

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80579; File No. SR-NYSEArca-2016-120)

May 2, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Shares of the ForceShares Daily 4X US Market Futures Long Fund and ForceShares Daily 4X US Market Futures Short Fund under Commentary .02 to NYSE Arca Equities Rule 8.200

I. Introduction

On October 17, 2016, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the ForceShares Daily 4X US Market Futures Long Fund (“Fund” or “Long Fund”) and ForceShares Daily 4X US Market Futures Short Fund (“Fund” or “Short Fund” and, together with the Long Fund, the “Funds”) under Commentary .02 to NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the Federal Register on November 4, 2016.³ On December 14, 2016, pursuant to Section 19(b)(2) of the Act,⁴ 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rule change.⁵ On December 22, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 79201 (October 31, 2016), 81 FR 76977.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 79550, 81 FR 92892 (December 20, 2016). The Commission designated February 2, 2017 as the date by which it shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.

originally filed. On February 1, 2017, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁶ On February 15, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1. On April 20, 2017, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 2.⁷ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 3.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 3⁸

The Exchange proposes to list and trade the Shares under Commentary .02 to NYSE Arca Equities Rule 8.200, which governs the listing and trading of Trust Issued Receipts on the

⁶ See Securities Exchange Act Release No. 79914, 82 FR 9625 (February 7, 2017).

⁷ In Amendment No. 3, the Exchange: (1) clarified the permissible investments of the Funds; (2) clarified the prices that will be used to calculate the net asset value (“NAV”) for each Fund; (3) stated that the indicative fund value (“IFV”) will be calculated and disseminated throughout the Exchange Core Trading Session; (4) amended and clarified the description of the creation and redemption process for the Shares; (5) added a discussion regarding the impact on the arbitrage mechanism as a result of the use of derivatives; (6) amended and supplemented the description of the information that will be provided to ETP Holders through the Information Bulletin; (7) provided information regarding the obligations of ETP Holders to follow FINRA guidance relating to increased sales practice and customer margin requirements applicable to inverse, leveraged, and inverse leveraged securities; and (8) made various technical changes. Amendment No. 3 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues. All of the amendments to the proposed rule change are available at: <https://www.sec.gov/comments/sr-nysearca-2016-120/nysearca2016120.shtml>.

⁸ The Commission notes that additional information regarding the Trust (defined below), the Funds, their investments, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, and taxes, among other information, can be found in Amendment No. 3, supra note 7, and the Registration Statement, infra note 9.

Exchange. Each Fund is a commodity pool that is a series of the ForceShares Trust (“Trust”).⁹ ForceShares LLC will be the sponsor of the Funds (“Sponsor”). ALPS Distributors, Inc. will be the marketing agent for the Shares. U.S. Bank National Association will be the Funds’ custodian (“Custodian”). The Custodian will also be the registrar and transfer agent for the Shares.

The Long Fund’s primary investment objective is to seek daily investment results, before fees and expenses, that correspond to approximately four times (400%) the daily performance of the closing settlement price for lead month (i.e., the “near month” or next-to-expire) Standard & Poor’s 500 Stock Price Index Futures contracts (“Big S&P Contracts”) that are traded on the Chicago Mercantile Exchange (“CME”). This closing settlement price is referred to as the “Benchmark.”¹⁰ The Short Fund’s primary investment objective is to seek daily investment results, before fees and expenses, that correspond to approximately four times the inverse (-400%) of the daily performance of the Benchmark. Each Fund will not seek to achieve its primary investment objective over a period of time greater than a single day.¹¹

Under normal market conditions, each Fund will seek to achieve its primary investment objective primarily by investing in Big S&P Contracts. Each Fund will also invest in E-Mini S&P 500 Futures contracts (“E-Minis” and, together with Big S&P Contracts, “Primary S&P

⁹ The Trust is registered under the Securities Act of 1933. On September 30, 2016, the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 relating to the Funds (File No. 333-213911) (“Registration Statement”).

¹⁰ The design of the Funds’ Benchmark is such that it will change four times per year in connection with the expiration of the lead month Big S&P Contracts, and each Fund’s positions in S&P Interests (defined below) will be rolled on a regular basis in order to track the changing nature of the Benchmark.

¹¹ The Exchange states that the return of each Fund for periods longer than a single day will be the result of each day’s returns compounded over the period, which will very likely differ from four times the total performance, in the case of the Long Fund, or four times the inverse of the total performance, in the case of the Short Fund, of the Benchmark over the same period.

Interests”) to seek to achieve its primary investment objective where position limits prevent further purchases of Big S&P Contracts. Each Fund expects to apply approximately 10-25% of its portfolio toward obtaining exposure to futures contracts, all of which will be lead month or deferred month Primary S&P Interests. Subsequently, each Fund may also invest in swap agreements (cleared and over-the-counter) referencing Primary S&P Interests or the S&P 500 Index, and over-the-counter forward contracts referencing Primary S&P Interests (“Other S&P Interests” and, together with Primary S&P Interests, “S&P Interests”).¹² Each Fund may invest in Other S&P Interests in an amount up to 25% of its net assets.

Each Fund may acquire or dispose of Stop Options, which will be options on Primary S&P Interests, in pursuing its secondary investment objective of recouping a small amount of a Fund’s losses from an extreme, short term movement in the Benchmark.¹³ Stop Options are expected to average less than approximately 5% of each Fund’s portfolio.

On a day-to-day basis, each Fund will invest the remainder of its assets in money market funds, depository accounts with institutions with high quality credit ratings, or short-term debt instruments that have terms-to-maturity of less than 397 days and exhibit high quality credit profiles, including U.S. government securities and repurchase agreements (collectively, “Cash Equivalents”). Cash Equivalents are expected to comprise approximately 70-85% of each Fund’s portfolio.

¹² The Sponsor will assess or review, as appropriate, the creditworthiness of each potential or existing counterparty to an over-the-counter contract.

¹³ The Long Fund will hold put options, and the Short Fund will hold call options, with respect to all or substantially all of its S&P Interests with strike prices at approximately 75%, in the case of the Long Fund, or 125%, in the case of the Short Fund, of the value of the applicable underlying S&P Interest as of the end of the preceding business day. These Stop Options will serve primarily to (a) prevent the Fund’s NAV from going to zero in the event of a 25% adverse move in the Benchmark, and (b) recoup a small portion of substantial losses of a Fund that may result from large movements in the Benchmark.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,¹⁵ 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 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 also 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,¹⁶ which sets forth Congress's 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 disseminated through the facilities of the Consolidated Tape Association ("CTA"). The indicative fund value ("IFV") will be disseminated every 15 seconds during the Exchange's Core Trading Session.¹⁷ The Exchange will make available on its website daily trading volume, closing prices, and the NAV of the

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).

¹⁶ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁷ The Exchange will disseminate the IFV through the facilities of the CTA high speed line. In addition, the IFV will be published on the Exchange's website and will be available through on-line information services.

Shares.¹⁸ The Exchange will also disseminate on a daily basis via the CTA information with respect to the NAV and Shares outstanding. Intraday and closing price information from brokers and dealers or independent pricing services, among other sources, will be available for S&P Interests, Stop Options, and Cash Equivalents. The Benchmark will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session.

On a daily basis, the Sponsor will disclose on the Funds' website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; market value of the holding; and the percentage weighting of the holding in a Fund's portfolio.¹⁹ The Funds' website will also include the prospectus, data relating to the NAV, and other applicable quantitative information for each Fund.

The Commission also 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 appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the

¹⁸ Each Fund's NAV will be calculated as of the earlier of 4:00 p.m. E.T. or the close of the Exchange each day. The NAV for a particular trading day will be released after 4:15 p.m. E.T. The NAV for the Funds will be disseminated daily to all market participants at the same time.

¹⁹ The disclosure of the Funds' portfolio composition on the Funds' website will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Purchasers so that all market participants are provided portfolio composition information at the same time.

NAV is available to all market participants. Trading in the Shares will also be subject to NYSE Arca Equities Rule 7.12, which sets forth circumstances under which trading in the Shares may be halted. In addition, trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.²⁰ Moreover, the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the underlying futures contracts occurs. If the interruption to the dissemination of the IFV or the value of the underlying futures contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange represents that it 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. In support of this proposal, the Exchange has made the following representations:

- (1) The Funds will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the

²⁰ These may include: (1) the extent to which trading is not occurring in the underlying futures contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Exchange, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.²¹

- (4) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, Primary S&P Interests, and options on futures with other markets or other entities that are members of the Intermarket Surveillance Group (“ISG”), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets or entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”).
- (5) Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA.
- (6) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following:
 - (a) the risks involved in trading the Shares during the Opening and Late Trading

²¹ The Exchange states that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

Sessions when an updated IFV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IFV and the portfolio is disseminated; (e) applicable prospectus delivery requirements; and (f) trading information.

- (7) Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin. Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (a) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such ETP Holder, and (b) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that ETP Holders must make reasonable efforts to obtain the following information: (a) the customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such ETP Holder or registered representative in making recommendations to the customer.
- (8) A minimum of 100,000 Shares for each Fund will be outstanding at the start of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolios; (b) limitations on portfolio holdings or reference assets; or (c) the applicability of Exchange listing rules specified in the rule filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor²² for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment No. 3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act²³ and Section 11A(a)(1)(C)(iii) of the Act²⁴ and the rules and regulations thereunder applicable to a national securities exchange.

²² The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-NYSEArca-2016-120), as modified by Amendment No. 3, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Eduardo A. Aleman
Assistant Secretary

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR 200.30-3(a)(12).