

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79834; File No. SR-NYSEArca-2017-01)

January 18, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending the NYSE Arca Equities Rule 5 and Rule 8 Series

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)², and Rule 19b-4 thereunder,³ notice is hereby given that on January 6, 2017, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

The Exchange proposes to amend the NYSE Arca Equities Rule 5 and Rule 8 series to add additional continued listing standards as well as clarify the procedures it will undertake when an ETP is noncompliant with applicable rules. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, 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, the self-regulatory organization 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 those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend the listing rules for ETPs in the Rule 5 and Rule 8 series of the NYSE Arca Equities rule book to add additional continued listing standards as well as clarify the procedures it will undertake when an ETP is noncompliant with applicable rules. The proposed rule changes are being made in concert with discussions with the SEC. Staff (“Staff”) of the SEC’s Division of Trading and Markets (“T&M”) requested that the Exchange adopt certain additional continued listing standards for ETPs.

As a result, the proposed amended rules reflect the guidance provided by T&M Staff to clarify that most initial listing standards, as well as certain representations included in Exchange rule filings under SEC Rule 19b-4 to list an ETP (“Exchange Rule Filings”), are also considered continued listing standards. The Exchange Rule Filing representations that will also be required to be maintained on a continuous basis include (a) the description of the fund and (b) the fund’s investment restrictions.

The proposed rule changes require that ETPs listed by the Exchange without an Exchange Rule Filing must maintain the initial index or reference asset criteria on a continued basis. For example, in the case of a domestic equity index, these criteria generally include: (a) stocks with 90% of the weight of the index must have a minimum market value of at least \$75 million; (b) stocks with 70% of the weight of the index must have a minimum monthly trading volume of at least 250,000 shares; (c) the most heavily weighted component cannot exceed 30% of the weight of the index, and the five most heavily weighted stocks cannot exceed 65%; (d)

there must be at least 13 stocks in the index; and (e) all securities in the index must be listed in the U.S. There are similar criteria for international indexes, fixed-income indexes and indexes with a combination of components.

If an Exchange Rule Filing is made to list a specific ETP, the proposed rule change requires that the issuer of the security comply on a continuing basis with any statements or representations contained in the applicable rule proposal, including (a) the description of the portfolio and (b) limitations on portfolio holdings or reference assets. The NYSE Arca listing rules will also be modified to require that issuers of securities listed under the Rule 5 and Rule 8 series must notify the Exchange regarding instances of non-compliance. In addition, while listed ETPs are currently subject to the delisting process in Rule 5.5(m), the rules will be clarified to make this explicit.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(5)⁵ of the Act, in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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 Exchange also believes that the proposed rule change is consistent with Section 6(b)(5)⁶ of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(5).

The proposed rule changes accomplish these objectives by enhancing Exchange rules by clarifying that most initial listing standards, as well as certain representations included in Exchange Rule Filings to list an ETP, are considered continued listing standards. Additionally, the NYSE Arca listing rules will be modified to require that issuers of securities listed under the Rule 5 and Rule 8 series must notify the Exchange regarding instances of non-compliance and to clarify that deficiencies will be subject to the delisting process in Rule 5.5(m). The Exchange believes that these amendments will enhance the NYSE Arca listing rules, thereby serving to improve the national market system and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that the proposed rule change to amend the listing rules for ETPs in the NYSE Arca Rule 5 and Rule 8 series and the related notification requirement will have no impact on competition. Furthermore, since T&M Staff has provided the same guidance regarding ETP continued listing requirements to all exchanges, the Exchange believes that there will be no effect on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 Number SR-NYSEArca-2017-01 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2017-01. 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 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-2017-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Eduardo A. Aleman
Assistant Secretary

⁷ 17 CFR 200.30-3(a)(12).