

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79914; File No. SR-NYSEArca-2016-120)

February 1, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the ForceShares Daily 4X US Market Futures Long Fund and ForceShares Daily 4X US Market Futures Short Fund under Commentary .02 to NYSE Arca Equities Rule 8.200

I. Introduction

On October 17, 2016, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) 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 ForceShares Daily 4X US Market Futures Long Fund (“Fund” or “Long Fund”) and ForceShares Daily 4X US Market Futures Short Fund (“Fund” or “Short Fund” and, together with the Long Fund, the “Funds”) under Commentary .02 to NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the Federal Register on November 4, 2016.³ On December 14, 2016, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On December 22, 2016, the Exchange filed Amendment

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 79201 (October 31, 2016), 81 FR 76977.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 79550, 81 FR 92892 (December 20, 2016). The Commission designated February 2, 2017, as the date by which it shall approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁶ The Commission has received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change.

II. Exchange's Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes to list and trade the Shares under Commentary .02 to NYSE Arca Equities Rule 8.200, which governs the listing and trading of Trust Issued Receipts on the Exchange. Each Fund is a commodity pool that is a series of the ForceShares Trust. ForceShares LLC will be the sponsor of the Funds ("Sponsor"). ALPS Distributors, Inc. will be the marketing agent for the Shares. U.S. Bank National Association will be the Funds' custodian ("Custodian") and will hold the Funds' cash and cash equivalents. The Custodian will also be the registrar and transfer agent for the Shares.

The Long Fund's primary investment objective is to seek daily investment results, before fees and expenses, that correspond to approximately four times (400%) the daily performance, and the Short Fund's primary investment objective is to seek daily investment results, before fees and expenses, that correspond to approximately four times the inverse (-400%) of the daily performance, of the closing settlement price for lead month (i.e., the "near month" or next-to-expire) Standard & Poor's 500 Stock Price Index Futures contracts ("Big S&P Contracts") that

⁶ In Amendment No. 1, the Exchange: (a) clarified the permissible investments of the Funds; (b) added that a creation basket may not differ in size from a redemption basket, and that basket sizes may be between 10,000 and 100,000 Shares; (c) modified when purchase orders may be rejected, when the right of redemption may be suspended, and when the redemption settlement date may be postponed; and (d) made various technical changes. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2016-120/nysearca2016120-1442225-130027.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

are traded on the Chicago Mercantile Exchange. Each Fund will not seek to achieve its primary investment objective over a period of time greater than a single day.

Under normal market condition, each Fund will seek to achieve its primary investment objective by investing primarily in Big S&P Contracts such that daily changes in the Fund's net asset value ("NAV") are expected to closely track the changes, in the case of the Long Fund, or the inverse of the changes, in the case of the Short Fund, in the closing settlement price of the lead month Big S&P Contracts ("Benchmark") on a leveraged basis. Each Fund will also invest in E-Mini™ S&P 500® Futures contracts ("E-Minis" and, together with Big S&P Contracts, "Primary S&P Interests") to seek to achieve its primary investment objective where position limits prevent further purchases of Big S&P Contracts. Each Fund expects to apply approximately 10-25% of its portfolio toward obtaining exposure to futures contracts, all of which would be lead month or deferred month Primary S&P Interests. Each Fund may also invest in swap agreements (cleared and over-the-counter) referencing Primary S&P Interests or the S&P 500 Index, and over-the-counter forward contracts referencing Primary S&P Interests ("Other S&P Interests"). Each Fund may invest in Other S&P Interests in an amount up to 25% of its net assets.

Each Fund may acquire or dispose of Stop Options on Primary S&P Interests in pursuing its secondary investment objective of recouping a small amount of a Fund's losses that may result from large movements in the Benchmark. Stop Options are expected to average less than approximately 5% of each Fund's portfolio.⁸

⁸ Not more than 10% of the net assets of each Fund in the aggregate invested in futures contracts or exchange-traded options contracts will consist of futures contracts or exchange-traded options contracts whose principal market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

On a day-to-day basis, each Fund will invest the remainder of its assets in money market funds, depository accounts with institutions with high quality credit ratings, or short-term debt instruments that have terms-to-maturity of less than 397 days and exhibit high quality credit profiles, including U.S. government securities and repurchase agreements (collectively, “Cash Equivalents”). Cash Equivalents are expected to comprise approximately 70-85% of each Fund’s portfolio.⁹

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2016-120 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁰ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹¹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed

⁹ For more information regarding the Funds and the Shares, see Amendment No. 1, supra note 6.

¹⁰ 15 U.S.C. 78s(b)(2)(B).

¹¹ Id.

to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.”¹²

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.¹³

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in Amendment No. 1,¹⁴ in addition to any other comments they may wish to submit about the proposed rule change. The Commission

¹² 15 U.S.C. 78f(b)(5).

¹³ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

¹⁴ See supra note 6.

notes that the proposal sets forth certain conditions relating to the creation and redemption of baskets of Shares. In particular, under the proposal, “[t]he Sponsor may, in its discretion, suspend the right of redemption, or postpone the redemption settlement date with respect to a Fund...for such other period as the Sponsor determines to be necessary for the protection of a Fund’s Shareholders....”¹⁵ What are commenters’ views on the scope of this discretion with respect to redemptions? Is the discretion likely to have an effect on the arbitrage mechanisms and, if so, how?

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 Number SR-NYSEArca-2016-120 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2016-120. 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

¹⁵ See Amendment No. 1, supra note 6, at 21.

withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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-2016-120 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

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Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(57).