

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66965; File No. SR-NYSEARCA-2012-38)

May 11, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NYSE Arca Equities Rule 5.2(j)(1), the Exchange's "Other Securities" Listing Standard, to Delete a Provision Providing That If a Security Listed Under the Rule Contains Redemption Provisions, the Redemption Price Must Be At Least \$3.00 Per Unit

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on April 30, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("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 Equities Rule 5.2(j)(1), the Exchange's "Other Securities" listing standard, to delete a provision providing that if a security listed under the rule contains redemption provisions the redemption price must be at least \$3.00 per unit. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

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

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(1), the Exchange's initial listing standard for "Other Securities,"³ as set forth below. Under NYSE Arca Equities Rule 5.2(j)(1), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, warrants, contingent value rights, and unit investment trusts.⁴ The Exchange, like certain other national securities exchanges, refers to such securities as "Other Securities."⁵ In addition, NYSE Arca Equities Rule 5.2(j)(4) ("Index-linked Exchangeable Notes") and NYSE Arca Equities Rule 5.2(j)(6) ("Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor

³ See Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998 (August 1, 1994) (SR-PSE-93-12) (approving, among other things, the initial listing standards for "Other Securities" of the Pacific Stock Exchange ("PCX"), the predecessor entity to NYSE Arca).

⁴ NYSE Arca Equities Rule 5.2(j)(1) currently states that the Exchange will consider listing any security not otherwise covered by the requirements of NYSE Arca Equities Rules 5.2(c) through (h). See NYSE Arca Equities Rule 5.2(j)(1); see, e.g., NYSE Arca Equities Rules 5.2(c) (listing criteria for common stock); 5.2(d) (listing criteria for preferred stock and similar issues and secondary classes of common stock); 5.2(e) (listing criteria for bonds and debentures); 5.2(f) (listing criteria for warrants); 5.2(g) (listing criteria for contingent value rights); and 5.2(h) (listing criteria for unit investment trusts).

⁵ NYSE Amex's initial listing standards for "Other Securities" are set forth in Section 107A of the NYSE Amex Company Guide. See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR-Amex-89-29) (approving the initial listing criteria for "Other Securities").

Index-Linked Securities”) (securities listed under any of these rules and securities listed under NYSE Arca Equities Rule 5.2(j)(1) shall be referred to herein as “hybrid securities”) require that, in the case of securities listed under those rules, both the issuer and the issuer must comply with the requirements of NYSE Arca Equities Rule 5.2(j)(1), except to the extent that those rules explicitly provide otherwise.

The Exchange amended its initial and continued listing standards for operating companies on a pilot program basis in 2006 (the “Pilot Program”) and subsequently extended that Pilot Program three times.⁶ The Pilot Program also made minor changes to a number of other rules, including NYSE Arca Equities Rule 5.2(j)(1), which was amended to (i) add a pre-tax income initial listing requirement of \$1,000,000 and (ii) to make some minor non-substantive stylistic changes. The Exchange amended rules included in the Pilot Program on several occasions while the Pilot Program was operational, including by means of a rule filing approved by the SEC in which the Exchange deleted NYSE Arca Equities Rule 5.2(j)(1)(E), which provided that the redemption price must be at least \$3.00 per unit for those issues that contain redemption provisions.⁷

⁶ The Commission initially approved the Pilot Program for six months, until May 29, 2007. See Securities Exchange Act Release No. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (SR-NYSEArca-2006-85). The Pilot was subsequently extended for an additional six months, until November 30, 2007. See Securities Exchange Act Release No. 55838 (May 31, 2007), 72 FR 31642 (June 7, 2007) (SR-NYSEArca-2007-51). The Pilot was then extended for an additional six months, until May 31, 2008. See Securities Exchange Act Release No. 56885 (December 3, 2007), 72 FR 69272 (December 7, 2007) (SR-NYSEArca-2007-123). The Pilot was finally extended for an additional six months, until November 30, 2008. See Securities Exchange Act Release No. 57922 (June 4, 2008), 73 FR 33137 (June 11, 2008) (SR-NYSEArca-2008-55).

⁷ See Securities Exchange Act Release No. 56906 (December 5, 2007), 72 FR 70636 (December 12, 2007) (SR-NYSEArca-2007-103).

The third and final extension of the Pilot Program expired on November 30, 2008. After the final extension of the Pilot Program in 2008, NYSE Euronext, the ultimate parent company of NYSE Arca decided to discontinue initial listing of equity securities of operating companies on NYSE Arca. The listing standards adopted under the Pilot Program, as amended, were not adopted on a permanent basis prior to the expiration of the Pilot Program because of that decision.

The Exchange now proposes to amend its rules to delete NYSE Arca Equities Rule 5.2(j)(1)(E), which provides that the redemption price must be at least \$3.00 per unit for those issues that contain redemption provisions. The Exchange proposes to delete this provision in order to bring the NYSE Arca Equities rule in line with those of other exchanges and, therefore, to remain competitive in the marketplace.⁸ The Exchange notes that, while it does not at this time list any securities under NYSE Arca Equities Rule 5.2(j)(1), NYSE Arca Rule 5.2(j)(4) and NYSE Arca Equities Rule 5.2(j)(6) both incorporate certain requirements from NYSE Arca Equities Rule 5.2(j)(1), including those the Exchange proposes to delete pursuant to this filing. As the Exchange continues to regularly list securities under NYSE Arca Equities 5.2(j)(6), the proposed amendment has significant implications for the Exchange's competitive position.

When the Exchange first adopted its "Other Securities" listing standard in 1994, it adopted a standard that was the same in all material respects as the standard adopted by the American Stock Exchange ("Amex") (predecessor to NYSE Amex) in 1990. At the time that the Amex adopted its "Other Securities" standard, the market for exchange-traded hybrid securities

⁸ See Securities Exchange Act Release No. 37165 (May 3, 1996), 61 FR 21215 (May 9, 1996) (SR-Amex-96-15) (eliminating the U.S. dollar cash settlement and minimum redemption price requirements for "Hybrid Securities" in Section 107A of the NYSE Amex Company Guide).

was in its infancy. The Exchange understands that there was a concern that investors did not have a sophisticated enough understanding of how hybrid securities performed and it was believed that it was therefore necessary to protect investors against the possibility that they could lose most or all of their investment in a hybrid security. Consequently, the Amex (and, following the Amex's lead, the PCX) adopted a requirement that the issuer of a mandatorily redeemable security could not redeem such security at a price of less than \$3.00. This provision provided downside protection to investors and ensured that they would not unknowingly purchase a security that would ultimately have little or no intrinsic value. The NYSE never adopted such a requirement and the Amex deleted this provision from its own rule in 1996 to conform to the "Other Securities" rule of the NYSE.

The Exchange believes that a minimum redemption price requirement may provide a desirable protection for investors in the case of certain hybrid securities. In that regard, the Exchange notes that after adoption of the proposed amendment issuers would still have the ability to include a minimum redemption price provision in their securities when doing so is desirable. However, the Exchange notes that requiring a minimum redemption price of \$3.00 deprives investors of the ability to make the sort of investment choices that an investor can make when an equity security declines in value, as it essentially forces the issuer to redeem the securities as soon as possible after they fall below that price, as the issuer would otherwise be at risk of having to redeem the securities at a premium. In the absence of this automatic redemption, investors would have greater flexibility in that they would be able to choose either to continue to hold a security whose value had significantly declined (on the basis that its value might recover) or sell the security to avoid further losses. By contrast, the current requirement would force investors to realize the loss associated with the difference between their purchase

price and the \$3.00 redemption price. The Exchange also notes that exchange-traded hybrid securities now typically provide for the possibility of redemption of large blocks of the securities at the option of the investor at regular intervals. As such, an investor who owns a significant amount of the securities and who is concerned about the trend in the value of the reference asset for a hybrid security and its implications for the future value of the hybrid security itself is able to require the issuer to redeem his securities, thereby limiting his exposure to future declines in the value of the hybrid security. Finally, the Exchange notes that the “Other Securities” standards of other national securities exchanges, including the NYSE, NYSE Amex and Nasdaq, do not include mandatory redemption provisions.

2. Statutory Basis

NYSE Arca believes that the proposed rule change is consistent with Section 6(b)⁹ of the Securities Exchange Act of 1934 (the “Act”),¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular in that it is designed 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed amendment is consistent with the protection of investors and the public interest because (i) if the automatic redemption requirement was no longer applicable, investors would have greater flexibility in that they would be able to choose either to continue to hold a security

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78a.

¹¹ 15 U.S.C. 78f(b)(5).

whose value had significantly declined (on the basis that its value might recover) or sell the security to limit their losses and (ii) issuers will still have the ability to include a minimum redemption price provision in their securities when doing so is desirable. In addition, the proposed amendment is designed to remove an impediment to a free and open market in that it would remove a requirement which is not included in the comparable rules of competitor exchanges and would therefore promote competition.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4 thereunder.¹³

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4. In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁴

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 SR-NYSEArca-2012-38 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2012-38. 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

¹⁴ 15 U.S.C. 78s(b)(3)(C).

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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2012-38 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).