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Dated: December 16, 2010.

**Rochelle C. Baval,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2010-32133 Filed 12-17-10; 4:15 pm]

BILLING CODE 7590-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63550; File No. SR-NYSEArca-2010-115]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Options Rule 5.3(j) To Permit Trading Options on Leveraged Exchange-Traded Notes and Broaden the Definition of Futures Linked Securities

December 15, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 9, 2010, 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 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 amend NYSE Arca Options Rule 5.3(j) to: (1) Permit trading options on leveraged (multiple or inverse) exchange-traded notes, and (2) broaden the definition of "Futures-Linked Securities [sic]. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend NYSE Arca Options Rule 5.3(j) to: (1) Permit trading options on leveraged (multiple or inverse) exchange-traded notes ("ETNs"), and (2) broaden the definition of "Futures-Linked Securities."<sup>4</sup> ETNs are also known as "Index-Linked Securities," which are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments, or market indexes of the foregoing. Index-Linked Securities are the nonconvertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

##### Leveraged ETN Options

The Exchange proposes to amend NYSE Arca Options Rule 5.3(j) to permit the listing of options on leveraged (multiple or inverse) ETNs. Multiple leveraged ETNs seek to provide investment results that correspond to a specified multiple of the percentage performance on a given day of a particular Reference Asset. Inverse leveraged ETNs seek to provide investment results that correspond to the inverse (opposite) of the percentage performance on a given day of a particular Reference Asset by a specified multiple. Multiple leveraged ETNs and inverse leveraged ETNs differ from traditional ETNs in that they do not merely correspond to the performance of a given Reference Asset, but rather attempt to match a multiple or inverse of a Reference Asset's performance.

The Barclays Long B Leveraged S&P 500 TR ETN ("BXUB"), the Barclays Long C Leveraged S&P 500 TR ETN ("BXUC"), and the UBS AG 2x Monthly Leveraged Long Exchange-Traded Access Securities (E-TRACS) linked to the Alerian MLP Infrastructure Index due July 9, 2040 ("MLPL") currently trade on the NYSE Arca equity platform and are examples of multiple leveraged ETNs. In addition, the Barclays ETN + Inverse S&P 500 VIX Short-Term Futures ETN ("XXV") currently trades on the NYSE Arca equity platform and is an example of an inverse leveraged ETN. The NYSE Arca equity platform also lists several other inverse leveraged ETNs for trading.<sup>5</sup>

Currently, NYSE Arca Options Rule 5.3 provides that securities deemed appropriate for options trading shall include shares or other securities ("Equity Index-Linked Securities," "Commodity-Linked Securities," "Currency-Linked Securities," "Fixed Income Index-Linked Securities," "Futures-Linked Securities," and "Multifactor Index-Linked Securities," collectively known as "Index-Linked Securities"), as defined in NYSE Arca Equities Rule 5.2(j)(6), that are principally traded on a national securities exchange and an "NMS stock" (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934), and represent ownership of a security that provides for the payment at maturity, as described below:

- Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities ("Equity Reference Asset");
- Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options on commodities, or other commodity derivatives or Commodity-Based Trust Shares or a basket or index of any of the foregoing ("Commodity Reference Asset");
- Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options on currencies or currency futures or other currency derivatives or Currency Trust Shares (as defined in NYSE Arca Equities Rule 8.202(c)), or a basket or index of any of

<sup>4</sup> The amendments proposed herein are similar to changes approved for the Chicago Board Options Exchange ("CBOE"). See Securities Exchange Act Release No. 63202 (October 28, 2010), 75 FR 67794 (November 3, 2010) (SR-CBOE-2010-080).

<sup>5</sup> These ETNs include the Barclays Short B Leveraged Inverse S&P 500 TR ETN ("BXDB"), the Barclays Short C Leveraged Inverse S&P 500 TR ETN ("BXDC") and the Barclays Short D Leveraged Inverse S&P 500 TR ETN ("BXDD").

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a et seq.

<sup>3</sup> 17 CFR 240.19b-4.

the foregoing (“Currency Reference Asset”);

- Fixed Income Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing (“Fixed Income Reference Asset”);

- Futures-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an index of: (a) Futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (“VIX”) futures (“Futures Reference Asset”); and

- Multifactor Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, or Futures Reference Assets (“Multifactor Reference Asset”).

For purposes of NYSE Arca Options Rule 5.3(j), Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets, and Multifactor Reference Assets collectively are referred to as “Reference Assets.”

In addition, Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in NYSE Arca Options Rule 5.3 or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset. In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash, or cash equivalents, satisfactory to the issuer of the Index-Linked Securities that underlie the option as described in the Index-Linked Securities prospectus.

The Exchange proposes to amend NYSE Arca Options Rule 5.3 to expand the type of Index-Linked Securities that may underlie options to include

leveraged (multiple or inverse) ETNs. To effect this change, the Exchange proposes to amend NYSE Arca Options Rule 5.3(j) by adding the phrase, “or the leveraged (multiple or inverse) performance” to each of the subparagraphs ((A) through (F)) in that section, which sets forth the different eligible Reference Assets.<sup>6</sup>

The Exchange’s current continuing listing standards for ETN options will continue to apply. Specifically, under NYSE Arca Options Rule 5.4(m), ETN options shall not be deemed to meet the Exchange’s requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Index-Linked Securities whenever the underlying securities are delisted and trading in the Index-Linked Securities is suspended on a national securities exchange, or the Index-Linked Securities are no longer an “NMS stock” (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934). In addition, the Exchange shall consider the suspension of opening transactions in any series of options of the class covering Index-Linked Securities in any of the following circumstances: (1) The underlying Index-Linked Security fails to comply with the terms of NYSE Arca Options Rule 5.3(j); (2) in accordance with the terms of NYSE Arca Options Rule 5.4(b), in the case of options covering Index-Linked Securities when such options were approved pursuant to NYSE Arca Options Rule 5.3(j), except that, in the case of options covering Index-Linked Securities approved pursuant to NYSE Arca Options Rule 5.3(j)(3)(B) that are redeemable at the option of the holder at least on a weekly basis, then option contracts of the class covering such Securities may only continue to be open for trading as long as the Securities are listed on a national securities exchange and are “NMS stock” as defined in Rule 600 of Regulation NMS; (3) in the case of any Index-Linked Security trading pursuant to NYSE Arca Options Rule 5.3(j), the value of the Reference Asset is no longer calculated or available or (4) such other event shall occur or condition exist that in the opinion of the Exchange make further dealing in such options on the Exchange inadvisable. Expanding the eligible types of ETNs for options trading under NYSE Arca Options Rule 5.3 will not have any

effect on the rules pertaining to position and exercise limits<sup>7</sup> or margin.<sup>8</sup>

This proposal is necessary to enable the Exchange to list and trade options on shares of BXUB, BXUC, XXV, BXDB, BXDC, BXDD and MLPL. The Exchange believes the ability to trade options on leveraged (multiple or inverse) ETNs will provide investors with greater risk management tools. The proposed amendment to the Exchange’s listing criteria for options on ETNs is necessary to ensure that the Exchange will be able to list options on the above listed leveraged (multiple and inverse) ETNs as well as other leveraged (multiple and inverse) ETNs that may be introduced in the future.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in leveraged (multiple and inverse) ETN options.

It is expected that The Options Clearing Corporation will seek to revise the Options Disclosure Document to accommodate the listing and trading of leveraged (multiple and inverse) ETN options.

Broaden the Definition of “Futures-Linked Securities”

The second change proposed by this filing is to amend the definition of “Futures-Linked Securities” set forth in NYSE Arca Options Rule 5.3(j)(1)(E). Currently, the definition of “Futures-Linked Securities” is limited to securities that provide for the payment at maturity of a cash amount based on the performance of an index of: (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; (b) interest rate futures or options or derivatives on the foregoing; or (c) CBOE VIX futures.

NYSE Arca Options Rule 5.3 sets forth generic listing criteria for securities that may serve as underlyings for listed options trading. The Exchange believes that the current definition of “Futures-Linked Securities” is unnecessarily restrictive and requires the Exchange to submit a filing to amend the definition each time a new ETN is issued that tracks the performance of an index of futures/options on futures that is not enumerated in the existing rule. To address this issue, the Exchange is proposing to revise the definition of “Futures-Linked Securities” to provide that they are securities that provide for the payment at maturity of a cash

<sup>6</sup> The Exchange also proposes a technical correction to the Rule to conform a definition. In particular, we are changing the defined term “NMS Stock” to “NMS stock” to conform to how it is defined in Rule 600 of Regulation NMS under the Securities and Exchange Act of 1934.

<sup>7</sup> See Rules 5.15, Position Limits, and 5.18, Exercise Limits.

<sup>8</sup> See Rule 5.25, Margins.

amount based on the performance or the leveraged (multiple or inverse) performance of an index or indexes of futures contracts or options or derivatives on futures contracts ("Futures Reference Asset"). The Exchange notes that all ETNs eligible for options trading must be principally traded on a national securities exchange and an "NMS stock." As a result, the Exchange believes that broadening the definition of "Futures-Linked Securities" by no longer specifically listing the types of futures and options on futures contracts that may be tracked by an ETN is appropriate.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is 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 Exchange believes the proposed rules applicable to trading pursuant to generic listing and trading criteria serve to foster investor protection.

### 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

### 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.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule

change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the Exchange can list and trade options on leveraged (multiple or inverse) ETNs and implement the amended definition of "Futures-Linked Securities" immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>13</sup> The Commission notes the proposal is substantively identical a proposal that was recently approved by the Commission, and does not raise any new regulatory issues.<sup>14</sup> For these reasons, the Commission designates the proposed rule change as operative upon filing.

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.

## 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](mailto:rule-comments@sec.gov). Please include File

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has fulfilled this requirement.

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> See *supra* note 4.

Number SR-NYSEArca-2010-115 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2010-115. 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 Web site (<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 Web site 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.<sup>15</sup> 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-2010-115 and should be submitted on or before January 11, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-31994 Filed 12-20-10; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>15</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).