

SECURITIES AND EXCHANGE COMMISSION
(Release No 34-81442; File No. SR-NYSEArca-2017-54)

August 18, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Generic Listing Criteria Applicable to Equity Index-Linked Securities

I. Introduction

On May 4, 2017, 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” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the generic listing criteria applicable to Equity Index-Linked Securities.³ The proposed rule change was published for comment in the Federal Register on May 23, 2017.⁴ On July 6, 2017, pursuant to Section 19(b)(2) of the Act,⁵ 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rule change.⁶ On August 17, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original proposal in its entirety.⁷ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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 Investment Company Act of 1940 and/or Investment Company Units (“Units”). See NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1).

⁴ See Securities Exchange Act Release No. 80707 (May 17, 2017), 82 FR 23636.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 81081, 82 FR 32218 (July 12, 2017).

⁷ In Amendment No. 1 the Exchange: (1) revised proposed NYSE Arca Rules-5.2-E(j)(6)(B)(I)(1)(b)(iii) and 5.2-E(j)(6)(B)(I)(2)(a)(i) to provide that the index

received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. The Exchange’s Description of the Proposed Rule Change, as modified by Amendment No.1

The Exchange proposes to amend NYSE Arca Rule 5.2-E(j)(6) to exclude the following types of index components from certain generic listing requirements applicable to an index underlying Equity Index-Linked Securities: (1) Investment Company Units (“Units”);⁸ (2) securities defined in Section 2 of NYSE Arca Rule 8-E (collectively with Units, “Derivative Securities Products”);⁹ (3) Index-Linked Securities; and (4) securities listed on other national

concentration limit applicable to the five highest dollar-weighted components would apply only to an index with five or more components that are not Derivative Securities Products or Index-Linked Securities (as those terms are defined below) and to provide that these securities would only be excluded from the numerator of the index concentration limit calculation; (2) modified proposed NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(a) to specify that Derivative Securities Products and Index-Linked Securities (as those terms are defined below) also include securities listed on another national securities exchange pursuant to substantially equivalent listing rules; and (3) made a technical correction to Rule 5.2-E(j)(6)(B)(I)(1)(b)(iv) to change its reference to “NYSE Arca Rule 5.3” to read “NYSE Arca Rule 5.3-O.” Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2017-54/nysearca201754-2227310-160780.pdf>. Amendment No. 1 also reflects numbering changes effected by the recently approved merger of NYSE Arca Equities and NYSE Arca Options rules. See Securities Exchange Act Release No. 81419 (August 17, 2017) (SR-NYSEArca-2017-40).

⁸ 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 Rule-5.2-E(j)(3).

⁹ The following securities currently are included in Section 2 of NYSE Arca Rule 8-E: Portfolio Depositary Receipts (Rule 8.100-E); Trust Issued Receipts (Rule 8.200-E); Commodity-Based Trust Shares (Rule 8.201-E); Currency Trust Shares (Rule 8.202-E); Commodity Index Trust Shares (Rule 8.203-E); Commodity Futures Trust Shares (Rule-8.204-E); Partnership Units (Rule 8.300-E); Paired Trust Shares

securities exchanges pursuant to rules that are substantially equivalent to NYSE Arca Rule 5.2-E(j)(3), NYSE Arca Rule 5.2-E(j)(6), and Section 2 of NYSE Arca Rule 8-E.

Specifically, the Exchange proposes the following:

- Currently, for an issue of Equity Index-Linked Securities to qualify for initial listing, each underlying index must have at least ten component securities. The Exchange would modify this requirement to reflect no minimum number of index components 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.¹⁰
- Currently, for an issue of Equity Index-Linked Securities to qualify for initial listing, each component security must have a minimum market value of at least \$75 million, except that the market value 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 may be at least \$50 million. The Exchange proposes to exclude Derivative Securities Products and Index-Linked Securities from those minimum market value requirements, as well as to exclude from the calculation of the aggregate dollar value of the index the market value(s) of all components that are Derivative Securities Products or Index-Linked Securities.¹¹
- Currently, for an issue of Equity Index-Linked Securities to qualify for initial listing, component stocks that in the aggregate account for at least 90% of the

(Rule-8.400-E);Trust Units (Rule 8.500-E); Managed Fund Shares (Rule 8.600-E); and Managed Trust Securities (Rule 8.700-E).

¹⁰ See proposed NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(a).

¹¹ See proposed NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(b)(1).

weight of the underlying index each must 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. The Exchange proposes to apply those requirements only to index components that are not Derivative Securities Products or Index-Linked Securities, and would exclude components that are Derivative Securities Products or Index-Linked Securities from the calculation of the index's weight.¹²

- Currently, for an issue of Equity Index-Linked Securities to qualify for initial listing, no component security may represent more than 25% of the dollar weight of the index and the five highest dollar-weighted component securities in the index may not in the aggregate account for more than 50%, or 60% for an index consisting of fewer than 25 component securities, of the dollar weight of the index.¹³ The Exchange proposes to exclude Derivative Securities Products and Index-Linked Securities from these index concentration limits and would exclude Derivative Securities Products and Index-Linked Securities from the dollar value of the index for purposes of calculating the total dollar value of the index components.¹⁴

¹² See proposed NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(b)(2).

¹³ Currently, these requirements must also be met whenever the index is rebalanced. See NYSE Arca Rule 5.2-E(j)(6)(B)(I)(2)(a)(i).

¹⁴ See proposed NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(b)(3). As discussed above, the Exchange also proposes that the index concentration limit applicable to the five highest dollar-weighted components would apply only to an index with five or more components that are not Derivative Securities Products or Index-Linked Securities. See *supra* note 7. Further, the Exchange proposes that these proposed index concentration limits be met whenever the index is rebalanced. See proposed NYSE Arca Rule-5.2-E(j)(6)(B)(I)(2)(a)(i).

- Currently, for an issue of Equity Index-Linked Securities to qualify for initial listing, 90% of the underlying index's numerical value, and at least 80% of the total number of component securities, must meet the then current criteria for standardized option trading set forth in NYSE Arca Rule 5.3-O; except that an index will not be subject to this requirement if (1) no underlying component security represents more than 10% of the dollar weight of the index, and (2) the index has a minimum of 20 components. The Exchange proposes to apply this requirement only to index components that are not Derivative Securities Products or Index-Linked Securities and, for purposes of this requirement would exclude all components that are a Derivative Securities Product or Index-Linked Security from the calculations of the index's numerical value, total number of components, and dollar value.¹⁵
- Currently, on a continuous basis, component stocks that in the aggregate account for at least 90% of the weight of the index each must 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. The Exchange proposes to apply those requirements only to index components that are not Derivative Securities Products or Index-Linked Securities, and would exclude components that are Derivative Securities Products or Index-Linked Securities from the calculation of the index's total weight.¹⁶

¹⁵ See proposed NYSE Arca Rule 5.2-E(j)(6)(B)(I)(1)(b)(iv).

¹⁶ See proposed NYSE Arca Rule 5.2-E(j)(6)(B)(I)(2)(a)(ii).

The Exchange also proposes non-substantive changes to the text of NYSE Arca Rule 5.2-E(j)(6).

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the Exchange's rules 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.

In support of its proposal, the Exchange notes that Derivative Securities Products are excluded from consideration when determining whether the components of Units satisfy the applicable listing criteria in NYSE Arca Rule 5.2-E(j)(3),¹⁹ 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 NYSE Arca Rule 8.600-E.²⁰

¹⁷ 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).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See Commentary .01 to NYSE Arca Rule 5.2-E(j)(3). See also Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR-NYSEArca-2008-29) (approving amendments to the eligibility criteria for components of an index underlying Investment Company Units).

²⁰ See Commentary .01 to NYSE Arca Rule 8.600-E. See also Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR-NYSEArca-2015-

Specifically, the Exchange states: “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-E.”²¹ In approving the exclusion of Derivative Securities Products and Index-Linked Securities from certain generic listing requirements applicable to Managed Fund Shares, the Commission stated that such exclusions would not increase the susceptibility of Managed Fund Shares to manipulation because Index-Linked Securities and Derivative Securities Products each: (1) have asset-exposure concentration limits and requirements promoting price transparency within their own listing standards; (2) are listed and traded on national securities exchanges; and (3) provide trading and price information and other quantitative data for investors and other market participants.²² For these same reasons, the Commission believes that excluding Derivative Securities Products and Index-Linked Securities from the same type of generic listing requirements would not increase the susceptibility of Equity Index-Linked Securities to manipulation.

Additionally, the Exchange represents that it 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.

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 Act²³ and the rules and regulations thereunder applicable to a national securities exchange.

²¹ 110) (approving the adoption of generic listing standards for Managed Fund Shares (“MFS Order”).

²² Amendment No. 1, supra note 7, at 9, text accompanying n.20.

²³ See MFS Order, supra note 20, at 49325.

²³ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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-2017-54 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 Number 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, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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 Number SR-NYSEArca-2017-54 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of Amendment No. 1 in the Federal Register. As noted above, Amendment No. 1 modified proposed NYSE Arca Rules-5.2-E(j)(6)(B)(I)(1)(b)(iii) and 5.2-E(j)(6)(B)(I)(2)(a)(i) to provide that the index concentration limit applicable to the five highest dollar-weighted components would apply only to an index with five or more components that are not Derivative Securities Products or Index-Linked Securities. These provisions are consistent with Commentary .01(a)(1)(C) to NYSE Arca Rule 8.600-E, and therefore the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁴ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

²⁴ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,²⁵ that the proposed rule change (SR-NYSEArca-2017-54), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Jill M. Peterson
Assistant Secretary

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR 200.30-3(a)(12).