

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80777; File No. SR-NYSEArca-2017-30]

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

May 25, 2017.

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.

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 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)(B)(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

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).

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 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

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).

¹³ 15 U.S.C. 78b(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.

²⁹ 17 CFR 200.30-3(a)(12).

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.

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.

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

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80782; File No. SR–NYSEMKT–2017–31]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change To Adopt Rule 6900 To Establish the Procedures for Resolving Potential Disputes Related to CAT Fees Charged to Industry Members

May 26, 2017.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act” or the “Exchange Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on May 16, 2017, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“SEC” or the “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 adopt Rule 6900 (Consolidated Audit Trail—Fee Dispute Resolutions) to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members.⁴ The proposed rule

change is available on the Exchange’s Web site 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 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

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors’ Exchange LLC, Miami International Securities Exchange, LLC, MIAAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,⁵ NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.⁶ (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act⁷ and Rule 608 of Regulation NMS thereunder,⁸ the National Market System Plan Governing the Consolidated Audit Trail (the “CAT

NMS Plan” or “Plan”).⁹ The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,¹⁰ and approved by the Commission, as modified, on November 15, 2016.¹¹ The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to operate the CAT.¹² Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).¹³ The Participants are required

⁹ See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

¹⁰ Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

¹¹ Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Approval Order”).

¹² The Plan also serves as the limited liability company agreement for the Company.

¹³ Section 11.1(b) of the CAT NMS Plan. Proposed Rule 6900 would be applicable to member organizations. The term “member organization” is defined in Rule 24 (Office Rules) as “a partnership, corporation or such other entity as the Exchange may, by Rule, permit to become a member organization, and which meets the qualifications specified in the Rules.” The term “member organization” is defined in Rule 2(b)(i) (Equities Rules) as [sic] a registered broker or dealer (unless exempt pursuant to the Securities Exchange Act of 1934) (the “Act”) that is a member of the Financial Industry Regulatory Authority, Inc. (“FINRA”) or another registered securities exchange. Member organizations that transact business with public customers or conduct business on the Floor of the Exchange shall at all times be members of FINRA. A registered broker or dealer must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof.” The term “member organization” also [sic] includes any registered broker or dealer that is a member of FINRA or a registered securities exchange, consistent with the requirements of section 2(b)(i) of this Rule, which does not own a trading license and agrees to be

Continued

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein or in the Consolidated Audit Trail Funding Fees sections of the Exchange’s Equities Price List

and Options Fee Schedule, the Exchange’s CAT Compliance Rule Series or in the CAT NMS Plan.

⁵ ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Release Nos. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017); 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017); and 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017).

⁶ National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017).

⁷ 15 U.S.C. 78k–1.

⁸ 17 CFR 242.608.