

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89898; File No. SR-NYSEArca-2020-46)

September 16, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend NYSE Arca Rule 5.2-E(j)(6) Relating to Options-Linked Securities

On June 10, 2020, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 amend NYSE Arca Rule 5.2-E(j)(6) to accommodate Exchange listing and trading of Options-Linked Securities. The proposed rule change was published for comment in the Federal Register on June 22, 2020.³

On July 28, 2020, 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 The Commission has received no comment letters on the proposed rule change.

The Commission is issuing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove 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. 89073 (June 16, 2020), 85 FR 37488 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 89412, 85 FR 46744 (August 3, 2020). The Commission designated September 20, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

I. Description of the Proposal

Exchange Rule 5.2-E(j)(6) provides for Exchange 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”). The Exchange proposes to amend Rule 5.2-E(j)(6) to add Options-Linked Securities to the type of Index-Linked Securities set forth in Rule 5.2-E(j)(6) permitted to list and trade on the Exchange.

The proposal would also add a new paragraph (vii) to Rule 5.2-E(j)(6) to provide that the payment at maturity with respect to Options-Linked Securities is based on the performance of 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; (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; or (f) a basket or index of any of the foregoing (“Options Reference Asset”). 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.

The Exchange proposes that Options-Linked Securities⁷ must meet one of the following two initial listing standards:

(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 Exchange Act 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 that is an Intermarket Surveillance Group ("ISG") member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement.

In addition, the Exchange also proposes that Options-Linked Securities must meet both of the following initial listing criteria: (1) 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 Exchange's Core Trading Session;⁸ and (2) 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

⁷ The proposal would set forth the Options-Linked Securities listing standards in Rule 5.2-E(j)(6)(B)(VII). 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 to Rule 5.2-E(j)(6).

⁸ As that term is defined in NYSE Arca Rule 7.34-E.

major market data vendors on at least a 15-second basis during the Exchange's Core Trading Session.

The Exchange will consider the suspension of trading in, and will initiate delisting proceedings pursuant to NYSE Arca Rule 5.5-E(m) if any of the initial listing criteria described above are not continuously maintained. The Exchange may also halt trading in Options-Linked Securities, and will initiate delisting proceedings pursuant to NYSE Arca Rule 5.5-E(m) under any of the following circumstances:

(A) if the aggregate market value or the principal amount of the Options-Linked Securities publicly held is less than \$400,000;

(B) if the value of the Options Reference Asset is no longer calculated or available and a new Options Reference Asset is substituted, unless the new Options Reference Asset meets the requirements of Rule 5.2-E(j)(6); or

(C) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.⁹

According to the Exchange, 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 Assets, as described above, would also work in conjunction with the initial and continued listing criteria related to surveillance procedures and trading guidelines for Index-

⁹ According to the Exchange, the proposed continued listing criteria for Options-Linked Securities are substantially identical to continued listing criteria in Rule 5.2-E(j)(6) applicable to other Index-Linked Securities. The proposal would also add Options Reference Assets to the permitted types of Multifactor Reference Assets.

Linked Securities. The Exchange further 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.

II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2020-46 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁰ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹¹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange 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."¹²

¹⁰ 15 U.S.C. 78s(b)(2)(B).

¹¹ Id.

¹² 15 U.S.C. 78f(b)(5).

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.¹³

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,¹⁴ and any other issues raised by the proposed rule change under the Act. As discussed above, the Exchange proposes to adopt generic listing standards for Options-Linked Securities. The Exchange takes the position that the proposed Options-Linked Securities generic listing standards would continue to ensure

¹³ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

¹⁴ See supra note 3.

transparency surrounding the listing process for Index-Linked Securities. The Exchange also states that the standards for listing and trading Options-Linked Securities are reasonably designed to promote a fair and orderly market for such securities.

The Commission seeks commenters' views regarding whether the proposal is designed to protect investors and the public interest, and, in particular, whether there is adequate transparency and disclosure related to the options to which Options-Linked Securities or Multifactor Index-Linked Securities are proposed to be linked. In addition, the Commission seeks comment regarding whether additional requirements, either qualitative or quantitative, relating to either the generic listing standards for Options-Linked Securities or the definition of Options Reference Assets, would help to ensure that the proposal is designed to prevent fraudulent and manipulative acts and practices.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-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]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(57).