

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80707; File No. SR-NYSEArca-2017-54)

May 17, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend NYSE Arca Equities Rule 5.2(j)(6) Relating to Equity Index-Linked Securities

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 May 4, 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, II, and III below, which Items have been prepared by the self-regulatory organization. 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 amend NYSE Arca Equities Rule 5.2(j)(6) to exclude Investment Company Units, securities defined in Section 2 of NYSE Arca Equities Rule 8 and Index-Linked Securities when applying the quantitative generic listing criteria applicable to Equity Index-Linked Securities. The proposed 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 concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6) to exclude Investment Company Units (“Units”) and securities defined in Section 2 of NYSE Arca Equities Rule 8 (collectively, together with Units, “Derivative Securities Products”)⁴, as well as Index-Linked Securities⁵ when applying the quantitative generic listing criteria applicable to Equity Index-Linked Securities.

Equity Index-Linked Securities are securities that provide for the payment at maturity (or earlier redemption) based on the performance of an underlying index or indexes of equity securities, securities of closed-end management investment companies registered under the

⁴ Units are securities that represent an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity, that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities or securities in another registered investment company that holds such securities. See NYSE Arca Equities Rule 5.2(j)(3). The following securities currently are included in Section 2 of NYSE Arca Equities Rule 8: Portfolio Depositary Receipts (Rule 8.100); Trust Issued Receipts (Rule 8.200); Commodity-Based Trust Shares (Rule 8.201); Currency Trust Shares (Rule 8.202); Commodity Index Trust Shares (Rule 8.203); Commodity Futures Trust Shares (Rule 8.204); Partnership Units (Rule 8.300); Paired Trust Shares (Rule 8.400); Trust Units (Rule 8.500); Managed Fund Shares (Rule 8.600); and Managed Trust Securities (Rule 8.700).

⁵ Index-Linked Securities are securities that qualify for Exchange listing and trading under NYSE Arca Equities Rule 5.2(j)(6). The securities described in Rule 5.2(j)(3), Rule 5.2(j)(6) and Section 2 of Rule 8, as referenced above, would include securities listed on another national securities exchange pursuant to substantially equivalent listing rules.

Investment Company Act of 1940⁶ and/or Units.⁷ In addition to certain other generic listing criteria, Equity Index-Linked Securities must satisfy the generic quantitative initial and continued listing criteria under NYSE Arca Equities Rule 5.2(j)(6)(B)(I) in order to become, and continue to be, listed and traded on the Exchange. Certain of the applicable quantitative criteria specify minimum or maximum thresholds that must be satisfied with respect to, for example, market value, trading volume, and dollar weight of the index represented by a single component or groups of components.

The applicable initial quantitative listing criteria include (i) that each underlying index is required to have at least ten component securities⁸; (ii) that each component security has a minimum market value of at least \$75 million, except that for each of the lowest dollar weighted component securities in the index that in the aggregate account for no more than 10% of the dollar weight of the index, the market value can be at least \$50 million; (iii) that component stocks that in the aggregate account for at least 90% of the weight of the index each have a minimum global monthly trading volume of 1,000,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months; (iv) that no underlying component security represents more than 25% of the dollar weight of the index, and the five highest dollar weighted component securities in the index do not in the aggregate account for more than 50% of the dollar weight of the index (60% for an index consisting of fewer than 25 component securities); and (v) that 90% of the index's numerical value and at least 80% of the total number of component securities meet the then current criteria for standardized option trading set forth in NYSE Arca Rule 5.3; except that an index will not be subject to this

⁶ 15 U.S.C. 80-1.

⁷ See Rule 5.2(j)(6)(B)(I)(1).

⁸ See Rule 5.2(j)(6)(B)(I)(1)(a).

last requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index and (b) the index has a minimum of 20 components.⁹ The applicable continued quantitative listing criteria require that component stocks that in the aggregate account for at least 90% of the weight of the index each have a minimum global monthly trading volume of 500,000 shares, or minimum global notional volume traded per month of \$12,500,000, averaged over the last six months.¹⁰

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(a), which provides that each underlying index is required to have at least ten component securities, to provide that there shall be no minimum number of component securities if one or more issues of Derivative Securities Products or Index-Linked Securities constitute, at least in part, component securities underlying an issue of Equity Index-Linked Securities. The Exchange also proposes to exclude Derivative Securities Products and Index-Linked Securities from consideration when determining whether the applicable quantitative generic thresholds have been satisfied under the initial listing standards specified in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(i)-(iv) and the continued listing standards specified in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(2)(a)(i) and (ii).¹¹ Thus, for example, when determining compliance with NYSE Arca Equities Rule

⁹ See Rule 5.2(j)(6)(B)(I)(1)(b)(i)-(iv).

¹⁰ See Rule 5.2(j)(6)(B)(I)(2)(a)(ii).

¹¹ NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(2)(a)(i) and (ii) provide that the Corporation will maintain surveillance procedures for securities listed under Rule 5.2(j)(6) and may halt trading in such securities and will initiate delisting proceedings pursuant to Rule 5.5(m) (unless the Commission has approved the continued trading of the subject Index-Linked Security), if any of the standards set forth in Rules 5.2(j)(6)(B)(I)(1)(a) and 5.2(j)(6)(B)(I)(1)(b)(2) are not continuously maintained, except that: (i) the criteria that no single component represent more than 25% of the dollar weight of the index and the five highest dollar weighted components in the index cannot represent more than 50% (or 60% for indexes with less than 25 components) of the dollar weight of the index, need only be satisfied at the time the index is rebalanced (Rule 5.2(j)(6)(B)(I)(2)(a)(i)), and (ii) component stocks that in the aggregate account for at least 90% of the weight of the

5.2(j)(6)(B)(I)(1)(b)(ii), component stocks, excluding Derivative Securities Products or Index-Linked Securities, that in the aggregate account for at least 90% of the remaining index weight, excluding any Derivative Securities Products or Index-Linked Securities would be required to have a minimum global monthly trading volume of 1 million shares, or minimum global notional volume traded per month of 25 million, averaged over the last six months.

The Exchange believes that it is appropriate to exclude Derivative Securities Products and Index-Linked Securities from the generic listing and continued listing criteria specified above for Equity Index-Linked Securities because Derivative Securities Products and Index-Linked Securities that may be included in an index or portfolio underlying a series of Equity Index-Linked Securities are themselves subject to specific initial and continued listing requirements of the exchange on which they are listed. For example, Units listed and traded on the Exchange are subject to the listing standards specified under NYSE Arca Equities Rule 5.2(j)(3). Also, Derivative Securities Products and Index-Linked Securities would have been listed and traded on an exchange pursuant to a filing submitted under Sections 19(b)(2) or 19(b)(3)(A) of the Act,¹² or would have been listed by an exchange pursuant to the requirements of Rule 19b-4(e) under the Act.¹³ Derivative Securities Products and Index-Linked Securities are derivatively priced, and, therefore, the Exchange does not believe that it is necessary to apply the generic quantitative criteria (e.g., market capitalization, trading volume, or component weighting) applicable to securities that are not Derivative Securities Products or Index-Linked Securities (e.g., common stocks) to such products. Finally, by way of comparison, Derivative

index each shall have a minimum global monthly trading volume of 500,000 shares, or minimum global notional volume traded per month of \$12,500,000, averaged over the last six months (Rule 5.2(j)(6)(B)(I)(2)(a)(ii)).

¹² 15 U.S.C. 78s(b)(2); 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(e).

Securities Products are excluded from consideration when determining whether the components of Units satisfy the applicable listing criteria in Rule 5.2(j)(3)¹⁴, and both Derivative Securities Products and Index-Linked Securities are excluded from the applicable listing criteria for Managed Fund Shares holding equity securities in Commentary .01 to Rule 8.600.¹⁵

The Exchange also proposes to replace “investment company units” with “Investment Company Units” in two places in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1) in order to conform to other usages of this term in Exchange rules. In addition, the Exchange proposes to replace the word “Index” with “index” in two places in Rule 5.2(j)(6)(B)(I)(2)(a)(i) to conform to other usages of this word in Rule 5.2(j)(6)(B)(I)(2).

The Exchange notes that the proposed change is not otherwise intended to address any other issues and that the Exchange is not aware of any problems that ETP Holders or issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just

¹⁴ See Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3). See also, Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR-NYSEArca-2008-29) (order approving amendments to the eligibility criteria for components of an index underlying Investment Company Units).

¹⁵ See Commentary .01 to NYSE Arca Equities Rule 8.600. See also, Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR-NYSEArca-2015-110) (order approving amendments to NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

and equitable principles of trade, to remove impediments to, 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 change would facilitate the listing and trading of additional types of Equity Index-Linked Securities, which would enhance competition among market participants, to the benefit of investors and the marketplace. The proposed change would also result in greater efficiencies in the listing process with respect to Equity Index-Linked Securities by eliminating an unnecessary consideration regarding underlying components, which would therefore remove impediments to, and perfect the mechanism of, a free and open market. In addition, the proposed amendment to the Equity Index-Linked Securities listing criteria is intended to protect investors and the public interest in that it is consistent with the manner in which Derivative Securities Products are also excluded from consideration when determining whether the components of an index or portfolio underlying an issue of Units satisfy the applicable listing criteria,¹⁸ and both Derivative Securities Products and Index-Linked Securities are excluded from the applicable listing criteria for Managed Fund Shares holding equity securities in Commentary .01 to Rule 8.600.¹⁹ Additionally, Equity Index-Linked Securities would remain subject to all existing listing standards, thereby maintaining existing levels of investor protection. The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Equity Index-Linked Securities would continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 5.2(j)(6). Further, the proposed change would not impact the existing listing process for Derivative Securities Products and Index-Linked Securities, whereby the exchanges on which such securities are listed must, for example, submit proposed rule changes

¹⁸ See supra, note 14.

¹⁹ See supra, note 15.

with the Commission prior to listing and trading.

The Exchange believes that it is appropriate to exclude Derivative Securities Products and Index-Linked Securities from the generic criteria specified above for Equity Index-Linked Securities because Derivative Securities Products and Index-Linked Securities that may be included in an index or portfolio underlying a series of Equity Index-Linked Securities are themselves subject to specific initial and continued listing requirements of the exchange on which they are listed. For example, Units listed and traded on the Exchange are subject to the listing standards specified under NYSE Arca Equities Rule 5.2(j)(3). Also, such Derivative Securities Products and Index-Linked Securities would have been listed and traded on an exchange pursuant to a filing submitted under Sections 19(b)(2) or 19(b)(3)(A) of the Act,²⁰ or would have been listed by an exchange pursuant to the requirements of Rule 19b-4(e) under the Act.²¹ The Exchange believes that quantitative factors--such as market value, global monthly trading volume, or weighting—when applied to index components (such as common stocks) underlying a series of Equity Index-Linked Securities, are relevant criteria in establishing that such series is sufficiently broad-based to minimize potential manipulation.²² Derivative Securities Products and Index-Linked Securities, however, are derivatively priced, and, therefore, the Exchange does not believe that it is necessary to apply the generic quantitative

²⁰ 15 U.S.C. 78s(b)(2); 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(e).

²² See, e.g., Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66693 (SR-Amex-2006-78) (order approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes), in which the Commission stated that “these standards are reasonably designed to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and that when applied in conjunction with the other applicable listing requirements, will permit the listing only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation.”

criteria applicable to securities that are not Derivative Securities Products and Index-Linked Securities (e.g., common stocks) to such products. As noted above, Derivative Securities Products are excluded from consideration on NYSE Arca when determining whether the components of Units satisfy the applicable listing criteria,²³ and both Derivative Securities Products and Index-Linked Securities are excluded from the applicable listing criteria for Managed Fund Shares holding equity securities in Commentary .01 to Rule 8.600. Moreover, for shares of Derivative Securities Products that are not listed on an exchange pursuant to an exchange's generic listing rules, the Commission must first approve an exchange's proposed rule change under Section 19(b) of the Act regarding a particular Derivative Securities Product or Index-Linked Securities, which is subject to the representations and restrictions included in such proposed rule change. The Exchange also believes it is appropriate to exclude Derivative Securities Products and Index-Linked Securities from the requirement under NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(iv) that 90% of the applicable index's numerical value and at least 80% of the total number of component securities will meet the criteria for standardized option trading set forth in NYSE Arca Rule 5.3. Rule 5.3 includes criteria for securities underlying option contracts approved for listing and trading on the Exchange. Among such criteria are those applicable to "Exchange-Traded Fund Shares" (as referenced in NYSE Arca

²³ See Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3). See also Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR-NYSEArca-2008-29) (order approving amendments to eligibility criteria for components of an index underlying Investment Company Units), in which the Commission noted that "based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations. However, because Derivative Securities Products are themselves subject to specific initial and continued listing requirements, the Commission believes that it would be reasonable to exclude Derivative Securities Products, as components, from certain index component eligibility criteria for [Investment Company] Units."

Rule 5.3(g)), Trust Issued Receipts (as referenced in NYSE Arca Rule 5.3(h)), Partnership Units (as referenced in NYSE Arca Rule 5.3(i)) and Index-Linked Securities (as referenced in NYSE Arca Rule 5.3(j)) that underlie Exchange-traded option contracts. The Exchange does not believe that criteria in Rule 5.3 should be applied to Derivative Securities Products and Index-Linked Securities because such securities are subject to separate numerical and other criteria included in the applicable exchange listing rules, including both generic listing rules permitting listing pursuant to Rule 19b-4(e) and non-generic listing rules. Derivative Securities Products and Index-Linked Securities that are the subject of a Commission approval order under Section 19(b) of the Act also are subject to specific representations made in the applicable Rule 19b-4 filing. These include representations regarding the existence of comprehensive surveillance agreements between the applicable exchange and the principal markets for certain financial instruments underlying Derivative Securities Products, or percentage limitations on assets (e.g., non-U.S. stocks, futures and options) whose principal market is not a member of the Intermarket Surveillance Group (“ISG”).²⁴ The proposed replacement of “investment company units” with “Investment Company Units” in two places in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1) is appropriate as such changes conform to other usages of this term in Exchange rules. The proposed replacement of the word “Index” with “index” in two places in Rule

²⁴ See, e.g., Securities Exchange Act Release No. 76719 (December 21, 2015), 80 FR 80859 (December 28, 2015) (order approving Exchange listing and trading of shares of the Guggenheim Total Return Bond ETF (“Fund”) under NYSE Arca Equities Rule 8.600), which filing stated: “Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) will consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. In addition, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options contracts will consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.”

5.2(j)(6)(B)(I)(2)(a)(i) is appropriate as such changes would conform to other usages of this word in Rule 5.2(j)(6)(B)(I)(2).

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in Index-Linked Securities in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. All Index-Linked Securities listed pursuant to NYSE Arca Equities Rule 5.2(j)(6) are included within the definition of “security” or “securities” as such terms are used in the Exchange rules and, as such, are subject to Exchange rules and procedures that currently govern the trading of securities on the Exchange. Trading in the securities will be halted under the conditions specified in NYSE Arca Equities Rule 5.2(j)(6)(E).

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,²⁵ 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. Instead, the Exchange believes that the proposed change will encourage competition by enabling additional types of Equity Index-Linked Securities to be listed on the Exchange and, by eliminating an unnecessary consideration regarding underlying components, create a more efficient process surrounding the listing of Equity Index-Linked Securities.

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.

²⁵ 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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 No. SR-NYSEArca-2017-54 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, DC 20549-1090.

All submissions should refer to File No. SR-NYSEArca-2017-54. 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, D.C. 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 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 No. SR-NYSEArca-2017-54, 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.²⁶

Eduardo A. Aleman
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).