

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70124; File No. SR-NYSEARCA-2013-78)

August 6, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 5.3(i)(1)(i) to Specify the Procedures to be Followed if a Listed Derivative Securities Product or a Listed Structured Product is Based on An Index or Portfolio of Securities and Such Index or Portfolio is Modified or Replaced

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 July 25, 2013, 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, II, and III 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 NYSE Arca Equities Rule 5.3(i)(1)(i) to specify the procedures to be followed if a listed Derivative Securities Product or a listed Structured Product is based on an index or portfolio of securities and such index or portfolio is modified or replaced. The text of 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 its rules to clarify Exchange policies with respect to changes in the index or portfolio on which a listed security is based. The proposed rule change is consistent with the policies currently applied under existing Exchange rules. In particular, the Exchange proposes to adopt specific procedures to be followed when a Derivative Securities Product⁴ or a Structured Product⁵ based on an index or portfolio of securities is listed on the Exchange and: (1) the value of such index or portfolio is no longer calculated or available and a new index or portfolio is substituted; or (2) such index or portfolio is replaced with a new index or portfolio from the same or a different index provider; or (3) the index or portfolio is significantly modified (including, but not limited to, a significant modification to the index

⁴ “Derivative Securities Products” are (i) investment company units listed under NYSE Arca Equities Rule 5.2(j)(3) Commentary .01(a)(A)(1) and (ii) securities defined in Section 2 of NYSE Arca Equities Rule 8.

⁵ Pursuant to NYSE Arca Equities Rule 5.1(b)(17), the term “Structured Products” means products that are derived from and/or based on a single security or securities, a basket of stocks, an index, a commodity, debt issuance and/or a foreign currency, among other things. Structured Products include index and equity linked notes, term notes and units generally consisting of a contract to purchase equity and/or debt securities at a specified time.

methodology, a change in the index provider or a change in control of the index provider) (each of (1), (2) and (3), a “Material Index or Portfolio Change”).

It is the Exchange’s long-standing policy to require the issuer of any Derivative Securities Product or Structured Product to submit an executed Supplemental Listing Application and to obtain authorization from NYSE Regulation prior to the effective date of any change in the index or portfolio on which such security is based. Generally, NYSE Regulation requires at least two weeks to review and to approve a Supplemental Listing Application. The Exchange reminds issuers of this policy in an annual reminder letter sent to all listed issuers which summarizes important Exchange corporate governance and notice requirements. This current policy is appropriate in light of NYSE Arca Equities Rule 5.3(i)(1)(i)(N), which requires listed issuers to “provide sufficient advance application for the listing of securities in substitution for securities, the obligations, rights or privileges of which have been altered by merger, acquisition, consolidation or other corporate action, unless specifically exempted by the [Exchange].” The Exchange also has the authority to require this notice pursuant to NYSE Arca Equities Rule 5.3(i)(1)(i)(O), which requires listed issuers to furnish any information concerning their businesses as the Exchange may reasonably require.

The Exchange notes that a Derivative Securities Product or Structured Product based on an index or portfolio of securities that is listed under a generic listing standard or pursuant to a rule filing approved by the Commission is authorized for continued listing only so long as it meets the terms of the applicable generic listing standard or rule filing. In the event that a Material Index or Portfolio Change causes the applicable security to cease to be qualified for listing under the applicable generic listing standard or rule filing, then the Exchange does not have the authority to continue its listing unless such continued listing is authorized pursuant to a rule

filing declared immediately effective or approved by the Commission.⁶ Similarly, the Exchange is required to file a Form 19b-4(e) with the Commission whenever it lists a new Derivative Securities Product or Structured Product under a generic listing standard and it is the Exchange's existing practice to file a new Form 19b-4(e) if there is a Material Index or Portfolio Change in relation to such security in cases where the security as modified still meets the applicable generic listing standard.

The Exchange proposes to add a new paragraph (P) to NYSE Arca Equities Rule 5.3(i)(1)(i) to provide additional clarity to issuers of Derivative Securities Products and Structured Products with respect to Exchange rules and policy applicable in the event of any change in the index or portfolio on which a security is based would specify. If a Material Index or Portfolio Change occurs with respect to a listed security, the Exchange will not continue the listing of such security unless the new (or modified) index or portfolio meets the requirements for listing of the rule under which such security was originally listed, either pursuant to Rule 19b-4(e) under the Act (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval or immediate effectiveness of a filing pursuant to Section 19(b)(1) of the Act. In such circumstances, the Exchange will have sole discretion as to whether it chooses to submit a rule filing pursuant to Section 19(b)(1). If an issuer of a listed Derivative Securities Product or listed Structured Product effectuates a Material Index or Portfolio Change with respect to which approval of a rule filing pursuant to Section 19(b)(2) is required and such rule filing has not yet been approved or is not immediately effective, then the Exchange will immediately halt trading in the applicable security until such rule filing is approved. If at any

⁶ There can be no assurance that the Commission will approve a rule filing with respect to any specific Material Index or Portfolio Change. In the event that any such rule filing is not approved, the security in question will be delisted.

time it becomes clear, in the opinion of the Exchange, that such rule filing will not be approved by the Commission or become immediately effective, or the Exchange decides in its sole discretion to withdraw or not file such rule filing, the Exchange will immediately commence delisting procedures with respect to such security.

Proposed NYSE Arca Equities Rule 5.3(i)(1)(i)(P) would also require the issuer of any listed Derivative Securities Product or Structured Product to notify the Exchange no fewer than ten business days in advance of the effective date of any change or modification to the index or portfolio associated with such security and, if required by the Exchange, to make application for the continued listing of the security as so changed and to announce such change via a method acceptable under the Exchange's rule with respect to material news dissemination, NYSE Arca Equities Rule 5.3(i)(2). The proposed rule will advise issuers to consult with NYSE Regulation in advance of any Material Index or Portfolio Change which could cause the applicable security to cease to be qualified for continued listing without the approval or immediate effectiveness of a rule filing pursuant to Section 19(b)(1), in which case the proposed rule will advise issuers to provide adequate notice to the Exchange to provide sufficient time to submit an appropriate rule change prior to implementation of the Material Index or Portfolio Change, thereby avoiding any disruption in trading.

The proposed rule change is intended to ensure that the Exchange has appropriate notice of modifications to the index or portfolio on which a security is based that would give rise to the requirement to submit a new rule filing or to file a Form 19b-4(e). The proposal to require 10 business days' notice of a modification of the index or portfolio on which a security is based is consistent with the Exchange's longstanding policy requiring the issuer of any Derivative Securities Product or Structured Product to submit an executed Supplemental Listing Application

and to obtain authorization from NYSE Regulation prior to the effective date of any change in the index or portfolio on which such security is based. Generally, NYSE Regulation requires at least two weeks to review and to approve a Supplemental Listing Application. The Exchange reminds issuers of this policy annually in a letter summarizing important Exchange corporate governance and notice requirements disseminated to all listed issuers. The Exchange believes that this current policy is appropriate in light of NYSE Arca Equities Rule 5.3(i)(1)(i)(N), which requires listed issuers to “provide sufficient advance application for the listing of securities in substitution for securities, the obligations, rights or privileges of which have been altered by merger, acquisition, consolidation or other corporate action, unless specifically exempted by the [Exchange].” The Exchange also believes that it has the authority to require this notice pursuant to NYSE Arca Equities Rule 5.3(i)(1)(i)(O), which requires listed issuers to furnish any information concerning their businesses as the Exchange may reasonably require.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁷ of the Securities Exchange Act of 1934 (the “Act”),⁸ in general, and furthers the objectives of Section 6(b)(1) of the Act,⁹ in particular in that it is designed to comply, and to ensure that the Exchange enforces listed company compliance, with the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange believes that the proposed amendment is consistent with Section 6(b)(1) of the Act in that it simply clarifies the framework under which the Exchange will handle a Material Index or Portfolio Change in relation to a Derivative Securities Product or Structured Product. Pursuant to the Act, the Exchange does not have

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78a.

⁹ 15 U.S.C. 78f(b)(5).

authority to continue listing a security that ceases to be qualified for listing under an applicable generic listing standard or rule filing. In the event that a security ceases to so qualify, the proposed rule change merely sets forth the framework for how the Exchange will rectify the deficiency or ultimately commence delisting proceedings. In this regard, the proposed rule change is consistent with Section 6(b)(1) of the Act.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The sole purpose of the proposed rule filing is to enable the Exchange to effectively comply with its obligations under the Act and Commission rules with respect to the listing of Derivative Securities Products and Structured Products in the event of a Material Index or Portfolio Change and it therefore imposes no burden 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁴ of the Act to determine whether the proposed rule change should be approved or 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-2013-78 on the subject line.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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 Number SR-NYSEARCA-2013-78. 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-2013-78 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).