

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80415; File No. SR-NYSEArca-2017-30)

April 10, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend Commentary .01 and Commentary.02 to NYSE Arca Equities Rule 5.2(j)(3) to Provide for the Inclusion of Cash in an Index Underlying a Series of Investment Company Units

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 29, 2017, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .01 and Commentary.02 to NYSE Arca Equities Rule 5.2(j)(3) to provide for the inclusion of cash in an index underlying a series of Investment Company Units. The proposed change is available on the Exchange’s website at [www.nyse.com](http://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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .01 and Commentary.02 to NYSE Arca Equities Rule 5.2(j)(3) to provide for the inclusion of cash in an index underlying a series of Investment Company Units (“Units”).<sup>4</sup> NYSE Arca Equities Rule 5.2(j)(3) provides “generic” criteria permitting listing and trading of Units pursuant to Rule 19b-4(e) under the Act<sup>5</sup> when the underlying index or portfolio satisfies the criteria set forth in NYSE Arca Equities Rule 5.2(j)(3).

The Exchange understands that certain index providers have included, or intend to include, cash as a component in indexes that also include equity or fixed income securities components. An index provider may, for example, provide a certain index weighting allocation to cash or may periodically change an allocation to cash based on the index provider’s assessment of market risk associated with other asset classes in the applicable index.<sup>6</sup>

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<sup>4</sup> Investment Company Units are securities that represent interests in a unit investment trust, an open-end management investment company securities or a similar entity registered under the investment Company Act of 1940 (15 U.S.C. 80a-1). A series of Investment Company Units seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>5</sup> 17 CFR 240.19b-4(e).

<sup>6</sup> The Exchange notes that shares of the following exchange-traded funds based on indexes that include cash as a component are currently listed and traded on the BATS BZX Exchange, Inc.: QuantX Risk Managed Growth ETF; QuantX Risk Managed Multi-Asset Income ETF; QuantX Risk Managed Multi-Asset Total Return ETF; and QuantX Risk Managed Real Return ETF.

Accordingly, the Exchange proposes to amend Commentaries .01 and .02 to permit listing and trading of Units based on an index or portfolio that includes cash as a component. While Units, like mutual funds, will generally hold an amount of cash, NYSE Arca Equities Rule 5.2(j)(3) currently provides that components of an index or portfolio underlying a series of Units consist of securities – namely, US Component Stocks, Non-US Component Stocks, Fixed Income Securities or a combination thereof. As described below, the proposed amendments to Commentary .01 and Commentary .02 to Rule 5.2(j)(3) would permit inclusion of cash as an index or portfolio component.

Currently, Commentary .01(a)(A) provides that an underlying index or portfolio of US Component Stocks<sup>7</sup> must meet specified criteria. The Exchange proposes to amend Commentary .01(a)(A) to provide that the components of an index or portfolio underlying a series of Units may also include cash. In addition, the percentage weighting criteria in Commentary .01(a)(A)(1) through (4) each would be amended to make clear that such criteria would be applied only to the US Component Stocks portion of an index or portfolio. For example, in applying the criteria in proposed Commentary .01(a)(A)(1),<sup>8</sup> if 85% of the weight of an index consists of US Component Stocks and 15 % of the index weight is cash, the requirement that component stocks accounting for 90% of the weight of the index or portfolio have a minimum market value of \$75 million minimum would be applied only to the 85% portion consisting of US Component Stocks.

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<sup>7</sup> Rule 5.2(j)(3) defines “US Component Stock” as an equity security that is registered under Sections 12(b) or 12(g) of the Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

<sup>8</sup> Proposed Commentary .01(a)(A)(1) would provide that component stocks (excluding Units and Derivative Securities Products) that in the aggregate account for at least 90% of the weight of the US Component Stocks portion of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum market value of at least \$75 million.

Commentary .01 (a)(B), which relates to international or global indexes or portfolios, would be amended to provide that components of an index or portfolio underlying a series of Units may consist of (a) only Non-US Component Stocks, (b) Non-US Component Stocks and cash, (c) both US Component Stocks and Non-US Component Stocks, or (d) US Component Stocks, Non-US Component Stocks and cash. In addition, the percentage weighting criteria in Commentary .01(a)(B)(1) through (4) each would be amended to make clear that such criteria would be applied only to the combined US and Non-US Component Stocks portions of an index or portfolio.

Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) provides generic criteria applicable to listing and trading of Units whose underlying index or portfolio includes Fixed Income Securities.<sup>9</sup> Currently, Commentary .02(a)(1) provides that an underlying index or portfolio must consist of Fixed Income Securities. The Exchange proposes to amend Commentary .02(a)(1) to provide that the index or portfolio may also include cash. In addition, the percentage weighting criteria in Commentary .02(a)(2), (a)(4) and (a)(6) each would be amended to make clear that such criteria would be applied only to the Fixed Income Securities portion of an index or portfolio. For example, in applying the criteria in proposed Commentary .01(a)(2),<sup>10</sup> if 90% of the weight of an index or portfolio consists of Fixed Income Securities and 10% of the index weight is cash, the requirement that Fixed Income Securities accounting for at

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<sup>9</sup> As defined in Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3), Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof.

<sup>10</sup> Proposed Commentary .01(a)(2) would provide that Fixed Income Security components that in aggregate account for at least 75% of the Fixed Income Securities portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of \$100 million or more.

least 75% of the weight of the index or portfolio have a minimum original principal amount outstanding of \$100 million would be applied only to the 90% portion consisting of Fixed Income Securities.

The Exchange notes that the Commission has previously approved Exchange rules allowing portfolios held by issues of Managed Fund Shares (actively-managed exchange-traded funds) under Commentary .01 to NYSE Arca Equities Rule 8.600 to include cash.<sup>11</sup> Like the provision in Commentary .01(c) to Rule 8.600, which states that there is no limit to cash holdings by an issue of Managed Fund Shares listed under Commentary .01 to Rule 8.600, there is no proposed limit to the weighting of cash in an index underlying a series of Units. The Exchange believes this is appropriate in that cash does not, in itself, impose investment or market risk.

The Exchange believes the proposed amendments, by permitting inclusion of cash as a component of indexes underlying series of Units, would provide issuers of Units with additional choice in indexes permitted to underlie Units that are permitted to list and trade on the Exchange pursuant to the Rule 19b-4(e), which would enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the proposed amendments would provide investors with greater ability to hold Units based on underlying indexes that may accord more closely with an investor's assessment of market risk, in that some investors may view cash as a desirable component of an underlying index under certain market conditions.

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<sup>11</sup> See Commentary .01(c) to NYSE Arca Equities Rule 8.600.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>13</sup> in particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange notes that, as described above, the percentage weighting criteria in Commentary .01(a)(B)(1) through (4) to Rule 5.2(j)(3) each would be amended to make clear that such criteria would be applied only to the combined US and Non-US Component Stocks portions of an index or portfolio. The percentage weighting criteria in Commentary .02(a)(2), (a)(4) and (a)(6) to Rule 5.2(j)(3) each would be amended to make clear that such criteria would be applied only to the Fixed Income Securities portion of an index or portfolio. Such applications of the proposed amendments would assure that the weighting requirements in Commentary .01 and Commentary .02 would continue to be applied only to securities in an index or portfolio, and would not be diluted as a result of inclusion of a cash component. In

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

addition, the addition of cash as a permitted component of indexes underlying Units listed and traded on the Exchange pursuant to Rule 19b-4(e) does not raise regulatory issues because cash does not, in itself, impose investment or market risk and is not susceptible to manipulation.

The Exchange believes the proposed amendments, by permitting inclusion of cash as a component of indexes underlying series of Units, would provide issuers of Units with additional choice in indexes permitted to underlie Units that are permitted to list and trade on the Exchange pursuant to the Rule 19b-4(e), which would enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the proposed amendments would provide investors with greater ability to hold Units based on underlying indexes that may accord more closely with an investor's assessment of market risk.

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

In accordance with Section 6(b)(8) of the Act,<sup>14</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would permit Exchange listing and trading under Rule 19b-4(e) of Units based on indexes that include cash as a component, which would enhance competition among market participants, to the benefit of investors and the marketplace.

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

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<sup>14</sup> 15 U.S.C. 78f(b)(8).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2017-30 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-2017-30. 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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2017-30, 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.<sup>15</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).