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Via Electronic Mail

September 16, 2015

Secretary
U.S. Securities and Exchange Commission
100 F. Street NE
Washington, D.C. 20549-1090

Re: File No. SR-NYSEArca-2015-02

NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) hereby responds to the request for comment by the Securities and Exchange Commission (“Commission”) regarding the Exchange’s proposed rule change to amend NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares.¹

The Commission’s Notice requests comment on whether the proposed listing requirements are adequate to deter manipulation of the price of generically listed Managed Fund Shares and other trading abuses. For the reasons discussed below, the Exchange believes the proposed requirements are fully adequate to deter and prevent such price manipulation.

As the Notice states, a number of the proposed criteria are based on criteria in the Exchange’s generic listing rules for Investment Company Units in NYSE Arca Equities Rule 5.2(j)(3). In particular, with respect to equity and fixed income securities underlying index-based shares exchange-traded funds (“ETFs”), the Commission has repeatedly determined that the generic listing criteria applied by exchanges in listing index-based ETFs under Rule 5.2(j)(3) provide for a level of liquidity, capitalization, trading volume, and weighting of index components (among other listing and trading criteria provided in exchange rules) are designed to prevent fraudulent or manipulative acts.²

¹ See Securities Exchange Act Release No. 75115 (June 5, 2015), 80 FR 33309 (June 11, 2015) (SR-NYSEArca-2015-02) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend NYSE Arca Equities Rule 8.600 to Adopt Generic Listing Standards for Managed Fund Shares) (“Notice”).

² See, e.g., Securities Exchange Act Release Nos. 44551, (July 12, 2001), 68 FR 37716 July 19, 2001 (SR-PCX-2001-14) (notice of filing and order granting accelerated approval of proposed rule change by the Pacific Exchange, Inc. relating to generic listing standards applicable to the listing and trading of Investment Company Units and Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 (“Act”)), in which the Commission stated that “[t]he Commission believes that the proposed generic listing

Similar to the requirements in NYSE Arca Equities Rule 5.2(j)(3), the criteria in proposed NYSE Arca Equities Rule 8.600, Commentary .01(a), requires that a specified percentage of equity securities held by Managed Fund Shares, would have to meet minimum market value, monthly trading volume and weighting criteria. In addition, a portfolio including any equity security as described in Commentary .01(a) of the proposed rule would be required to have a minimum of 13 component stocks (with an exception for portfolios including Derivative Securities Products or Index-Linked Securities, as defined in Rules 7.34(a)(4)(A) and 5.2(j)(6), respectively). These proposed criteria are intended to provide that the preponderance of equity issues held by a series of Managed Fund Share listed under the NYSE Arca Equities Rule 8.600 are liquid, diversified and well-capitalized. In addition, the proposed criteria for equity securities would add to the criteria in Rule 5.2(j)(3) the requirement that (except as provided in the proposed rule change) all equity securities held by a series of Managed Fund Shares be “NMS Stocks” as defined in Rule 600 of Regulation NMS under the Act. The wide availability of quotation and trading information for NMS Stocks, which are listed and traded on national securities exchanges, will further assure a high level of pricing transparency for all a fund’s equity holdings.

The Commission similarly has determined that generic criteria such as those in NYSE Arca Equities Rule 5.2(j)(3) applicable to fixed income index components underlying a series of ETFs are sufficiently broad-based in scope to minimize potential manipulation.³ As noted in the

standards ensure that the securities composing the indexes and portfolios underlying the ICUs and PDRs are well capitalized and actively traded. These capitalization and liquidity criteria serve to prevent fraudulent or manipulative acts and are therefore consistent with Section 6(b)(5) of the Act.” ; 42787, 65 FR 33598 (May 24, 2000) (SR-Amex-00-14) (order approving proposed rule change by the American Stock Exchange relating to generic listing standards applicable to listing

Portfolio Depository Receipts and Index Fund Shares pursuant to Rule 19b-4(e) under the Act), in which the Commission stated that “[t]he Commission believes that these criteria should serve to ensure that the underlying securities of these indexes and portfolios are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new series of PDRs and Index Fund Shares under rule 19b-4(e). These listing criteria also will make certain that new series of PDRs and Index Fund Shares do not contain features that are likely to impact adversely the U.S. securities markets. Accordingly, the Commission finds that these criteria are consistent with Section 6(b)(5) of the Act, because they serve to prevent fraudulent or manipulative acts; promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.”

³ See, e.g., Securities Exchange Act Release Nos. 55783 (May 17, 2007) (SR-NYSEArca-2007-36) (notice of filing of proposed rule change and Amendment No. 1 thereto to establish generic listing standards for Exchange-Traded Funds based on fixed income indexes and order granting accelerated approval), stating that “these standards are reasonably designed to ensure that a substantial portion of any underlying index or portfolio consists of securities about which information is publicly available, and that when applied in conjunction with the other

proposed rule changes by the Exchange and the American Stock Exchange relating to generic rules for fixed income index ETFs, such rules are “loosely based on the standards contained in Commission and Commodity Futures Trading Commission (“CFTC”) rules regarding the application of the definition of narrow-based security index to debt security indexes”.⁴ For example, the conditions set forth in proposed NYSE Arca Equities Rule 8.600, Commentary .01(b)(4) (and current NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(a)(6)) are similar to those in Rule 3a-55-4 under the Act, as adopted in the Joint Rules Release. The Commission and the CFTC stated in the Joint Rules Release their belief that “the criteria in the rules, including the requirements relating to the maximum weighting and concentration of securities of an issuer in an index, the eligibility conditions for issuers, and the minimum remaining outstanding principal amount requirement should reduce the likelihood that a future on such an index would be readily susceptible to manipulation or could be used to manipulate the market for the underlying debt securities.” The Exchange believes that the conditions set forth in proposed NYSE Arca Equities Rule 8.600, Commentary .01(b), including requirements regarding amount outstanding, weighting, number of components of non-affiliated issuers, and the alternative conditions set forth in Rule 8.600, Commentary .01(b)(4) would deter manipulation in a manner similar to the criteria currently applicable to index-based ETFs.

Importantly, the criteria applied to equity and fixed income holdings would be pertinent for listed or over-the counter (“OTC”) derivatives to the extent such derivatives are used to gain exposure to individual equities, fixed income securities or indexes of such securities. In such case, proposed Commentary .01(f) would provide that over-the-counter or listed derivatives exposure would be required to meet the proposed equity and fixed income criteria in Commentary .01(a) and .01(b), respectively. The Exchange believes this would facilitate use of derivatives based on fixed income or equity securities or indexes that are themselves comprised of liquid, well-capitalized, actively-traded securities. In addition, with respect to listed derivatives, in the aggregate at least 90% of the weight of such holdings invested in futures and exchange-traded options would be futures and exchange-traded options whose principal market

applicable listing requirements, will permit the listing and trading only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation.”; 55437 (March 9, 2007) (SR-Amex-2006-118) (notice of filing of Amendment Nos. 2 and 3 to proposed rule change relating to generic listing standards for series of Portfolio Depositary Receipts and Index Fund Shares based on fixed income indexes and accelerated approval of proposed rule change), stating that “[t]hese requirements are designed, among other things, to require that components of an index or portfolio underlying the ETF are adequately capitalized and sufficiently liquid, and that no one security dominates the index. The Commission believes that these standards are reasonably designed to ensure that a substantial portion of any underlying index or portfolio consists of securities about which information is publicly available, and that when applied in conjunction with the other applicable listing requirements, will permit the listing and trading only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation.”

⁴ See Securities Exchange Act Release No. 54106 (July 6, 2006), 71 FR 39534 (July 13, 2006) (File No. S7-07-06) (the “Joint Rules Release”).

is a member of the Intermarket Surveillance Group or is a market with which the Exchange has a comprehensive surveillance sharing agreement.

Other elements of the proposed generic rules that the Exchange believes would deter manipulation include the following:

- The proposed criteria would apply on both an initial and continual basis.
- All current requirements of NYSE Arca Equities Rule 8.600 (except for current Commentary .01) would apply to generically-listed series of Managed Fund Shares, including rules related to initial and continued listing, the Disclosed Portfolio, the Portfolio Indicative Value, suspension of trading or removal from listing, trading halts, requirements for erecting a “fire wall” between an investment adviser and an affiliated broker-dealer, and other requirements of Rule 8.600.
- Rule 8.600(c)(2) would be amended to foster transparency of a fund’s assets by requiring website disclosure of specific information regarding a fund’s Disclosed Portfolio, including, as applicable, descriptions and identifiers, assets underlying derivatives holdings, options strike prices, quantities, maturity date, market value, percentage weighting in the portfolio, and other information.⁵

The Commission’s Notice also requests comment on the sources of pricing information (both intraday and end-of-day) available for centrally-cleared OTC Derivatives, and the sources of pricing information (both intraday and end-of-day) available for non-centrally-cleared OTC Derivatives. The Notice also requests comments on whether the answers to these questions depend upon the underlying reference asset.

With respect to centrally-cleared swaps and non-centrally-cleared swaps regulated by the Commodity Futures Trading Commission (“CFTC”)⁶, the Dodd-Frank Act mandates that swap information be reported to swap data repositories (SDRs).⁷ SDRs provide a central facility for swap data reporting and recordkeeping and are required to comply with data standards set by the CFTC, including real-time public reporting of swap transaction data to a derivatives clearing

⁵ The website disclosure requirements in the proposed amendments to NYSE Arca Equities Rule 8.600(c)(2) are similar to those previously approved by the Commission for issues of Managed Fund Shares that may hold derivative instruments. See, e.g., Securities Exchange Act Release No. 73908 December 22, 2014), 79 FR 78533 (December 30, 2014) (SR-NYSEArca-2014-85) (order approving proposed rule change relating to the listing and trading of shares of the PIMCO Low Duration Investment Grade Corporate Bond Active Exchange-Traded Fund under NYSE Arca Equities Rule 8.600).

⁶ Pursuant to the Dodd-Frank Act, OTC and centrally-cleared swaps are regulated by the CFTC, with the exception of security-based swaps, which are regulated by the Commission.

⁷ The following entities are provisionally registered with the CFTC as SDRs: BSDR LLC, Chicago Mercantile Exchange, Inc., DTCC Data Repository, and ICE Trade Vault.

organization or swap execution facility (“SEF”).⁸ SDRs require real-time reporting of all OTC and centrally cleared derivatives, including public reporting of the swap price and size. The parties responsible for reporting swaps information are CFTC-registered swap dealers (“RSDs”), major swap participants, and SEFs. If swap counterparties do not fall into the above categories, then one of the parties to the swap must report the trade to the SDR.

Cleared swaps regulated by the CFTC must be executed on a Designated Contract Market (DCM) or SEF. Such cleared swaps have the same reporting requirements as futures, including end-of-day price, volume, and open interest. As noted in the Exchange’s proposed rule change, there are currently five categories of swaps eligible for central clearing: interest rate swaps; credit default swaps; foreign exchange swaps; equity swaps; and commodity swaps.

CFTC swaps reporting requirements require public dissemination of, among other items, product ID (if available); asset class; underlying reference asset, reference issuer, or reference index; termination date; date and time of execution; price, including currency; notional amounts, including currency; whether direct or indirect counterparties include a RSD; whether cleared or un-cleared; and Platform ID of where the contract was executed (if applicable).

With respect to security-based swaps regulated by the Commission, the Commission has adopted Regulation SBSR under the Act implementing requirements for regulatory reporting and public dissemination of security-based swap transactions set forth in Title VII of the Dodd-Frank Act. Regulation SBSR provides for the reporting of security-based swap information to registered security-based swap data repositories (“registered SDRs”) or the Commission, and the public dissemination of security-based swap transaction, volume, and pricing information by registered SDRs.⁹

Price information relating to forwards, spot currency, and OTC options will be available from major market data vendors.

Please contact Michael Cavalier, Counsel, NYSE Group, Inc. at [REDACTED] with any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to be the initials 'MJ' or similar, written in a cursive style.

⁸ Approximately 21 entities currently are temporarily registered with the CFTC as SEFs, including ICE Swap Trade, LLC.

⁹ See Securities Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14564 (March 19, 2015) (Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information).