

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77045; File No. SR-NYSEArca-2015-113)

February 3, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Relating to the Index Underlying the WisdomTree Put Write Strategy Fund

I. Introduction

On December 2, 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 proposal to change a representation the Exchange made in support of a prior proposed rule change. The proposed rule change was published for comment in the Federal Register on December 21, 2015.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

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

A. The Prior Proposal

The Commission approved the listing and trading on the Exchange of shares (“Shares”) of the WisdomTree Put Write Strategy Fund (“Fund”) under NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units.⁴ The Exchange filed that proposed rule change because the Fund and the Shares did not meet all of the “generic” listing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 76646 (Dec. 15, 2015), 80 FR 79371 (“Notice”).

⁴ See Securities Exchange Act Release Nos. 74290 (February 18, 2015), 80 FR 9818 (February 24, 2015) (SR-NYSEArca-2015-05) (“Prior Notice”); 74675 (April 8, 2015), 80 FR 20038 (April 14, 2015) (SR-NYSEArca-2015-05) (“Prior Order” and, together with the Prior Notice, the “Prior Release”).

requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3), applicable to the listing of Investment Company Units based upon an index of “US Component Stocks.”⁵ The Exchange represented that the Shares would conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the underlying index, the CBOE S&P 500 Put Write Index (the “Index”), would not meet the requirements of NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(1)-(5). The Exchange, however, also represented that the Index would (1) include a minimum of 20 components, and therefore (2) meet the numerical requirements of NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(4), which requires a minimum of 13 index or portfolio components.

The Exchange has not listed or commenced trading in the Shares.⁶

B. The Instant Proposed Rule Change

The Exchange submitted this proposal to correct two representations made in support of its prior proposal to list and trade the Shares. Specifically, the Exchange seeks to strike its representations that the Index will (1) include a minimum of 20 components; and (2) meet the numerical requirements of NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(4). At any given time, the Index consists of one component, an “SPX Put.”⁷ Additionally, NYSE Arca clarifies that the Commentary is inapplicable because the Index contains options components.⁸

⁵ NYSE Arca Equities Rule 5.2(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 Act and an American Depositary Receipt, the underlying equity securities of which is registered under Sections 12(b) or 12(g) of the Act.

⁶ See Notice, supra note 3, 80 FR at 79371.

⁷ The Index is maintained by the Chicago Board Options Exchange, Inc. (“CBOE”) and tracks the value of a passive investment strategy, which consists of overlaying of S&P 500 Index put options (“SPX Puts”) over a money market account, invested in one and three-month Treasury bills. The SPX Puts are struck at-the-money and are sold on a monthly basis, usually the third Friday of the month (i.e., the “Roll Date”), which

The Exchange asserts that the deletion of its prior representations would not adversely affect investors or the public interest, because the Index is based on CBOE-traded puts on the S&P 500, which are highly liquid.⁹ The Exchange further estimates that, on the launch date, the Fund would hold approximately \$2.5-\$5.0 million in cash and cash equivalents. The Exchange also believes that sufficient protections are in place to protect against market manipulation of the Fund's Shares and SPX Puts because: (i) trading in the Shares and the underlying Fund instruments are subject to the federal securities laws and to the Exchange's, CBOE's, and the Financial Industry Regulatory Authority's rules and surveillance programs, which are designed to detect violations; (ii) assets in the portfolio – which will primarily be short-term U.S. Treasury bills¹⁰ and SPX Puts – will be acquired in extremely liquid and highly regulated markets; and (iii) the exchange-traded fund creation/redemption and arbitrage mechanisms are tied to the large pool of liquidity of each of the Fund's underlying investments.

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances and that these procedures are adequate to properly monitor Exchange trading of the

matches the expiration date of the SPX Puts. All SPX Puts are standardized options traded on the CBOE.

⁸ NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(5) provides that all securities in the applicable index or portfolio shall be US Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 under Regulation NMS of the Act. Each component stock of the S&P 500 Index is a US Component Stock that is listed on a national securities exchange and is an NMS Stock. Options are excluded from the definition of NMS Stock.

⁹ See Notice, supra note 3, at 79372 and 79373 for the Exchange's representation of the average daily trading volume of at-the-money 30-day SPX Puts, the trading volume of the at-the-money SPX Puts, and the daily high, low and last reported sales prices on each of the Roll Dates for SPX Puts at-the-money.

¹⁰ See Notice, supra note 3, at 79373. The Exchange states that the short-term Treasury securities that the Fund will acquire as part of its strategy are not readily susceptible to market manipulation due to the liquidity and extensive oversight associated with the short-term U.S. Treasury market.

Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws. Furthermore, the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, or the regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares and SPX Index options with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, may obtain trading information regarding trading in the portfolio securities from these markets and other entities. In addition, the regulatory staff of the Exchange may obtain information regarding trading in the portfolio securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

III. Discussion and Commission’s Findings

After careful review, the Commission finds that the exchange’s proposal is consistent with the requirements of Section 6 of the Act¹¹ and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹³ 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.

¹¹ 15 U.S.C. 78f.

¹² 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).

¹³ 15 U.S.C. 78f(b)(5).

The Commission believes that it would be difficult to manipulate the price of the Shares by manipulating the prices of its underlying assets. The Fund's portfolio will comprise cash, short-term U.S. Treasury bills, and SPX Puts.¹⁴ The Exchange contends that neither short-term Treasury securities nor SPX Puts are readily susceptible to market manipulation due to the deep liquidity in¹⁵ and extensive oversight of those markets.¹⁶ With respect to SPX Puts, specifically, the Exchange has provided data demonstrating that the average daily trading volume (through expiration) of recent SPX Puts compares favorably to the average daily trading volumes of at-the-money put options on other major indexes and is, in fact, higher than that of at-the-money puts on the Russell 2000 index.¹⁷

For these reasons, the Commission believes that it would be difficult to manipulate the price of the Shares by manipulating the prices of its underlying assets. The Commission also

¹⁴ See Notice, supra note 3, 80 FR at 79373.

¹⁵ The Exchange states: "According to Federal Reserve Bank of New York data as of September 2015, average daily trading volume for U.S. Treasury bills totaled \$67.8 billion.... SPX options are among the most liquid index options in the U.S. and derive their value from the actively traded S&P 500 Index components. SPX options are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes that the highly regulated S&P 500 options markets, and the broad base and scope of the S&P 500 Index, make securities that derive their value from that index, including S&P 500 options, less susceptible to potential market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities." Id.

¹⁶ The Exchange states: "In addition, the Treasury market and its participants are subject to a wide range of oversight and regulations, including requirements designed to prevent market manipulation and other abuses. For example, Treasury market participants and the Treasury market, itself, are subject to significant oversight by a number of regulatory authorities, including the Treasury, the Commission, federal bank regulators, and the Financial Industry Regulatory Authority." Id., n.15. The Exchange represents that the SPX Puts will be subject to CBOE and FINRA surveillance programs. See id., 80 FR at 79374.

¹⁷ See id., 80 FR at 79372-73.

notes that, except as discussed above, all other representations made in support of the Prior Release remain unchanged.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁸ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-NYSEArca-2015-113), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Robert W. Errett
Deputy Secretary

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).