and .01(a)(A)(5) discussed above, Rule 5.2(j)(3) also provides, among other things, that (i) the component stocks (excluding Derivative Securities Products) representing at least 70% of the weight of the index or portfolio (excluding such Derivative Securities Products) must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares, or minimum notional monthly trading volume of \$25 million, (ii) the most heavily weighted component stock (excluding Derivative Securities Products) in an underlying index or portfolio cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks (excluding Derivative Securities Products) cannot together exceed 65% of the weight of the index or portfolio, and (iii) the index or portfolio must include a minimum of 13 stocks. See Commentaries .01(a)(A)(2), .01(a)(A)(3) and .01(a)(A)(4) to NYSE Arca Equities Rule 5.2(j)(3).

¹⁴ See Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14).

¹⁵ See notes 6 and 7, supra.

designed to prevent fraudulent or manipulative acts.¹⁶ The Commission believes that the Index should not be susceptible to manipulation in light of the characteristics of the Index components when viewed as a whole. The generic listing requirement that all securities in the Index be NMS Stocks is designed to ensure that listed Units are not used as surrogates for trading in unregistered securities.¹⁷ The Commission believes that the Shares will not serve this function because non-NMS stocks account for only approximately 3.7% of the Index weight.

In addition, the Commission notes that it has not received any comments regarding the proposed rule change.

IV. Conclusion

For the forgoing 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.

¹⁶ See Securities Exchange Act Release No. 44551, supra note 14, 66 FR at 37719.

¹⁷ See Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571, 19576 (April 18, 2007) (SR-NYSEArca-2006-86).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NYSEArca-2010-64) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,
Deputy Secretary

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).