

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78627; File No. SR-NYSEArca-2016-67)

August 22, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Shares of of the Natixis Seeyond International Minimum Volatility ETF Under NYSE Arca Equities Rule 8.600

On May 5, 2016, 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 Natixis Seeyond International Minimum Volatility ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on May 25, 2016.³ On June 13, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁴ On June 22, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.⁵ On July 1, 2016, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change as modified by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 77861 (May 19, 2016), 81 FR 33291.

⁴ In Amendment No. 1, the Exchange: (1) narrows the universe of investments that may be held by the Fund; (2) discusses the types of corporate bonds of foreign issuers that the Fund would ordinarily hold; (3) clarifies potentially ambiguous language in the filing.

⁵ In Amendment No. 2, the Exchange proposes standards for the corporate bonds of foreign issuers that may be held by the Fund and clarifies how spot foreign currency transactions would be priced for purposes of calculating the net asset value (“NAV”) of the Fund.

Amendments No. 1 and No. 2.⁶ The Commission has received no comments on the proposed rule change.

On June 30, 2016, pursuant to Section 19(b)(2) of the Act,⁷ 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.⁸ The Commission has not received any comments on the proposal, as modified by Amendment No. 3.

This order institutes proceedings under Section 19(b)(2)(B) of the Act⁹ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 3.

⁶ In Amendment No. 3, the Exchange revises the standards for the Fund's investment in non-U.S. equity securities. Amendments No. 1, No. 2, and No. 3 are available at: <http://www.sec.gov/comments/sr-nysearca-2016-67/nysearca201667.shtml>.

⁷ 15 U.S.C. 78s(b)(2).

⁸ See Securities Exchange Act Release No. 78204, 81 FR 44393 (July 7, 2016). The Commission designated a longer period within which to take action on the proposed rule change and designated August 23, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁹ 15 U.S.C. 78s(b)(2)(B).

I. The Exchange’s Description of Proposal¹⁰

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 the Trust, which is registered with the Commission as an open-end management investment company. NGAM Advisors, L.P. will serve as the investment adviser and administrator to the Fund (“Adviser”). Natixis Asset Management U.S., LLC will serve as the Fund’s sub-adviser (“Sub-Adviser”). State Street Bank and Trust Company will serve as custodian and transfer agent for the Fund.

Principal Investments

The Exchange states that, under normal circumstances,¹¹ the Fund will invest primarily in non-U.S. equity securities, which are common stocks and “Depository Receipts.”¹² The Fund

¹⁰ The Commission notes that additional information regarding Natixis ETF Trust (“Trust”), the Fund, its investments, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of NAV, distributions, and taxes, among other things, can be found in Amendment No. 3, supra note 6, and the initial registration statement filed with the Commission on March 14, 2016 on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the Investment Company Act of 1940 (15 U.S.C. 80a-1) relating to the Fund (File Nos. 333-210156 and 811-23146) (File Nos. 333-210156 and 811-23146) (“Registration Statement”), as applicable.

¹¹ The term “under normal circumstances” includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund’s investments are made for temporary defensive purposes; operational issues (e.g., systems failures) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

¹² Investments in common stock of foreign corporations may be in the form of American Depository Receipts (“ADRs”) and Global Depository Receipts (collectively “Depository Receipts”). Not more than 10% of the Fund’s assets will be invested in non-exchange-listed ADRs.

may invest in companies of any size and typically will invest in a number of different countries throughout the world. The Fund's investments may include non-U.S. equity securities traded over-the-counter ("OTC") as well as those traded on a U.S. or foreign securities exchange.¹³

Other Investments

The Exchange states that, while the Fund, under normal circumstances, will invest primarily (more than 50% of its assets) in non-U.S. equity securities, as described above, the Fund will invest its remaining assets in the securities and financial instruments described below ("Non-Principal Investments").

The Fund may invest in: certificates of deposit; time deposits, which are non-negotiable deposits maintained in a bank for a specified period of time up to seven days at a stated interest rate; and bankers' acceptances, which are credit instruments evidencing the obligation of a bank to pay a draft drawn on it by a customer.

The Fund also may purchase U.S. dollar-denominated obligations issued by foreign branches of domestic banks or foreign branches of foreign banks ("Eurodollar" obligations) and domestic branches of foreign banks ("Yankee dollar" obligations).

¹³ Non-U.S. equity securities in the Fund's portfolio will meet the following criteria on a continual basis: (1) non-U.S. equity securities each shall have a minimum market value of at least \$100 million; (2) non-U.S. equity securities each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months; (3) the most heavily weighted non-U.S. equity security shall not exceed 25% of the weight of the Fund's entire portfolio, and, to the extent applicable, the five most heavily weighted non-U.S. equity securities shall not exceed 60% of the weight of the Fund's entire portfolio; and (4) each non-U.S. equity security shall be listed and traded on an exchange that has last-sale reporting. See Amendment No. 3, supra note 6, at 6, n.8.

The Fund may invest in the following U.S. government securities: U.S. Treasury Bills; U.S. Treasury Notes and Bonds; U.S. Treasury Floating Rate Notes; and Treasury Inflation-Protected Securities.

The Fund may invest in other investment companies, including exchange-traded funds. The Fund may invest in U.S. or foreign exchange-traded real estate investment trusts (“REITs”).

The Fund may invest in preferred stock traded on a U.S. or foreign exchange or OTC.

The Fund may invest in the following foreign debt securities, all or a portion of which may be non-U.S. dollar-denominated: (1) debt obligations issued or guaranteed by non-U.S. national, provincial, state, municipal or other governments or by their agencies or instrumentalities, including “Brady Bonds”; (ii) debt obligations of supranational entities; (iii) debt obligations of the U.S. government issued in non-dollar securities; (iv) debt obligations and other fixed-income securities of foreign corporate issuers;¹⁴ and (v) non-U.S. dollar-denominated securities of U.S. corporate issuers.

The Fund may engage in foreign currency transactions for both hedging and investment purposes. To protect against a change in the foreign currency exchange rate between the date on which the Fund contracts to purchase or sell a security and the settlement date for the purchase or sale, to gain exposure to one or more foreign currencies or to “lock in” the equivalent of a dividend or interest payment in another currency, the Fund might purchase or sell a foreign currency on a spot (i.e., cash) basis at the prevailing spot rate.

The Fund may enter into repurchase agreements.

¹⁴ Under normal circumstances, the Fund will invest in corporate bond issuances that have at least \$100,000,000 par amount outstanding in developed countries and at least \$200,000,000 par amount outstanding in emerging market countries. See Amendment No. 3, supra note 6, at 11.

The Fund may invest in money market instruments. Money market instruments are high-quality, short-term securities.

The Fund may invest in U.S. equity securities (other than Depositary Receipts) that are traded on a U.S. exchange or OTC.

II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2016-67 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁵ to determine whether the proposed rule change, as modified by Amendment No. 3, 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, as modified by Amendment No. 3. 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, as modified by Amendment No. 3.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁶ 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," and "to protect investors and the public interest."¹⁷

¹⁵ 15 U.S.C. 78s(b)(2)(B).

¹⁶ Id.

¹⁷ 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 proposal 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.¹⁸

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal 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,¹⁹ in addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendment No. 3. In particular, the Commission seeks comment on the following:

¹⁸ 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).

¹⁹ See Notice, supra note **Error! Bookmark not defined.**

1. In general, do commenters believe that the proposal is consistent with the requirements of Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, 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?

2. What are commenters' views regarding the lack of quantitative requirements proposed with respect to certain Non-Principal Investments (e.g., U.S. equity securities other than Depositary Receipts, preferred stock, and foreign REITs), which may constitute up to 50% of the Fund's portfolio? Is the proposal adequate, with respect to Non-Principal Investments, to ensure that the price of the Shares is not susceptible to manipulation?

3. What are commenters' views regarding whether the proposal is adequate, with respect to Non-Principal Investments, to ensure adequate pricing transparency for assets held in the Fund's portfolio?

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-2016-67 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 Numbers SR-NYSEArca-2016-67. 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 these filings 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-2016-67 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.²⁰

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(57).