

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81775; File No. SR-NYSEArca-2017-115)

September 29, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Implementation Date for Certain Changes to the NYSE Arca Rule 5 and Rule 8 Series

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 28, 2017, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 Substance of the Proposed Rule Change

The Exchange proposes to extend the date on which certain changes to the NYSE Arca Rule 5 and Rule 8 series are implemented. 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 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 6, 2017, the Exchange filed a proposed rule change, as subsequently amended by Amendments No. 1 and 2 thereto (as amended, the “Proposed Rule Change”), to adopt certain changes to the NYSE Arca Rules 5 and 8 series to add additional continued listing standards for exchange-traded funds (“ETFs”) as well as clarify the procedures that the Exchange will undertake when an ETF is noncompliant with applicable rules. Given the scope of the amendments specified in the Proposed Rule Change, the Exchange proposed that such amendments not be implemented until October 1, 2017. On March 9, 2017, the Commission granted accelerated approval of the Proposed Rule Change, including the October 1, 2017 implementation date.⁴ The Exchange now proposes to extend the implementation date of the amendments specified in the Proposed Rule Change to January 1, 2018.

Since the Proposed Rule Change was approved, the Exchange has engaged in extensive conversations with issuers of listed ETFs, industry advocacy groups and index providers to discuss the new rule requirements and offer guidance on rule interpretation and application. As a result of these conversations, ETF issuers have expressed concern about their ability to have in place systems and procedures to ensure compliance by the current October 1, 2017 implementation date. In particular, listed ETF issuers, and industry advocacy groups on their behalf, have explained that issuers require additional time to engage with listing exchanges to

⁴ See Securities Exchange Act Release No. 80189 (March 9, 2017), 82 FR 13889 (March 15, 2017) (SR-NYSEArca-2017-01).

better understand how elements of the Proposed Rule Change will be interpreted and applied as well as to design and test new compliance systems. The Exchange has been engaged with its listed issuers and will continue to engage with them on topics of rule interpretation and application. In addition, issuers require time to engage in discussions with third-party providers to source and track new data elements required for rule compliance.⁵ Because indices are, in most cases, managed and maintained by third-party index providers, issuers need to ensure that they have procedures in place to obtain required index files on an ongoing basis so they can test such files for compliance with applicable continued listing rules. Further, issuers may need to contract with third party data providers to obtain necessary trading information about securities included in an index. The Exchange understands that issuers have been engaged in dialogue with index providers on these topics. Once all required information has been obtained, issuers have informed the Exchange that they require additional time to test their systems and procedures to ensure they are accurate and efficient.

The Exchange believes it is appropriate to extend the implementation date of the Proposed Rule Change to January 1, 2018 to provide listed ETF issuers with the time needed to finish developing and testing their compliance procedures. In support of its proposal, the Exchange notes that the Proposed Rule Change imposes significant new compliance requirements on issuers that they have not been subject to previously. To meet these new compliance requirements, issuers must develop internal systems as well as coordinate with third-party service providers, such as index providers, to develop procedures by which they can obtain essential data. Listed issuers have informed the Exchange that they are unable to complete this

⁵ See, for example, Letter, dated July 11, 2017, from Dorothy Donohue, Acting General Counsel, Investment Company Institute to Brent J. Fields, Secretary, Securities and Exchange Commission, available at <https://www.sec.gov/comments/sr-nasdaq-2016-135/nasdaq2016135-1846208-155175.pdf>.

extensive project by the pending October 1, 2017 implementation date. The Exchange believes that it is critical for listed ETF issuers to have the appropriate procedures and systems in place to monitor and evidence ETF compliance with the new continued listing rules before such rules are implemented because failure to comply with Exchange rules could lead to delisting. Therefore, the Exchange proposes to extend the implementation date for the Proposed Rule Change until January 1, 2018. During the proposed extension period, the Exchange will communicate with issuers, as needed, with respect to any questions about interpretation and application of the Proposed Rule Change and in order to better understand the progress being made by issuers in completing the development of their compliance testing and procedures.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections [sic] 6(b)(5)⁷ of the Act, in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 Exchange believes that the proposed amendment is consistent with the protection of investors because failure to comply with Exchange rules could lead to delisting and the proposed amendment will enable listed issuers to have the systems and procedures needed to monitor and evidence compliance with the Proposed Rule Change prior to such rule being implemented. Providing listed issuers with additional time to ensure that they

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

have adequate compliance systems in place furthers the protection of investors and the public interest because it will enhance investor confidence that listed issuers are complying with Exchange rules.

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 not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange notes that the proposed rule change will facilitate listed issuer ability to monitor and evidence compliance with approved continued listing rules by providing issuers with additional time to finish developing and testing their internal systems and procedures prior to the implementation date.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange received a copy of a letter from the Investment Company Institute, on behalf of listed ETF issuers, to the Securities and Exchange Commission.⁸ As described in Item 3 [sic], above, the Investment Company Institute detailed challenges that listed ETF issuers are facing in developing compliance systems to address the amendments contained in the Proposed Rule Change and have requested that the implementation date for such amendments be extended.

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

⁸ See Footnote 5, *supra*.

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to 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 so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay will allow the Exchange to immediately extend the implementation date of the Proposed Rule Change, and avoid the potential confusion and disruption that could result if the extension did not become operative until after October 1, 2017. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹²

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 action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

⁹ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule change 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-2017-115 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-2017-115. 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-2017-115 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.¹³

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Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).