

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80777; File No. SR-NYSEArca-2017-30)

May 25, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend Commentary .01 and Commentary.02 to NYSE Arca Equities Rule 5.2(j)(3) to Provide for the Inclusion of Cash in an Index Underlying a Series of Investment Company Units

I. Introduction

On March 29, 2017, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to amend Commentary .01 and Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) to provide for the inclusion of cash in an index underlying a series of Investment Company Units. The proposed rule change was published for comment in the Federal Register on April 14, 2017.⁴ On May 10, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 80415 (April 10, 2017), 82 FR 18067.

⁵ In Amendment No. 1, which amended and replaced the proposed rule change in its entirety, the Exchange made a technical change to the proposed rule text. Amendment No. 1 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2017-30/nysearca201730-1749397-151677.pdf>. Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not materially alter the described substance of the proposed rule change or raise any novel regulatory issues.

II. Description of the Proposal

Commentary .01(a)(A), Commentary .01 (a)(B), and Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) permit the Exchange to generically list Investment Company Units (“Units”) that overlie an index or portfolio of US Component Stocks,⁶ Non-US Component Stocks,⁷ US Component Stocks and Non-US Component Stocks, and Fixed Income Securities⁸ that meets specified criteria. While “Investment Companies,”⁹ like mutual funds, may hold cash, currently, the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3) do not contemplate the generic listing Units overlying an index or portfolio with a cash component.

The Exchange proposes to amend Commentary .01 and Commentary.02 to NYSE Arca Equities Rule 5.2(j)(3) to permit the generic listing and trading of Units overlying an index or portfolio of cash and: (1) US Component Stocks; (2) Non-US Component Stocks; (3) US Component Stocks and Non-US Component Stocks; and (4) Fixed Income Securities.

Additionally, the Exchange is not proposing to otherwise amend the applicable generic listing

⁶ “US Component Stock” is defined in NYSE Arca Equities Rule 5.2(j)(3) as an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934.

⁷ “Non-US Component Stock” is defined in NYSE Arca Equities Rule 5.2(j)(3) as an equity security that is not registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

⁸ Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) defines Fixed Income Securities as debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities, government-sponsored entity securities, municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof.

⁹ The term “Investment Company” is defined in NYSE Arca Equities Rule 5.2(j)(3).

criteria, except to specify that the following generic listing criteria will not apply to the cash portion of the index or portfolio:

- Under proposed Commentary .01(a)(A)(1) through (4) to NYSE Arca Equities Rule 5.2(j)(3), the percentage weighting requirements would apply only to the US Component Stocks portion of the underlying index or portfolio.
- Under proposed Commentary .01 (a)(B)(1) through (4) to NYSE Arca Equities Rule 5.2(j)(3), the percentage weighting requirements would not apply to the cash component of the underlying index or portfolio.
- Under proposed Commentary .02(a)(2), (a)(4), and (a)(6) to NYSE Arca Equities Rule 5.2(j)(3) the percentage weighting requirements would apply only to the Fixed Income Securities portion of the underlying index or portfolio.

The Exchange does not propose any limit to the weighting of cash in an index or portfolio underlying a series of Units.¹⁰ The Commission notes that, under a provision of its current rule, the Exchange may generically list Units overlying a combination of indexes so long as each index satisfies the generic listing criteria.¹¹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the Commission finds

¹⁰ See Amendment No. 1, supra note 5, at 6.

¹¹ See Commentary .03 to NYSE Arca Equities Rule 5.2(j)(3).

¹² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹³ 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, 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.

The Commission believes that permitting the Exchange to generically list Units that overlie an index or portfolio with a cash component may enhance competition among generically listed Units, to the benefit of investors and the marketplace. Additionally, the Commission believes that the generic listing criteria referenced above, applicable only to the non-cash portion(s) of the index or portfolio will neither dilute the generic listing criteria nor render the indexes or portfolios underlying generically listed Units more susceptible to manipulation.¹⁴

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act¹⁵ and the rules and regulations thereunder applicable to a national securities exchange.

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ The Commission also notes that the Exchange represents that it has in place surveillance procedures that are adequate to properly monitor trading in Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. See Amendment No.1, supra note 5, at 7.

¹⁵ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,¹⁶ that the proposed rule change (SR-NYSEArca-2017-30), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

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Assistant Secretary

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).