

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76871; File No. SR-NYSEArca-2015-114)

January 11, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Market Vectors Dynamic Put Write ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On November 16, 2015, 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 list and trade shares (“Shares”) of the Market Vectors Dynamic Put Write ETF (the “Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on December 4, 2015.³ On December 11, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 76530 (Nov. 30, 2015), 80 FR 75883.

⁴ In Amendment No. 1, the Exchange clarified: (1) that the Fund may sell or invest in other U.S. exchange-traded put options on stock indexes, put options on stock index futures contracts, put options on the Fund (if available), or put options on exchange-traded pooled investment vehicles (rather than shares of such vehicles); (2) how the Fund’s put options, U.S. Treasuries, and cash equivalents generally would be valued to calculate the Fund’s net asset value (“NAV”); Amendment No.1 superseded the original filing in its entirety. Amendment No. 1 is available at: <http://www.sec.gov/comments/sr-nysearca-2015-114/nysearca2015114-1.pdf>.

II. The Exchange’s Description of the Proposed Rule Change⁵

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by Market Vectors ETF Trust (“Trust”), which is registered with the Commission as an investment company.⁶ Van Eck Absolute Return Advisers Corporation (“Adviser”) will serve as the investment adviser of the Fund. Van Eck Absolute Return Advisers will also serve as the administrator for the Fund, and The Bank of New York Mellon will serve as the custodian for the Fund. Van Eck Securities Corporation will serve as the distributor of the Shares.

Principal Investments

The Fund’s investment objective will be to seek a positive total return and income. Under normal circumstances,⁷ the Fund will seek to achieve its investment objective by selling only

⁵ The Commission notes that additional information regarding the Trust, the Fund, its investments, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolios holding disclosure policies, calculation of NAV, distribution, and taxes, among other things, can be found in Amendment No. 1, supra note 4, and the Registration Statement, infra note 6, as applicable.

⁶ The Exchange states that the Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On August 19, 2015, the Trust filed with the Commission a registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-123257 and 811-10325) (“Registration Statement”). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29496 (November 3, 2010) (File No. 812-13605).

⁷ The term “under normal circumstances” includes, but is not limited to, the absence of extreme volatility or trading halts in the domestic equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. For temporary defensive purposes, the Fund may hold cash and cash equivalents, including U.S. Treasury bills and/or invest without limit in money market instruments, repurchase agreements, or other funds which invest exclusively in money market instruments, as described further below. The Fund may take temporary defensive positions in anticipation of or in an attempt to respond to adverse market, economic, political or other conditions.

exchange-listed, uncovered out-of-the-money put options, which typically expire between 30 and 60 days, on: (i) the S&P 500 Index; (ii) futures on the S&P 500 Index; and (iii) e-mini futures on the S&P 500 Index.⁸ The aggregate notional value (i.e., the underlying value) of the Fund's put option contracts (including those described below) will be approximately 200% of the Fund's net assets.⁹

Other Investments

Cash and cash equivalents, in which the Fund may hold, include U.S. Treasury Bills, repurchase agreements, money market instruments, or investment companies and exchange-traded funds ("ETFs")¹⁰ that invest principally in money market instruments. The Fund also may invest in other U.S. exchange-traded put options on stock indexes, put options on stock index futures contracts, put options on the Fund (if available) or put options exchange-traded pooled investment vehicles,¹¹ to the extent such investments are considered suitable for the Fund by the Adviser.

⁸ Options on the S&P 500 Index are traded on the Chicago Board Options Exchange. Options on futures on the S&P 500 Index and options on e-mini futures on the S&P 500 Index are traded on the Chicago Mercantile Exchange.

⁹ See Amendment No. 1, supra note 4, at 7.

¹⁰ The ETFs in which the Fund may invest will be registered under the 1940 Act and include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs in which the Fund invests will be listed and traded in the U.S. on registered exchanges.

¹¹ Exchange-traded pooled investment vehicles include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act¹² and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁴ 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 notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

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,¹⁵ 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. According to the Exchange, quotation and last sale information for the Shares, ETFs and pooled investment vehicles will be available via the Consolidated Tape Association high-speed line. Quotation and last sale information for exchange-listed options cleared via the Options Clearing Corporation

¹² 15 U.S.C. 78f.

¹³ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78k-1(a)(1)(C)(iii).

will be available via the Options Price Reporting Authority. Intra-day and closing price information regarding exchange-traded options (including options on futures) will be available from the exchange on which these instruments are traded. Intra-day and closing price information regarding money market instruments, repurchase agreements, and cash equivalents, including U.S. Treasuries, will be available from major market data vendors. Price information for non-exchange-traded investment company securities will be available from major market data vendors and from the website of the applicable investment company. In addition, the Indicative Per Share Portfolio Value will be disseminated every 15 seconds during the Exchange's Core Trading Session by major market data vendors. On each business day, before commencement of trading in Shares in the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34(a)(2)), the Fund will disclose on its website the Disclosed Portfolio (as defined in NYSE Arca Equities Rule 8.600(c)(2)) that will form the basis for the Fund's calculation of NAV at the end of the business day.¹⁶ The Fund's NAV per Share will be calculated daily every day the NYSE is open. A basket composition file, which will include the security names and share quantities, if applicable, required to be delivered in exchange for the Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the National Securities Clearing Corporation.

¹⁶ On a daily basis, the Fund will disclose on the Fund's 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 option); the identity of the security, commodity, 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; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. This information will be publicly available at no charge. See Amendment No. 1, supra note 4, at 13.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The website for the Fund will include a form of the prospectus for the Fund and additional quantitative information.

The Commission further 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. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.¹⁷ In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted. The Exchange may halt trading in the Shares if the Indicative Per Share Portfolio Value is not being disseminated as required, if the Exchange becomes aware that the NAV for the Fund is not being disseminated to all market participants at the same time, if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.¹⁸ Further,

¹⁷ See NYSE Arca Equities Rule 8.600(d)(1)(B).

¹⁸ See NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading in the Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have

the Commission notes that the Reporting Authority that provides the Disclosed Portfolio of the Fund must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.¹⁹ The Commission notes that the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange,²⁰ will communicate as needed regarding trading in the Shares, options contracts and options on futures contracts with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, options contracts, and options on futures contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, options contracts, and options on futures contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. According to the Exchange, the Adviser is not a registered broker-dealer but is affiliated with a broker-dealer whose primary function is to serve as distributor and placement agent for its products. The Exchange states that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a

been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

¹⁹ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

²⁰ The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

registered broker-dealer or becomes affiliated with a broker-dealer, the Exchange states that such Adviser, new adviser or sub-adviser, as applicable will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

The Exchange deems the Shares to be equity securities, which subjects trading in the Shares to the Exchange's existing rules governing the trading of equity securities.²¹

In support of this proposal, the Exchange has made additional representations, including:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.²²
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.²³
- (3) The Exchange represents that the trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange or FINRA on behalf 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 the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.²⁴

²¹ See Amendment No. 1, supra note 4, at 15.

²² See id.

²³ See id.

²⁴ See id.

- (4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“ETP”) Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Unit (and that Shares are not individually redeemable); (b) 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; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Intraday Indicative Value (“IIV”) or Index value will not be calculated or publicly disseminated; (d) how information regarding the IIV and the Disclosed Portfolio will be disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.²⁵
- (5) For initial and continued listing, the Fund will be in compliance with Rule 10A-3²⁶ under the Act, as provided by NYSE Arca Equities Rule 5.3.
- (6) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.²⁷

This approval order is based on all of the Exchange’s representations.

²⁵ See id. at 16.

²⁶ 17 CFR 240.10A-3.

²⁷ See Amendment No. 1, supra note 4, at 15.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act²⁸ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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-2015-114 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2015-114. 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

²⁸ 15 U.S.C. 78f(b)(5).

website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 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; 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-2015-114 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice in the Federal Register. Amendment No. 1 supplements the proposed rule change by, among other things, clarifying the scope of the Fund's permitted investments and adding additional information about the availability of prices for the Shares and underlying assets. This clarifying information aided the Commission in evaluating the likelihood of effective arbitrage in the Shares. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁹ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

²⁹ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-NYSEArca-2015-114), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Robert W. Errett
Deputy Secretary

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).