

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-89073; File No. SR-NYSEArca-2020-46)

June 16, 2020

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 Options-Linked Securities

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 June 10, 2020, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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

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) (“Index-Linked Securities”) to accommodate Exchange listing and trading of Options-Linked Securities. The proposed rule 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 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.

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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.

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) provides for Exchange listing and trading, including listing pursuant to Rule 19b-4(e) under the Act,<sup>4</sup> of “Index-Linked Securities.”<sup>5</sup>

The Exchange proposes to amend NYSE Arca Rule 5.2-E(j)(6) to add Options-Linked Securities to the type of Index-Linked Securities permitted to list and trade on the Exchange.<sup>6</sup>

Proposed Rule 5.2-E(j)(6)(vii) would provide that the payment at maturity with respect to Options-Linked Securities would be based on the performance of one or more U.S. exchange-traded options on any one or combination of the following: (a) Investment Company Units; (b) Exchange-Traded Fund Shares; (c) Index-Linked Securities; (d) securities defined in Section 2 of Rule 8-E<sup>7</sup>; (e) the S&P 100 Index, the S&P 500 Index, the Nasdaq 100 Index, the Dow Jones Industrial Average, the MSCI EAFE Index, the MSCI Emerging Markets Index, the NYSE

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<sup>4</sup> Rule 19b-4(e) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to section (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO’s trading rules, procedures, and listing standards for the product class and the SRO has a surveillance program for the product class.

<sup>5</sup> Rule 5.2-E(j)(6) currently accommodates Exchange listing of Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities.

<sup>6</sup> Index-Linked Securities are sometimes referred to as “exchange-traded notes” or “ETNs.”

<sup>7</sup> The following securities currently are included in Section 2 of NYSE Arca Rule 8-E: Portfolio Depositary Receipts (Rule 8.100); Trust Issued Receipts (Rule 8.200); Commodity-Based Trust Shares (Rule 8.201); Currency Trust Shares (Rule 8.202); Commodity Index Trust Shares (Rule 8.203); Commodity Futures Trust Shares (Rule 8.204); Partnership Units (Rule 8.300); Paired Trust Shares (Rule 8.400); Trust Units (Rule 8.500); Managed Fund Shares (Rule 8.600); Managed Trust Securities (Rule 8.700); and Managed Portfolio Shares (Rule 8.900-E).

FANG Index or the Russell 2000 Index; or (f) a basket or index of any of the foregoing (collectively, “Options Reference Asset”).<sup>8</sup> To the extent that the Options Reference Asset consists of options based on Investment Company Units, Exchange-Traded Fund Shares, Index-Linked Securities, or securities defined in Section 2 of Rule 8-E, such Investment Company Units, Exchange-Traded Fund Shares, Index-Linked Securities, or securities defined in Section 2 of Rule 8-E shall not seek to provide investment results, before fees and expenses, that correspond to the inverse, a specific multiple, or a specific inverse multiple of the percentage performance on a given day of a particular index or combination of indexes.

Proposed Rule 5.2-E(j)(6)(B)(VII) (Options-Linked Securities Listing Standards) would set forth initial and continued listing criteria applicable to Options-Linked Securities. Proposed Section VII(1) would provide that an issue of Options-Linked Securities must meet the initial listing standard set forth in either (a) or (b) below:

- (a) The Options Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Options-Linked Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission’s approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied.
- (b) The pricing information for components of the Options Reference Asset must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement.

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<sup>8</sup> Current Rule 5.2-E(j)(6)(vi) applicable to Multifactor Index-Linked Securities would be amended to add Options Reference Asset as a Multifactor Reference Asset. In addition, the new term “Options-Linked Securities” would be added to certain headings in Rule 5.2-E(j)(6).

In addition, an issue of Options-Linked Securities must meet the following initial listing criteria:

- (a) the value of the Options Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session (as defined in NYSE Arca Rule 7.34-E); and
- (b) in the case of Options-Linked Securities that are periodically redeemable, the indicative value of the subject Options-Linked Securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

Proposed Section VII(2) would provide that an issue of Options-Linked Securities must meet the following continued listing criteria:<sup>9</sup>

- (a) The Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5-E(m) if any of the initial listing criteria described above are not continuously maintained; and
- (b) The Exchange may also halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5-E(m) under any of the following circumstances:
  - (i) If the aggregate market value or the principal amount of the Options-Linked Securities publicly held is less than \$400,000;
  - (ii) The value of the Options Reference Asset is no longer calculated or available and a new Options Reference Asset is substituted, unless the new

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<sup>9</sup> The continued listing criteria in proposed Rule 5.2-E(j)(6)(B)(VII)(2) are substantively identical to continued listing criteria in Rule 5.2-E(j)(6) applicable to other Index Linked Securities.

Options Reference Asset meets the requirements of this Rule 5.2-E(j)(6);  
or

- (iii) If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The Exchange also proposes to amend Commentary .01(a) and (b) to Rule 5.2-E(j)(6), which relate to specified requirements and obligations of an Equity Trading Permit (ETP) Holder acting as a registered Market Maker, to include Options Linked Securities and options to the financial instruments covered by Commentary .01.<sup>10</sup>

As noted above, proposed NYSE Arca Rule 5.2-E (j)(6)(vii) provides that the Options Reference Asset for Options Linked Securities consists of one or more U.S. exchange-traded options on any one or combination of the following: (a) Investment Company Units<sup>11</sup>; (b) Exchange-Traded Fund Shares<sup>12</sup>; (c) Index-Linked Securities; (d) securities defined in Section 2 of Rule 8-E; (e) the S&P 100 Index, the S&P 500 Index, the Nasdaq 100 Index, the Dow Jones Industrial Average, the MSCI EAFE Index, the MSCI Emerging Markets Index, the NYSE FANG Index or the Russell 2000 Index (collectively, the “Indexes”); or (f) a basket or index of any of the foregoing.

With respect to underlying components of the Options Reference Asset, the Exchange notes that, to the extent that Investment Company Units, Exchange-Traded Fund Shares, Index-Linked Securities and securities defined in Section 2 of Rule 8-E are listed and traded on the

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<sup>10</sup> The Exchange also proposes to make certain technical corrections to the existing rule text of Commentary .01 to Rule 5.2-E(j)(6).

<sup>11</sup> Investment Company Units are securities described in NYSE Arca Rule 5.2-E(j)(3) or comparable rules of other national securities exchanges.

<sup>12</sup> Exchange-Traded Fund Shares are securities described in NYSE Arca Rule 5.2-E(j)(8) or comparable rules of other national securities exchanges.

Exchange, such securities are subject to Exchange initial and continued listing criteria under applicable Exchange rules as approved by the Commission. In addition, the Commission has approved or issued a notice of effectiveness to permit listing on a national securities exchange of securities based on certain Indexes.<sup>13</sup> With respect underlying components of the Options Reference Asset, the Exchange notes that, to the extent that securities comparable to Investment Company Units, Exchange-Traded Fund Shares, Index-Linked Securities and securities defined in Section 2 of Rule 8-E are listed and traded on other national securities exchanges, such securities are subject to rules for initial and continued listing criteria as approved by the Commission for such exchanges. With respect to options on the Indexes, options on all of the Indexes are currently traded on U.S. options exchanges.

Finally, all Options-Linked Securities listed pursuant to NYSE Arca Rule 5.2-E (j)(6) would be included within the definition of “security” or “securities” as such terms are used in the Exchange’s rules and, as such, are subject to Exchange rules and procedures that currently govern the trading of securities on the Exchange. In addition to proposed NYSE Arca Rule 5.2-E

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<sup>13</sup> See, e.g., Securities Exchange Act Release Nos. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (SR-Amex-92-18) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index); 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998) (SR-Amex-97-29) (approving the listing and trading of DIAMONDS Trust Units, Portfolio Depositary Receipts based on the Dow Jones Industrial Average); 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997) (SR-CBOE-97-26) (approving the listing and trading of options on the Dow Jones Industrial Average); 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (SR-CBOE-83-08) (approving the listing and trading of options on the S&P 500 Index on the CBOE); 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (SR-Amex-98-34) (Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 to the Proposed Rule Change Relating to the Listing and Trading of Shares of the Nasdaq-100 Trust); 87437 (October 31, 2019), 84 FR 59900 (November 6, 2019) (SR-NYSEArca-2019-62) (Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Innovator MSCI EAFE Power Buffer ETFs and Innovator MSCI Emerging Markets Power Buffer ETFs under NYSE Arca Rule 8.600-E).

(j)(6)(vii) and proposed NYSE Arca Rule 5.2-E(j)(6)(B)(VII), all other provisions of Rule 5.2-E(j)(6) will apply to Options-Linked Securities as applicable.

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Index-Linked Securities. The Exchange also believes that the standards for listing and trading Options-Linked Securities are reasonably designed to promote a fair and orderly market for such securities. The proposed addition of Options Reference Asset, as described above, would also work in conjunction with the initial and continued listing criteria related to surveillance procedures and trading guidelines for Index-Linked Securities.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Options-Linked Securities in all trading sessions and to deter and detect violations of Exchange rules. The issuer of a series of Options-Linked Securities will be required to comply with Rule 10A-3 under the Act<sup>14</sup> for the initial and continued listing of Index-Linked Securities, as provided in NYSE Arca Rule 5.2-E (j)(6)(A)(f). The Exchange notes that the proposed change is not intended to amend any other component or requirement of NYSE Arca Rule 5.2-E (j)(6). With respect to options comprising the Options Reference Asset, the pricing information for components of the Options Reference Asset must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement.

Quotation and last sale information for Options-Linked Securities, Investment Company Units, Exchange-Traded Fund Shares, Index-Linked Securities, and securities defined in Section 2 of Rule 8-E are available via the Consolidated Tape Association (“CTA”) high speed line.

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<sup>14</sup> 17 CFR 240.10A-3.

Quotation and last sale information for such securities also will be available from the exchange on which they are listed. Quotation and last sale information for options on Investment Company Units, Exchange-Traded Fund Shares, Index-Linked Securities, securities defined in Section 2 of Rule 8-E and the Indexes will be available via the Options Price Reporting Authority and major market data vendors. Information regarding values of the Indexes is available from major market data vendors.

The Exchange believes that the proposed rule change will provide investors with the ability to better diversify and hedge their portfolios using an exchange-listed security without having to trade directly in the underlying options contracts, and will facilitate the listing and trading of additional Index-Linked Securities that will enhance competition among market participants, to the benefit of investors and the marketplace.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>16</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.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).



With respect to underlying components of the Options Reference Asset, the Exchange notes that Investment Company Units, Exchange-Traded Fund Shares, Index-Linked Securities and securities defined in Section 2 of Rule 8-E are subject to Exchange initial and continued listing criteria under applicable Exchange rules as approved by the Commission. With respect to underlying components of the Options Reference Asset, the Exchange notes that, to the extent that securities comparable to Investment Company Units, Exchange-Traded Fund Shares, Index-Linked Securities and securities defined in Section 2 of Rule 8-E are listed and traded on other national securities exchanges, such securities are subject to rules for initial and continued listing criteria as approved by the Commission for such exchanges. In addition, the Commission has approved or issued a notice of effectiveness to permit listing on a national securities exchange of securities based on certain Indexes.<sup>17</sup> With respect to options on the Indexes, options on all of the Indexes are currently traded on U.S. options exchanges. All options included in the Options Reference Asset will be U.S. exchange-traded.

Under proposed NYSE Arca Rule 5.2-E(j)(6)(vii), to the extent that the Options Reference Asset consists of options based on Investment Company Units, Exchange-Traded Fund Shares, Index-Linked Securities, or securities defined in Section 2 of Rule 8-E, such Investment Company Units, Exchange-Traded Fund Shares, Index-Linked Securities, or securities defined in Section 2 of Rule 8-E shall not seek to provide investment results, before fees and expenses, that correspond to the inverse, a specific multiple, or a specific inverse multiple of the percentage performance on a given day of a particular index or combination of indexes.

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<sup>17</sup> See note 13, supra.

Under proposed NYSE Arca Rule 5.2-E(j)(6)(B)(VII)(1), an issue of Options-Linked Securities would be required to meet the initial listing standard in either (a) or (b) as follows: (a) The Options Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Options-Linked Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or (b) The pricing information for components of the Options Reference Asset must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement.

In addition, an issue of Options-Linked Securities must meet the following initial listing criteria in NYSE Arca Rule 5.2-E(j)(6)(B)(VII): (a) The value of the Options Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session (as defined in NYSE Arca Rule 7.34-E); and (b) In the case of Options-Linked Securities that are periodically redeemable, that the indicative value of the subject Option-Linked Securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

Options-Linked Securities also will be subject to the continued listing criteria in proposed Rule 5.2-E(j)(6)(B)(VII)(2) as described above. Finally, all Options-Linked Securities listed pursuant to NYSE Arca Rule 5.2-E(j)(6) would be included within the definition of "security" or "securities" as such terms are used in the Exchange's rules and, as such, are subject to Exchange rules and procedures that currently govern the trading of securities on the Exchange. In addition

to proposed NYSE Arca Rule 5.2-E (j)(6)(vii) and proposed Rule 5.2-E(j)(6)(B)(VII), all other provisions of Rule 5.2-E(j)(6) will apply to Options-Linked Securities as applicable.

The Exchange also proposes to amend Commentary .01(a) and (b) to Rule 5.2-E(j)(6), which relate to specified requirements and obligations of an Equity Trading Permit (ETP) Holder acting as a registered Market Maker, to include Options Linked Securities and options to the financial instruments covered by Commentary .01.

The Exchange also proposes to make certain technical corrections to the existing rule text of Commentary .01 to Rule 5.2-E(j)(6).

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Index-Linked Securities. The Exchange also believes that the standards for listing and trading Options-Linked Securities are reasonably designed to promote a fair and orderly market for such securities. The proposed addition of Options Reference Asset, as described above, would also work in conjunction with the initial and continued listing criteria related to surveillance procedures and trading guidelines for Index-Linked Securities. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Options-Linked Securities in all trading sessions and to deter and detect violations of Exchange rules. Trading in the securities may be halted under the conditions specified in NYSE Arca Rule 5.2-E(j)(6)(E).

The Exchange believes that the proposed rule change will provide investors with the ability to better diversify and hedge their portfolios using an exchange listed security without having to trade directly in the underlying options contracts, and will facilitate the listing and trading of additional Index-Linked Securities that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

In accordance with Section 6(b)(8) of the Act,<sup>18</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 will facilitate the listing and trading of additional Index-Linked Securities that will 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 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

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<sup>18</sup> 15 U.S.C. 78f(b)(8).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2020-46 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-2020-46. 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 SR-NYSEArca-2020-46, 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>19</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).