

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80515; File No. SR-NYSEArca-2017- 45)

April 24, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reflect a Change in the Index Methodology Applicable to the Virtus Enhanced U.S. Equity ETF under NYSE Arca Equities Rule 5.2(j)(3)

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 20, 2017, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 the Substance of the Proposed Rule Change

The Exchange proposes to reflect a change in the index methodology applicable to the Virtus Enhanced U.S. Equity ETF (“Fund”). The Commission, pursuant to Section 19(b)(2) of the Act, has previously approved listing and trading of shares of the Fund on the Exchange under NYSE Arca Equities Rule 5.2(j)(3). The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

concerning the purpose of, and basis for, the proposed rule change and discussed any comments it 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved the listing and trading on the Exchange of shares (“Shares”) of the Fund,⁴ under NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units. The Exchange proposes to reflect a change in the index methodology applicable to the Fund from the index description in the Prior Notice, as described below. Shares of the Fund have not commenced trading on the Exchange as of the date of filing of this proposed rule change.

Index Methodology

As stated in the Prior Notice, the Fund’s investment objective will be to seek investment results that, before fees and expenses, closely correspond to the price and yield performance of the Rampart Enhanced U.S. Equity Index (the “Index”). The Prior Notice stated that the Index is comprised of an equity portfolio enhanced by an “Options Strategy Overlay”. The equity portfolio is comprised of the largest 400 U.S. exchange-listed stocks as measured by market capitalization. The portfolio is market capitalization-weighted and is reconstituted and rebalanced on a quarterly basis. The Options Strategy Overlay uses an objective, rules-based

⁴ See Securities Exchange Act Release No. 79402 (November 25, 2016), 81 FR 86760 (December 1, 2016) (SR-NYSEArca-2016-131) (“Prior Order”). See also Securities Exchange Act Release No. 79101 (October 14, 2016) (SR-NYSEArca-2016-131) (notice of filing of proposed rule change relating to listing on the Exchange of Shares of the Fund) (“Prior Notice” and, together with the Prior Order, the “Prior Releases”).

methodology to transact in options linked to the S&P 500 Index (SPX). SPX options are traded on the Chicago Board Options Exchange. Each week, out of the money SPX put options and out of the money SPX call options are sold. The proceeds are used to buy an SPX call option. The strike prices of the options are systematically selected according to the prevailing volatility environment. In general, in higher volatility environments the short options will be struck farther out of the money.

The Exchange proposes to delete the representation in the eighth sentence of the preceding paragraph that proceeds are used to buy an SPX call option. Instead, proceeds from weekly sales of out-of-the-money SPX put and call options by the Fund (to the extent there are profits from such sales), as it attempts to meet its investment objective, will be collected by the Fund, and distributed periodically to shareholders, instead of such proceeds being used to purchase additional SPX call options. Between such distributions, there would be no additional exposure to SPX options via reinvestment in such options. Virtus ETF Advisers LLC (the “Adviser”) represents that the proposed change to the Index methodology would provide a simplified strategy that emphasizes enhanced income to investors rather than enhanced total return.

There will be no change to the Fund’s investment objective. Except for the change noted above, all other representations made in the Prior Releases remain unchanged.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to,

⁵ 15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest. Proceeds from weekly sales of out-of-the-money SPX put and call options by the Fund, as it attempts to meet its investment objective, will be distributed periodically to shareholders instead of such proceeds being used to purchase additional SPX call options.

The proposed rule change is designed to perfect the mechanism of a free and open market, and, in general, to promote just and equitable principles of trade and to protect investors and the public interest. The Adviser represents that, by not using proceeds of sales to add to exposure to SPX options in the Index, the proposed change to the Index methodology would provide a simplified strategy that emphasizes enhanced income to investors rather than enhanced total return. Except for the change noted above, all other representations in the Prior Releases remain unchanged.

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. The Exchange believes the proposed rule change will enhance competition among issues of exchange-traded funds that invest in both U.S. exchange listed stocks and U.S. exchange-traded options to the benefit of investors and the marketplace.

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 foregoing 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, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁷

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative before 30 days from the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change does not raise any regulatory issues. Additionally, waiver of the operative delay will allow the Adviser to pursue the Fund's investment objective in a consistent manner should the Exchange wish to commence trading in the Shares without delay. For these reasons, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.⁹

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

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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-2017-45 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 Number SR-NYSEArca-2017-45. 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 such filing also will be available for inspection and copying at the principal offices 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-2017-45, 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.¹⁰

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Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).