

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80501; File No. SR-NYSEArca-2016-176)

April 21, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to the Listing and Trading of Shares of the EtherIndex Ether Trust Under NYSE Arca Equities Rule 8.201

On December 30, 2016, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) 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 EtherIndex Ether Trust (“Trust”) under NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the Federal Register on January 23, 2017.³ On February 23, 2017, 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 approve or disapprove the proposed rule change.⁵ The Commission has received no comments on 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. 79792 (Jan. 13, 2017), 82 FR 7891 (Jan. 23, 2017) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 80094 (Feb. 23, 2017), 82 FR 12268 (Mar. 1, 2017). The Commission designated April 23, 2017, as the date by which it should approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal⁷

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.⁸ Each Share would represent a fractional undivided beneficial interest in the Trust's net assets. According to the Exchange, the Trust's assets primarily would consist of ether,⁹ which would be held in the custody of, and secured by, the Trust's ether custodian, Coinbase

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ The Commission notes that additional information regarding the Trust and the Shares can be found in the Notice, see supra note 3, and the Registration Statement, which was filed by the Trust on Form S-1 under the Securities Act of 1933 on July 15, 2016, and amended on November 28, 2016. This additional information addresses the Trust's investment objectives, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of the net asset value ("NAV"), distributions, and taxes, as well as additional background information about ether and the Ethereum Network, including information relating to, among other things, Ethereum Network operations, ether transfers and transactions, cryptographic security used in the Ethereum Network, ether mining and creation of new ether, the supply of ether, and modifications to the ether protocol.

⁸ See NYSE Arca Equities Rule 8.201 (permitting the listing and trading of "Commodity-Based Trust Shares," defined as a security "(a) that is issued by a trust that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity").

⁹ The Exchange represents that ether is a digital asset similar to bitcoin and is not issued by any government, bank, or central organization, but rather is issued by, and is transmitted through, the decentralized, open-source protocol of the peer-to-peer Ethereum Network. The Exchange represents that unlike bitcoin, ether was not designed to function purely as a store of value. Instead, ether was meant to pay for specific actions on the Ethereum Network. However, according to the Exchange, ether's market is currently supported by many of the same online exchanges and the same infrastructure that has developed around the bitcoin network.

(“Custodian”).¹⁰ The Trust would create and redeem the Shares only in “Baskets” of 10,000 Shares, and orders to create and redeem Baskets may be placed only by Authorized Participants. The creation and redemption transactions would be conducted for cash or, at the discretion of the sponsor of the Trust, EtherIndex LLC, “in-kind” for ether, and the NAV of the Baskets being created or redeemed would be based on the aggregate number of ether represented by the Shares included in the Baskets as of the day the order to create or redeem was properly received.

The investment objective of the Trust would be for the Shares to track the price of ether as measured by the price of ether in U.S. dollars reported by the Global Digital Asset Exchange (“GDAX”) as of 4:00 p.m., Eastern Time (“GDAX Price”). The NAV of the Trust would be calculated each business day based on the GDAX Price. The Trust’s website would provide an intra-day indicative value (“IIV”) per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange’s Core Trading Session (i.e., 9:30 a.m. ET to 4:00 p.m. Eastern Time). The IIV would be calculated by using the prior day’s closing NAV per Share as a base and updating that value during the NYSE Arca Core

¹⁰ According to the Exchange, the private keys that control the Trust’s ether would be secured by the Custodian and stored completely offline in a “cold storage” system. The Exchange represents that the Custodian’s cold storage system is founded on the principles of (i) building defense-in-depth against external threats, (ii) protecting against human error, and (iii) guarding against misuse of insider access. The Custodian’s cold storage mechanism involves generating private keys on an “air-gapped” computer (i.e., a computer that has never been connected to the internet), then splitting these keys into segments using a special algorithm to ensure that no one individual knows how the key was fragmented, and finally distributing these fragments geographically so that no one entity can access the cold storage without the other individuals contributing their fragment of the key. According to the Exchange, the Custodian maintains insurance against theft and electronic compromise in an amount that exceeds the average value of ether that it holds online at any one time. The Exchange also represents that the Trust may hold cash for short periods in connection with the creation and redemption process and to pay certain fees, expenses, and liabilities.

Trading Session to reflect changes in the value of the Trust's ether holdings during the trading day.

II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2016-176 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹¹ 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,¹² 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" and "to protect investors and the public interest."¹³

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

¹¹ 15 U.S.C. 78s(b)(2)(B).

¹² Id.

¹³ 15 U.S.C. 78f(b)(5).

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.¹⁴

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.¹⁵ In addition to any other comments commenters may wish to submit about the proposed rule change, the Commission invites commenters' views concerning any features that distinguish the Exchange's proposal from other proposals to list and trade shares of commodity-trust ETPs.

¹⁴ 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).

¹⁵ See supra note 3.

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-2016-176 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-2016-176. 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-2016-176 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.¹⁶

Eduardo A. Aleman
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(57).