

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84279; File No. SR-NYSEARCA-2018-67)

September 25, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend NYSE Arca Rule 5.2-E(j)(6) Relating to Equity Index-Linked Securities Listing Standards Set Forth in NYSE Arca Rule 5.2-E(j)(6)(B)(I)

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 September 10, 2018, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 5.2-E(j)(6) relating to Equity Index-Linked Securities listing standards set forth in NYSE Arca Rule 5.2-E(j)(6)(B)(I). The proposed 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 places

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

NYSE Arca Rule 5.2-E(j)(6) relates to listing and trading of Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities (collectively, "Index-Linked Securities"). These securities are frequently referred to as "Exchange-Traded Notes" or "ETNs." NYSE Arca Rule 5.2-E(j)(6)(B)(I) sets forth listing standards applicable to Equity Index-Linked Securities.⁴

The Exchange proposes to amend NYSE Arca Rule 5.2-E (j)(6)(B)(I) relating to criteria applicable to components of an index underlying an issue of Equity Index-Linked Securities, as described below.⁵

⁴ Equity Index-Linked Securities are securities that provide for the payment at maturity based on the performance of an underlying index or indexes of equity securities, securities of closed-end management investment companies registered under the Investment Company Act of 1940 ("1940 Act") and/or Investment Company Units (as described in NYSE Arca Rule 5.2-E(j)(3)).

⁵ Rule 5.2-E(j)(6)(B)(I)(1)(b)(v) provides that all component securities shall be either:

- (A) Securities (other than foreign country securities and American Depositary Receipts ("ADRs")) that are (x) issued by a 1934 Act reporting company or by an investment company registered under the 1940 Act, which in each case is listed on a national securities exchange, and (y) an "NMS stock" (as defined in Rule 600 of SEC Regulation NMS); or
- (B) Foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group ("ISG") or parties to comprehensive surveillance sharing agreements with the Exchange will not in the aggregate represent more than 50% of the dollar weight of the index, and provided further that:

The Exchange proposes to amend NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(b)(v) to provide that all component securities of an index underlying an issue of Equity Index-Linked Securities shall be either (1) U.S. Component Stocks (as described in Rule 5.2-E(j)(3))⁶ that are listed on a national securities exchange and are NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act;⁷ or (2) Non-U.S. Component Stocks (as described in Rule 5.2-E(j)(3))⁸ that are listed and traded on an exchange that has last-sale reporting.⁹ The proposed amendment, therefore, would delete from Rule 5.2-E (j)(6)(B)(I)(1)(b)(v) the requirement that foreign country securities or foreign country securities underlying ADRs in an index satisfy requirements that a specified percentage of the dollar weight of the index have primary trading markets that are members of ISG or primary trading markets that are parties to comprehensive surveillance sharing agreements with the Exchange.

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- (i) the securities of any one such market do not represent more than 20% of the dollar weight of the index, and
 - (ii) the securities of any two such markets do not represent more than 33% of the dollar weight of the index.

⁶ Rule 5.2-E(j)(3) provides that the term "US Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934.

⁷ The term "Exchange Act" is defined in Rule 1.1(q) to mean the Securities Exchange Act of 1934, as amended.

⁸ Rule 5.2-E(j)(3) provides that the term "Non-US Component Stock" shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts (REITS) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

⁹ The text of proposed NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(b)(v)(1) is comparable to the requirement for US Component Stocks in Commentary .01(a)(A)(5) to NYSE Arca Rule 5.2-E(j)(3). The text of proposed NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(b)(v)(2) is comparable to the requirement for Non-US Component Stocks in Commentary .01(a)(B)(5) to NYSE Arca Rule 5.2-E(j)(3).

The proposed amendment would eliminate a requirement for Equity Index-Linked Securities that is not applicable to Investment Company Units and Managed Fund Shares with respect to Non-U.S. Component Stock index components or holdings of Non-U.S. Component Stocks. The amendment, therefore, would afford greater flexibility to ETN issuers to list securities that include foreign stocks and to better compete with issuers of Investment Company Units and Managed Fund Shares, which are not subject to this requirement.

The Exchange also proposes to amend NYSE Arca Rule 5.2-E (j)(6)(B)(I)(1)(a) by increasing the required minimum number of components in an index underlying Equity Index-Linked Securities that includes Non-U.S. Component Stocks.¹⁰ The Exchange proposes that an underlying index consisting only of U.S. Component Stocks (as described in Rule 5.2-E(j)(3)) that are listed on a national securities exchange and are NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act is required to have at least ten (10) component securities; and an underlying index consisting of (a) only Non-U.S. Component Stocks (as described in Rule 5.2-E(j)(3)), or (b) both U.S. Component Stocks and Non-U.S. Component Stocks, is required to have at least twenty (20) component securities.

The Exchange believes the amendments are appropriate and in the public interest in that Equity Index-Linked Securities would continue to be subject to numerical criteria for index components underlying Equity Index-Linked Securities that are comparable in significant respects to the criteria for U.S. Component Stocks and Non-U.S. Component Stocks in

¹⁰ NYSE Arca Rule 5.2-E (j)(6)(B)(I)(1)(a) provides that each underlying index is required to have at least ten (10) component securities; provided, however, that there shall be no minimum number of component securities if one or more issues of Derivative Securities Products (i.e., Investment Company Units (as described in Rule 5.2-E(j)(3)) and securities described in Section 2 of Rule 8) or Index-Linked Securities (as described in Rule 5.2-E(j)(6)), constitute, at least in part, component securities underlying an issue of Equity Index-Linked Securities.

Commentary .01 to NYSE Arca Rule 5.2-E(j)(3) for Investment Company Units and
Commentary .01(a) to NYSE Arca Rule 8.600-E for Managed Fund Shares.¹¹

For example, Rule 5.2-E(j)(6)(B)(I)(1)(b)(ii) provides that component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum global monthly trading volume of 1,000,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months.¹² In comparison, Commentary .01(a)(B)(2) to Rule 5.2-E(j)(3) applicable to an international or global index or portfolio provides that component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the US and Non-US Component Stocks portions of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months.¹³

In addition, Rule 5.2-E(j)(6)(B)(I)(1)(b)(iii) provides that no underlying component security will represent more than 25% of the dollar weight of the index, and, to the extent applicable, the five highest dollar weighted component securities in the index do not in the aggregate account for more than 50% of the dollar weight of the index (60% for an index

¹¹ Commentary .01 to NYSE Arca Rule 5.2-E(j)(3) and Commentary .01(a) to NYSE Arca Rule 8.600-E provide generic initial and continued listing criteria applicable to an equity index or portfolio underlying Investment Company Units and Managed Fund Shares, respectively.

¹² Rule 5.2-E(j)(6)(B)(I)(1)(b)(ii) excludes Derivative Securities Products and Index-Linked Securities from these provisions.

¹³ Commentary .01(a)(2) (B) to Rule 8.600-E provides that Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months.

consisting of fewer than 25 component securities).¹⁴ In comparison, Commentary .01(a)(B)(3) to Rule 5.2-E(j)(3) provides that the most heavily weighted component stock (excluding Derivative Securities Products) shall not exceed 25% of the combined US and Non-US Component Stocks portions of the weight of the index or portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products) shall not exceed 60% of the combined US and Non-US Component Stocks portions of the weight of the index or portfolio.¹⁵

With respect to the proposed amendment to NYSE Arca Rule 5.2-E (j)(6)(B)(I)(1)(a), an increase in the required minimum number of components in an index that includes Non-U.S. Component Stocks is comparable to the requirement applicable to equity indexes underlying series of Investment Company Units listed under Commentary .01 to NYSE Arca Rule 5.2-E(j)(3), and would provide for greater diversification among index components.¹⁶

The Exchange notes that, in originally approving the generic listing criteria in Commentary .01(a)(B) to NYSE Arca Rule 5.2-E(j)(3) applicable to indexes that include only non-U.S. Component Stocks or both U.S. and Non-U.S. Component Stocks in an index or

¹⁴ Rule 5.2-E(j)(6)(B)(I)(1)(b)(iii) excludes Derivative Securities Products and Index-Linked Securities from these provisions.

¹⁵ See also Commentary .01(a)(2)(C) to NYSE Arca Rule 8.600-E, which provides that the most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio.

¹⁶ See Commentary .01(a)(B)(4) to NYSE Arca Rule 5.2-E(j)(3). See also Commentary .01(a)(2)(D) to NYSE Arca Rule 8.600-E, which provides that, where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares.

portfolio underlying a series of Investment Company Units, the Commission stated that “[t]hese requirements are designed, among other things, to require that components of an index or portfolio underlying the ETF are adequately capitalized and sufficiently liquid, and that no one security dominates the index.”¹⁷ In addition, in approving the Exchange’s generic rules relating to listing of Index-Linked Securities, the Commission found that the rules’ requirements should help ensure that index components of the applicable reference asset are adequately capitalized, sufficiently liquid, and diversified, and that these requirements should significantly minimize the potential for manipulation.¹⁸

¹⁷ See Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86) (Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, 3, and 4 Thereto and Order Granting Accelerated Approval of the Proposed Rule Change as Modified by Amendments No. 2 and 4 Thereto Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Indexes Described in Exchange Rules Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities). See also Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 61811 (October 19, 2006) (SR-Amex-2006-78) (Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Relating to Generic Listing Standards for Series of Portfolio Depositary Receipts and Index Fund Shares Based on International or Global Indexes); 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendments No. 1 and 2 Thereto Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Indexes Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities).

¹⁸ See, e.g., Securities Exchange Act Release No. 52204 (August 3, 2005) 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Adoption of Generic Listing Standards for Index-Linked Securities), in which the Commission stated that “PCX’s proposed listing criteria include minimum market capitalization, monthly trading volume, and relative weighting requirements for the Index Securities. These requirements are designed to ensure that the trading markets for index components underlying Index Securities are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. The Commission believes that these requirements should significantly minimize the potential for manipulation.”

In addition to the above-referenced weighting and trading volume criteria, Rule 5.2-E(j)(6)(B)(I)(1)(b)(iv) provides that 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in NYSE Arca Rule 5.3-O.¹⁹ An index is not subject to this requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index and (b) the index has a minimum of 20 components.²⁰

Like the requirements applicable to an index or portfolio underlying Investment Company Units noted above, the proposed amendments to NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(b)(v) would subject an index or indexes underlying an issue of ETNs to specified minimum liquidity and market value requirements. Index components would continue to be subject to the weighting and diversification requirements of NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(b)(iii), which prevent any stock or small group of stocks from dominating a fund's portfolio. The proposed amendments to NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(b)(v) would provide additional flexibility to series of Equity Index-Linked Securities based on an index that includes Non-U.S. Component Stocks while continuing to apply substantial minimum criteria relating to liquidity, market capitalization and diversification.

The Exchange also proposes to amend the phrase "Section 19(b)(2) of the Act" to "Section 19(b)(2) of the Exchange Act" in NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(b)(1) in order to conform to usage in NYSE Arca Rule 1.1(q).²¹ The Exchange proposes further to make a

¹⁹ NYSE Arca Rule 5.3-O sets forth the criteria to be met by underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange.

²⁰ Rule 5.2-E(j)(6)(B)(I)(1)(b)(iv) excludes Derivative Securities Products and Index-Linked Securities from these provisions.

²¹ See note 7, supra.

grammatical change to NYSE Arca Rule 5.2-E (j)(6)(B)(I)(1)(b)(2) by deleting as repetitive the words “the index or indexes.”

Other than the changes proposed above, no other changes are being proposed to NYSE Arca Rule 5.2-E (j)(6) and all other requirements applicable to Index-Linked Securities will continue to apply.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(5) of the Act,²³ in particular, because it is 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, in general, to protect investors and the public interest.

The Exchange believes the amendment is appropriate and in the public interest in that Equity Index-Linked Securities would continue to be subject to numerical criteria for index components underlying Equity Index-Linked Securities that are comparable in significant respects to the criteria for U.S. Component Stocks and Non-U.S. Component Stocks in Commentary .01 to NYSE Arca Rule 5.2-E(j)(3) for Investment Company Units and Commentary .01(a) to NYSE Arca Rule 8.600-E for Managed Fund Shares. Rule 5.2-E(j)(6)(B)(I)(1)(b)(ii) provides that component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum global monthly trading volume of 1,000,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months. In addition, Rule 5.2-E(j)(6)(B)(I)(1)(b)(iii) provides that no

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

underlying component security will represent more than 25% of the dollar weight of the index, and, to the extent applicable, the five highest dollar weighted component securities in the index do not in the aggregate account for more than 50% of the dollar weight of the index (60% for an index consisting of fewer than 25 component securities). As noted above, the Commission, in approving the Exchange’s generic rules relating to listing of Index-Linked Securities, found that the rules’ requirements should help ensure that index components of the applicable reference asset are adequately capitalized, sufficiently liquid, and diversified, and that these requirements should significantly minimize the potential for manipulation.²⁴

The proposed amendment would eliminate a requirement for Equity Index-Linked Securities that is not applicable to Investment Company Units and Managed Fund Shares with respect to Non-U.S. Component Stock index components or holdings of Non-U.S. Component Stocks. The amendment, therefore, would afford greater flexibility to ETN issuers to list securities that include foreign stocks and to better compete with issuers of Investment Company Units and Managed Fund Shares.

With respect to the proposed amendment to NYSE Arca Rule 5.2-E (j)(6)(B)(I)(1)(a), an increase in the required minimum number of components in an index that includes Non-U.S. Component Stocks is comparable to the requirement applicable to equity indexes underlying series of Investment Company Units listed under Commentary .01 to NYSE Arca Rule 5.2-E(j)(3), and would provide for greater diversification among index components.²⁵

The proposed amendment to change the phrase “Section 19(b)(2) of the Act” to “Section 19(b)(2) of the Exchange Act” in NYSE Arca Rule 5.2-E (j)(6)(B)(I)(1)(b)(1) conforms to usage

²⁴ See note 17, *supra*.

²⁵ See Commentary .01(a)(B)(4) to NYSE Arca Rule 5.2-E(j)(3).

in NYSE Arca Rule 1.1(q). The proposed deletion of the words “the index or indexes” in NYSE Arca Rule 5.2-E (j)(6)(B)(I)(1)(b)(2) eliminates an unnecessary repetition.

The Exchange represents that trading in ETNs is subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of ETNs in all Exchange trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.²⁶

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in Exchange-listed ETNs with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in ETNs from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,²⁷ the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate

²⁶ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

²⁷ 15 U.S.C. 78f(b)(8).

in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change will encourage competition by accommodating listing and trading of additional issues of Equity Index-Linked Securities and will permit ETN issuers to better compete with issuers of Investment Company Units and Managed Fund Shares.

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 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 the 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 NYSEArca-2018-67 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 NYSEArca-2018-67. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number NYSEArca-2018-67, 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.²⁸

Eduardo A. Aleman
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(12).