

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76645; File No. SR-NYSEArca-2015-74)

December 15, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Regarding a Change to the Underlying Index of the Market Vectors Short High Yield Municipal Index ETF

I. Introduction

On August 26, 2015, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to reflect a change to the reference index relating to the Market Vectors Short High Yield Municipal Index ETF (“Fund”). The Commission published notice of the proposed rule change in the Federal Register on September 16, 2015.³ On October 16, 2015, 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.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 75888 (September 10, 2015), 80 FR 55701 (“Notice”).

⁴ See Securities Exchange Act Release No. 76174, 80 FR 64027 (October 22, 2015). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated December 15, 2015 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

II. The Exchange's Description of the Proposal

The Commission approved listing and trading on the Exchange of shares (“Shares”) of the Fund under NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units (“Units”).⁵ Currently, the Shares are listed and traded on the Exchange. The Exchange submitted this proposed rule change because the underlying index will be changed and the index as modified would continue not to meet the “generic” listing requirement of Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) in that, as of June 30, 2015, only 30.10% of the weight of the Revised Index components had a minimum original principal amount outstanding of \$100 million or more.⁶

The investment objective of the Fund is 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”). The Fund is a series of the Market Vectors ETF Trust. Van Eck Associates Corporation is the investment adviser and the administrator for the Fund. Van Eck Securities Corporation is the Fund’s distributor. The Bank

⁵ See Securities Exchange Act Release No. 71232 (January 3, 2014), 79 FR 1662 (January 9, 2014) (SR-NYSEArca-2013-118) (order approving listing and trading of shares of the Market Vectors Short High Yield Municipal Index ETF) (“Order”). See also Securities Exchange Act Release No. 70871 (November 14, 2013), 78 FR 69503 (November 19, 2013) (SR-NYSEArca-2013-118) (notice of proposed rule change relating to listing and trading of shares of the Market Vectors Short High Yield Municipal Index ETF and, together with the Order, the “Release”). The Exchange submitted that proposed rule change to permit listing and trading of the Shares because the index underlying the Fund did not meet all of the “generic” listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) that are applicable to the listing of Units based on fixed income securities indexes. More specifically, the Index met all of the 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.

⁶ The Exchange states that the other generic listing criteria are satisfied. See Notice, *supra* note 3, 80 FR at 55703.

of New York Mellon is the custodian of the Fund's assets and provides transfer agency and fund accounting services to the Fund.

A. The Current Index

The Index is a market-size-weighted index composed of publicly traded municipal bonds that cover the U.S. dollar-denominated high-yield short-term tax-exempt bond market. A majority of the Index's constituents are from the revenue sector, with some constituents being from the general obligation sector. The revenue sector is divided into industry sectors that consist of, but may not be limited to, electric, health care, transportation, education, water and sewer, resource recovery, leasing, and special tax. The Index is calculated using a market-value weighting methodology, provided that the allocation to issuers from the territories of the United States, including: Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa and the Northern Mariana Islands, each individually does not exceed 8%.

B. The Revised Index

The Index Provider plans to revise the Index methodology as follows. The revised Short High Yield Index ("Revised Index") will have a targeted 40% weight in the Muni High Yield/\$100 Million Deal Size Index (reduced from a 50% weight). In addition, the Revised Index will have a 10% weight in the Muni A-Rated Index, which comprises investment grade components, as described below. The Revised Index will continue to have a 25% weight in the Muni High Yield/Under \$100 Million Deal Size Index and a 25% weight in the Muni Baa-Rated/\$100 Million Deal Size Index, as described in the Release.

The Revised Index will comprise four total-return, market-size-weighted benchmark indexes with target weights as follows:

- 40% weight in Muni High Yield/\$100 Million Deal Size Index. To be included in the Muni High Yield/\$100 Million Deal Size Index, bonds must be unrated or rated Ba1/BB+ or lower by at least two of the following rating agencies, if all three rate the bond: Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's, Inc. ("S&P"), and Fitch, Inc. ("Fitch"). If only two of the three agencies rate the security, the lower rating is used to determine index eligibility. If only one of the three agencies rates a security, the rating must be Ba1/BB+ or lower. Bonds in the Muni High Yield/\$100 Million Deal Size Index must have an outstanding par value of at least \$3 million and be issued as part of a transaction of at least \$100 million.⁷
- 25% weight in Muni High Yield/Under \$100 Million Deal Size Index. To be included in the Muni High Yield/Under \$100 Million Deal Size Index, bonds must be unrated or rated Ba1/BB+ or lower by at least two of the following rating agencies, if all three rate the bond: Moody's, S&P, and Fitch. If only two of the three agencies rate the security, the lower rating is used to determine index eligibility. If only one of the three agencies rates a security, the rating must be Ba1/BB+ or lower. Bonds in the Muni High Yield/Under \$100 Million Deal Size Index must have an outstanding par value of at least \$3 million and be issued as part of a transaction of under \$100 million but over \$20 million.⁸

⁷ As described in the Release, currently 50% of the Index weight is in the Muni High Yield/\$100 Million Deal Size Index.

⁸ The 25% weighting in the Muni High Yield/Under \$100 Million Deal Size Index is identical to the weighting set forth in the Release.

- 25% weight in Muni Baa-Rated/\$100 Million Deal Size Index. To be included in the Muni Baa-Rated/\$100 Million Deal Size Index, bonds must have a Barclays credit-quality classification between Baa1/BBB+ and Baa3/BBB-. Barclays credit-quality classification is based on the three rating agencies, Moody's, S&P, and Fitch. If two of the three agencies rate the bond equivalently, then that rating is used. If all three rate the bond differently, the middle rating is used. If only two of the three agencies rate the security, the lower rating is used to determine index eligibility. If only one of the three agencies rates a security, the rating must be Baa1/BBB+, Baa2/BBB, or Baa3/BBB-. The bonds must have an outstanding par value of at least \$7 million and be issued as part of a transaction of at least \$100 million.⁹
- 10% weight in Muni A-Rated Index. To be included in the Muni A-Rated Index, bonds must have a Barclays credit-quality classification between A1/A+ and A3/A-. The Barclays credit-quality classification is based on the three rating agencies, Moody's, S&P, and Fitch. If two of the three agencies rate the bond equivalently, then that rating is used. If all three rate the bond differently, the middle rating is used. If only two of the three agencies rate the security, the lower rating is used to determine index eligibility. If only one of the three agencies rates a security, the rating must be A1/A+, A2/A, or A3/A-. The bonds must have an outstanding par value of at least \$7 million and be issued as part of a transaction of at least \$75 million.

⁹ The 25% weighting in the Muni Baa-Rated/\$100 Million Deal Size Index is identical to the weighting set forth in the Release.

Remarketed issues will not be allowed in the benchmark. All bonds must have a fixed rate, a dated-date (i.e., the date when interest begins to accrue) after December 31, 1990, and a nominal maturity of 1 to 12 years. Taxable municipal bonds, bonds with floating rates, and derivatives will be excluded from the Revised Index.

The composition of the Revised Index will be rebalanced monthly. Interest and principal payments earned by the component securities will be held in the Revised Index without a reinvestment return until month end, when they are removed from the Revised Index.

Total returns will be calculated based on the sum of price changes, gain/loss on repayments of principal, and coupons received or accrued, expressed as a percentage of beginning market value. The Revised Index will be calculated and made available once a day.

As of June 30, 2015, 69.73% of the weight of the Revised Index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of \$100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the Revised Index was approximately \$224.6 billion, and the average dollar amount outstanding of issues in the Index was approximately \$23.7 million. Further, the most heavily weighted component represents 2.44% of the weight of the Revised Index, and the five most heavily weighted components represent 9.47% of the weight of the Revised Index.¹⁰

The Exchange believes that the Revised Index is sufficiently broad-based to deter potential manipulation, notwithstanding that the Revised Index does not satisfy the criterion in

¹⁰ Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and 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.

NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (a)(2), because it is composed of approximately 9,481 issues and 900 unique issuers. The Exchange also believes that the Revised Index securities are sufficiently liquid to deter potential manipulation in that a substantial portion (69.73%) of the Revised Index weight is composed of maturities that are part of a minimum original principal amount outstanding of \$100 million or more, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of Revised Index issues, as referenced above. In addition, the Exchange notes that the average daily notional trading volume for Revised Index components for the period from June 30, 2014 to June 30, 2015 was approximately \$323.6 million, and the sum of the notional trading volumes for the same period was \$82.2 billion.

The Revised Index value, calculated and disseminated at least once daily, as well as the components of the Revised 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.

The Exchange represents that: (1) except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares currently 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 Act¹¹ 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 Revised Index and the applicable

¹¹ 17 CFR 240.10A-3.

Intraday Indicative Value (“IIV”);¹² rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information 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.¹³

The value of the Revised 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 IIV for the Shares will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange’s Core Trading Session, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (c).

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange’s proposal to permit the Fund to track the Revised Index is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,¹⁵ which requires, among other things, that the Exchange’s rules be designed to

¹² 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. Currently, it is the Exchange’s understanding that several major market data vendors display or make widely available IIVs taken from the Consolidated Tape Association or other data feeds.

¹³ 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).

¹⁴ 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).

¹⁵ 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, 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 believes that the Revised Index is unlikely to be more susceptible to manipulation than the existing Index. The weight of the Revised Index components with a minimum original principal amount outstanding of \$100 million or more was 30.10% as of June 30, 2015,¹⁶ which is heavier than the weight of such components in the Index as of November 27, 2012.¹⁷ Additionally, the number of components and the number of unique issuers is greater for the Revised Index than for the Index.¹⁸ Further, the average daily notional trading volume was much greater for Revised Index components than for Index components.¹⁹

The Commission notes that the Exchange represents that: (1) the Shares and the Revised Index satisfy all of the requirements for generic listing standards under NYSE Arca Equities Rule 5.2(j)(3) except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3); and (2) except as noted, all other representations made in support of the Release remain unchanged.

¹⁶ See Notice, supra note 3, 80 FR at 55703.

¹⁷ See Order, supra note 5, 79 FR at 1663-4 (“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”).

¹⁸ As of June 30, 2015, the Revised Index was composed of 9,481 issues and 900 unique issuers. See Notice, supra note 3, 80 FR at 55704. As of November 27, 2012, the Index was composed of 1,935 issues and 530 unique issuers. See Order, supra note 5, 79 FR at 1664.

¹⁹ Between June 30, 2014, and June 30, 2015, the average daily notional trading volume for Revised Index components was approximately \$323.6 million. See Notice, supra note 3, 80 FR at 55704. The average daily notional trading volume for Index components between October 31, 2011, and October 31, 2012 was \$2,839,895. See Securities Exchange Act Release No. 71232, supra note 5, 78 FR at 69505.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act²⁰ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,²¹ that the proposed rule change (SR-NYSEArca-2015-74), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Robert W. Errett
Deputy Secretary

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).