

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71232; File No. SR-NYSEArca-2013-118)

January 3, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments Nos. 1 and 2, to List and Trade Shares of the Market Vectors Short High-Yield Municipal Index ETF Under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02

I. Introduction

On October 30, 2013, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the Market Vectors Short High-Yield Municipal Index ETF (“Fund”) under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02. On November 8, 2013, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the Federal Register on November 19, 2013.<sup>4</sup> On December 31, 2013, the Exchange filed Amendment No. 2 to the proposal.<sup>5</sup> The

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

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

<sup>3</sup> In Amendment No. 1, the Exchange: (1) deleted a sentence relating to the Fund holding depositary receipts and to-be-announced transactions; (2) added a phrase that states that the Administrator, through the National Securities Clearing Corporation (“NSCC”), will make available Indicative Per Share Portfolio Value on a continuous basis throughout the day; (3) made clarifying changes to reflect that the Fund will limit itself to holding up to 15% of its net assets in illiquid assets, not just illiquid securities; and (4) modified certain cross-references.

<sup>4</sup> See Securities Exchange Act Release No. 70871 (November 14, 2013), 78 FR 69503 (“Notice”).

<sup>5</sup> In Amendment No. 2, the Exchange deleted a sentence to clarify that Barclays Capital, Inc. (“Index Provider”), which publishes Barclays Municipal High Yield Short Duration Index (1) is a registered broker-dealer and has implemented a fire wall with respect to its relevant personnel regarding access to information concerning the composition and/or changes to the Barclays Municipal High Yield Short Duration Index; (2) is affiliated with

Commission received no comments on the proposal. This order approves on an accelerated basis the proposed rule change, as modified by Amendments No. 1 and 2 thereto.

## II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units (“Units”) based on fixed income securities indexes. The Fund is a series of the Market Vectors ETF Trust (“Trust”).<sup>6</sup> Van Eck Associates Corporation will be the investment adviser (“Adviser”) for the Fund. Van Eck Securities Corporation will be the Fund’s distributor and administrator for the Fund (“Administrator”) and will be responsible for certain clerical, recordkeeping and/or bookkeeping services. The Bank of New York Mellon will be the custodian of the Fund’s assets and provides transfer agency and fund accounting services to the Fund.

The investment objective of the Fund will be to seek to replicate as closely as possible, before fees and expenses, the price and yield performance of the Barclays Municipal High Yield Short Duration Index (“Short High Yield Index” or “Index”). According to the Exchange, the Advisor will attempt to approximate the investment performance of the Index using a “passive”

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a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Barclays Municipal High Yield Short Duration Index; and (3) as well as its broker-dealer affiliate have implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Barclays Municipal High Yield Short Duration Index.

<sup>6</sup> On August 27, 2012, the Trust filed an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) and the Investment Company Act of 1940 (“1940 Act”) (15 U.S.C. 80a-1) (File Nos. 333-123257 and 811-10325) (the “Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28021 (October 24, 2007) (File No. 812- 13426) (“Exemptive Order”).

or indexing investment approach, and expects that, over time, the correlation between the Fund's performance (before fees and expenses) and that of the Index will be 95% or better. The Adviser will utilize a "sampling" methodology to achieve the Fund's objective.

A. Primary Investments

Normally,<sup>7</sup> the Fund will invest at least 80% of its total assets in securities that compose the Short High Yield Index. Depositary receipts or to-be-announced transactions representing securities in the Short High Yield Index may be used by the Fund in seeking performance that corresponds to the Short High Yield Index, and in managing cash flows and may count towards the Fund's 80% policy.

B. Other Investments

While the Fund normally will invest at least 80% of its total assets in securities that compose the Index, the Fund may invest its remaining assets in other financial instruments, as described below.

The Fund may invest in securities not included in the Short High Yield Index, money market instruments, including repurchase agreements or other funds which invest exclusively in money market instruments, convertible securities, structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular stock or stock index), and certain derivative instruments that are mentioned below. The Fund may also invest, to the extent permitted by the

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<sup>7</sup> According to the Exchange, the word "normally" means, without limitation, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

1940 Act, in other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange-traded funds (“ETFs”).<sup>8</sup>

The Fund may invest in repurchase agreements with commercial banks, brokers or dealers to generate income from its excess cash balances and to invest securities lending cash collateral.

The Fund may use exchange-traded futures contracts and exchange-traded or over-the-counter options thereon, together with positions in cash and money market instruments, to simulate full investment in the Index.

The Fund may use cleared or non-cleared index, interest rate or credit default swap agreements. Swap agreements are contracts between parties in which one party agrees to make payments to the other party based on the change in market value or level of a specified index or asset.

The Fund may invest in exchange-traded warrants, which are equity securities in the form of options issued by a corporation which give the holder the right to purchase stock, usually at a price that is higher than the market price at the time the warrant is issued.

The Fund may invest in participation notes, which are issued by banks or broker-dealers and are designed to offer a return linked to the performance of a particular underlying equity security or market.

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<sup>8</sup> While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

The Fund will only enter into transactions in derivative instruments with counterparties that the Adviser reasonably believes are capable of performing under the contract and will post as collateral as required by the counterparty.<sup>9</sup>

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, in accordance with Commission guidance.<sup>10</sup> The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. According to the Exchange, illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Additional information regarding the Shares, the Fund, and the Index, including 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

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<sup>9</sup> According to the Exchange, the Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Adviser will review approved counterparties using various factors, which may include the counterparty's reputation, the Adviser's past experience with the counterparty and the price/ market actions of debt of the counterparty.

<sup>10</sup> According to the Exchange, in reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

found in the Notice,<sup>11</sup> the Registration Statement,<sup>12</sup> and on the website for the Fund ([www.marketvectorsetfs.com](http://www.marketvectorsetfs.com)).

C. The Need for the Proposed Rule Change and Exchange Representations Related Thereto

Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) permits the generic listing of Units that meet all of the initial and continued listing requirements of the rule. According to the Exchange, the Shares satisfy all of the generic listing criteria except for those set forth in Commentary .02(a)(2), which requires that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of \$100 million or more. Accordingly, the Exchange filed this proposed rule change seeking to list and trade the Shares.

The Exchange represents that: (1) except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) 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 (3) the Trust is required to comply with Rule 10A-3 under the Act<sup>13</sup> for the initial and continued listing of the Shares. In addition, 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 and the applicable Intraday Indicative Value (“IIV”),<sup>14</sup> rules governing the trading of equity securities, trading hours, trading halts,

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<sup>11</sup> See supra, note 4.

<sup>12</sup> See supra, note 6.

<sup>13</sup> 17 CFR 240.10A-3.

<sup>14</sup> The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange’s Core Trading Session of 9:30 a.m. to 4:00 p.m.,

surveillance, and the Information Bulletin (“Bulletin”) to Equity Trading Permit Holders (“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.<sup>15</sup>

### III. Discussion and Commission’s Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>16</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>17</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>18</sup> which requires, among other things, that the Exchange’s rules be 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.

The Commission notes that the Exchange represents that the Shares will comply with all requirements applicable to Units including, but not limited to, requirements relating to the

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Eastern time. The Exchange states that it understands that several major market data vendors display or make widely available IIVs taken from the Consolidated Tape Association (“CTA”) or other data feeds.

<sup>15</sup> See, e.g., Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR-NYSEArca-2007-36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 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); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (order approving rules for listing and trading of Units).

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</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>18</sup> 15 U.S.C. 78f(b)(5).

dissemination of key information such as the value of the Index and the applicable IIV,<sup>19</sup> rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the 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.<sup>20</sup>

Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares satisfy all other requirements for generic listing under the rule. Although, according to the Exchange only 15.66% of the weight of the Index components, as of November 27, 2012, had a minimum original principal amount outstanding of \$100 million or more, the Exchange provided statistical support for its assertion that Index is sufficiently broad-based to deter potential manipulation. According to the Exchange, the most heavily weighted component of the Index represents 2.67% of the weight of the Index, and the five most heavily weighted components represent 10.67% of the weight of the Index.<sup>21</sup> Additionally, the Exchange states: (1) the total dollar amount outstanding of issues in the Index was approximately \$757 billion; (2) the average dollar amount outstanding of issues in the Index was approximately \$394 million; and (3) the

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<sup>19</sup> The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session of 9:30 a.m. to 4:00 p.m., Eastern time. The Exchange states that it understands that currently several major market data vendors display and/or make widely available IIVs taken from the CTA or other data feeds.

<sup>20</sup> See, e.g., Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR-NYSEArca-2007-36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 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); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (order approving rules for listing and trading of Units).

<sup>21</sup> See Notice, supra note 4, 78 FR 69505. The Commission notes that Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) requires that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) represent more than 30% of the weight of the index or portfolio and that the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.



Index is composed of approximately 1,935 issues and 530 unique issuers.<sup>22</sup> Additionally, the Exchange represents that the Index Provider, a registered broker-dealer, has implemented a fire wall with respect to its relevant personnel regarding access to information concerning the composition of or changes to the Index. The Index Provider is also affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the Index. The Index Provider and its broker-dealer affiliate have implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.<sup>23</sup> For these reasons, the Commission believes that the Exchange has met its burden of showing that the proposed rule change is consistent with Section 6(b)(5) of the Act which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>24</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the CTA high-speed line. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares

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<sup>22</sup> See Notice, *supra* note 4, 78 FR 69505.

<sup>23</sup> See *supra* note 7.

<sup>24</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The IIV of the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session (9:30 a.m., Eastern time to 4:00 p.m., Eastern time), as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (c).<sup>25</sup> The current value of the Index will be widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (b)(ii). The components of the Index and their percentage weighting will be available from major market data vendors. In addition, the portfolio of securities held by the Fund will be disclosed daily on the Fund's website at [www.marketvectorsetfs.com](http://www.marketvectorsetfs.com) after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. The Administrator, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time), the list of securities needed to create Shares, as well as the list of securities to be delivered in connection with Share redemptions.

In support of this proposal, the Exchange has made representations, including:

- (1) The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.
- (2) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 5.2(j)(3) and 5.5(g)(2).
- (3) The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect

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<sup>25</sup> According to the Exchange, several major market data vendors display or make widely available IIVs taken from CTA or other data feeds.

violations of Exchange rules and applicable federal securities laws.

- (4) The Financial Industry Regulatory Authority, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.
- (5) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of its net assets are held in illiquid securities.<sup>26</sup>

This approval order is based on the Exchange's representations. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>27</sup> and Section 11A(a)(1)(C)(iii) of the Act<sup>28</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>26</sup> See Amendment No. 1, *supra* note 3.

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

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 No. SR-NYSEArca-2013-118 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-NYSEArca-2013-118. 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 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 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 No. SR-NYSEArca-2013-118 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

As discussed above,<sup>29</sup> through Amendment No. 2, the Exchange revises the proposed rule change by providing greater detail about how the Funds' NAVs are calculated and the availability of price information regarding the Funds' holdings. The Commission believes that Amendment No. 2 provides more support for the Exchange's contention that its proposed rule change consistent with the Section 6(b)(5) of the Act.<sup>30</sup> In particular, Amendment No. 2 clarified that: (1) the Index Provider is a registered broker-dealer and has implemented a fire wall with respect to its relevant personnel regarding access to information concerning the composition and/or changes to the Index; (2) the Index Provider is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Index; and (3) the Index Provider and its broker-dealer affiliate have implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> to approve the proposed rule change, as modified by Amendments Nos. 1 and 2, prior to the 30th day after the date of publication of notice in the Federal Register.

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<sup>29</sup> See note 5, *supra*.

<sup>30</sup> 15 U.S.C. 78s(b)(5).

<sup>31</sup> 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-NYSEArca-2013-118) as modified by Amendments No. 1 and 2 thereto 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>33</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).