

responsibility with respect to certain applicable laws, rules, and regulations. Included in the Plan is an exhibit that lists every MIAX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to MIAX members that are also members of FINRA and the associated persons therewith (“Certification”). On January 12, 2017, the parties submitted the proposed Amended Plan. The primary purpose of the amendment is to add MIAX PEARL as a Participant to the Plan.

### III. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act<sup>10</sup> and Rule 17d–2(c) thereunder<sup>11</sup> in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by MIAX, MIAX PEARL, and FINRA. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because MIAX, MIAX PEARL, and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, MIAX, MIAX PEARL, and FINRA have allocated regulatory responsibility for those MIAX and MIAX PEARL rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member’s activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are

specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, MIAX and MIAX PEARL will review the Certification, at least annually, or more frequently if required by changes in either the rules of MIAX, MIAX PEARL, or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add MIAX and MIAX PEARL rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete MIAX and MIAX PEARL rules included in the then-current list of Common Rules that are no longer substantially similar to FINRA rules; and confirm that the remaining rules on the list of Common Rules continue to be MIAX and MIAX PEARL rules that are substantially similar to FINRA rules.<sup>12</sup> FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. Under the Amended Plan, MIAX and MIAX PEARL will also provide FINRA with a current list of Common Members and shall update the list no less frequently than once each quarter.<sup>13</sup> The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all MIAX and MIAX PEARL rules that are substantially similar to the rules of FINRA for Common Members of MIAX and FINRA, and MIAX PEARL and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to MIAX or MIAX PEARL rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add a MIAX or MIAX PEARL rule to the Certification that is not substantially similar to a FINRA rule; delete a MIAX or MIAX PEARL rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a MIAX or MIAX PEARL rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan,

which must be filed with the Commission pursuant to Rule 17d–2 under the Act.<sup>14</sup>

### IV. Conclusion

This Order gives effect to the Amended Plan filed with the Commission in File No. 4–678. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

*It is therefore ordered*, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4–678, between FINRA, MIAX, and MIAX PEARL, filed pursuant to Rule 17d–2 under the Act, is approved and declared effective.

*It is further ordered* that MIAX and MIAX PEARL are relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4–678.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017–02739 Filed 2–9–17; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79975; File No. SR–NYSEArca–2017–08]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Equities Rule 5.2(j)(6)(v) To Add the EURO STOXX 50 Volatility Futures to the Definition of Futures Reference Asset

February 6, 2017.

Pursuant to Section 19(b)(1) 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 January 27, 2017, 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

<sup>14</sup> The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

<sup>15</sup> 17 CFR 200.30–3(a)(34).

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

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

<sup>3</sup> 17 CFR 240.19b–4.

<sup>10</sup> 15 U.S.C. 78q(d).

<sup>11</sup> 17 CFR 240.17d–2(c).

<sup>12</sup> See paragraph 2 of the Amended Plan.

<sup>13</sup> See paragraph 3 of the Amended Plan.

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 Equities Rule 5.2(j)(6)(v) to add the EURO STOXX 50 Volatility (VSTOXX<sup>®</sup>) Futures ("VSTOXX Futures") to the definition of Futures Reference Asset. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://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**

NYSE Arca Equities Rule 5.2(j)(6) provides for Exchange listing and trading, including listing pursuant to Rule 19b-4(e) under the Act,<sup>4</sup> of "Index-Linked Securities",<sup>5</sup> and, in particular, Futures-Linked Securities, which are Index-Linked Securities with a payment at maturity based on the performance of a Futures Reference Asset.<sup>6</sup> The

<sup>4</sup> Rule 19b-4(e) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to section (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class and the SRO has a surveillance program for the product class.

<sup>5</sup> As defined in NYSE Arca Equities Rule 5.2(j)(6), the term "Index-Linked Securities" includes Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities.

<sup>6</sup> As defined in NYSE Arca Equities Rule 5.2(j)(6)(v), "Futures Reference Asset" includes "an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign

proposed rule change is based on recently approved amendments to Bats BZX Exchange, Inc. ("BZX") Rule 14.11(d) to add VSTOXX Futures to the definition of Futures Reference Asset for purposes of listing Index-Linked Securities on BZX.<sup>7</sup>

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(v) in order to add VSTOXX Futures to the definition of Futures Reference Asset, which would allow the Exchange to list Futures-Linked Securities linked to VSTOXX Futures through generic listing standards pursuant to Rule 19b-4(e) under NYSE Arca Equities Rule 5.2(j)(6).<sup>8</sup> Prior to listing Futures-Linked Securities linked to VSTOXX Futures pursuant to Rule 5.2(j)(6), an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure of the Futures-Linked Securities to comply with the continued listing requirements.

NYSE Arca Equities Rule 5.2(j)(6)(B)(V) ("Futures-Linked Securities Listing Standards") requires that a Futures-Linked Security meet one of the following standards: (1) That the Futures Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Futures-Linked Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements ("CSSAs"), continue to be satisfied; or (2) the pricing information for components of a Futures Reference Asset must be derived from a market which is a member or affiliate of a member of the Intermarket Surveillance Group ("ISG") or a market with which the Exchange has a CSSA.<sup>9</sup> A Futures Reference Asset may include components representing not more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that do not meet requirement

country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) Futures."

<sup>7</sup> See Securities Exchange Act Release No. 79069 (October 7, 2016), 81 FR 70714 (October 13, 2016) (SR-BatsBZX-2016-26) ("BATS Filing"). Additional information regarding the VSTOXX and VSTOXX Futures is included in the BATS Filing.

<sup>8</sup> The Exchange also proposes to delete as duplicative the word "or" in two places in NYSE Arca Equities Rule 5.2(j)(6)(v).

<sup>9</sup> ISG is comprised of an international group of exchanges, market centers, and market regulators that perform front-line market surveillance in their respective jurisdictions. See <https://www.isgportal.org/home.html>.

(2) above; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset. As proposed, adding VSTOXX Futures to the definition of Futures Reference Asset would satisfy the first criterion described above and the second criterion would be satisfied by virtue of Eurex Deutschland's ("Eurex") membership in ISG, as further described below.

Further, any Futures-Linked Securities linked to VSTOXX Futures would also be required to meet both the initial and continued listing standards in NYSE Arca Equities Rule 5.2(j)(6)(B)(V) or be subject to delisting or removal proceedings, which include: (i) That the value of the Futures Reference Asset be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Exchange's Core Trading Session (normally, 9:30 a.m. to 4:00 p.m., Eastern Time); (ii) for Futures-Linked Securities that are periodically redeemable, the indicative value of the subject Futures-Linked Securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Exchange's Core Trading Session; (iii) the aggregate market value or the principal amount of the Futures-Linked Securities must be at least \$400,000; (iv) the value of the Futures Reference Asset is no longer calculated or available and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of Rule 5.2(j)(6); or (v) if such other event occurs or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable. Any Futures-Linked Securities linked to VSTOXX Futures would also be required to meet the listing standards applicable to all Index-Linked Securities under NYSE Arca Equities Rule 5.2(j)(6)(A). Finally, all Index-Linked Securities listed pursuant to NYSE Arca Equities Rule 5.2(j)(6) are included within the definition of "security" or "securities" as such terms are used in the Exchange rules and, as such, are subject to Exchange rules and procedures that currently govern the trading of securities on the Exchange.

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Index-Linked Securities. The Exchange also believes that the existing standards for listing and trading Futures-Linked Securities are reasonably designed to promote a fair and orderly market for such

Futures-Linked Securities and the addition of VSTOXX Futures to Futures Reference Assets does not affect this. The proposed addition of VSTOXX Futures to those instruments included in Futures Reference Assets would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading guidelines.

The Exchange believes that its surveillance procedures are adequate to continue to properly monitor the trading of Futures-Linked Securities linked to VSTOXX Futures in all trading sessions and to deter and detect violations of Exchange rules. The issuer of a series of Index-Linked Securities is and will continue to be required to comply with Rule 10A-3 under the Act<sup>10</sup> for the initial and continued listing of Index-Linked Securities, as provided in NYSE Arca Equities Rule 5.2(j)(6)(A)(f). The Exchange notes that the proposed change is not intended to amend any other component or requirement of NYSE Arca Equities Rule 5.2(j)(6).

Additional information regarding the VSTOXX and VSTOXX Futures can be found on the STOXX Limited (“STOXX”) Web site and the Eurex Web site, respectively.<sup>11</sup> The VSTOXX is based on EURO STOXX 50 Index (“Index”) real-time option prices that are listed on the Eurex and are designed to reflect the market expectations of near-term up to long-term volatility by measuring the square root of the implied variances across all options of a given time to expiration. The Index includes 50 stocks that are among the largest free-float market capitalization stocks from 12 Eurozone countries. VSTOXX Futures are cash settled and trade between the hours of 7:30 a.m. and 10:30 p.m. Central European Time (“CET”) (2:30 a.m. and 5:30 p.m. Eastern Time). The VSTOXX Futures contract value is 100 Euros per index point of the underlying and it is traded to two decimal places with a minimum price change of 0.05 points (equivalent to a value of 5 Euros). The daily settlement price is determined during the closing auction of the respective futures contract. The last trading day and final settlement day is 30 calendar days prior to the third Friday of the expiration month of the underlying options, which is usually the Wednesday prior to the second to last Friday of the respective maturity month.

STOXX will compute the Index on a real-time basis throughout each trading day, from 8:50 a.m. until 5:30 CET (3:50 a.m. until 12:30 p.m. Eastern Time). VSTOXX levels will be calculated by STOXX and disseminated by major market data vendors on a real-time basis throughout each trading day.

The Exchange believes that the proposed amendment to add VSTOXX Futures as an underlying Futures Reference Asset will provide investors with the ability to better diversify and hedge their portfolios using an exchange listed security without having to trade directly in the underlying futures contracts, and will facilitate the listing and trading of additional Futures-Linked Securities that will enhance competition among market participants, to the benefit of investors and the marketplace.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>13</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed amendment to add VSTOXX Futures as an underlying Futures Reference Asset will provide investors with the ability to better diversify and hedge their portfolios using an exchange-listed security without having to trade directly in the underlying futures contracts, and will facilitate the listing and trading of additional Futures-Linked Securities that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in Futures-Linked Securities and may obtain information regarding both the Futures-Linked Securities and VSTOXX Futures via ISG from other exchanges that are members of ISG or with which the Exchange has entered

into a CSSA. In addition, as noted above, investors will have ready access to information on an intraday basis regarding: (i) The value of the Futures Reference Asset, which will be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Exchange’s Core Trading Session; (ii) for Futures-Linked Securities that are periodically redeemable, the indicative value of the securities, which must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Exchange’s Core Trading Session; and (iii) information regarding market price and trading of Futures-Linked Securities, which will be available on brokers’ computer screens and other electronic services, and quotation and last sale information for the securities, which will be available on the facilities of the Consolidated Tape Association. Further, any Futures-Linked Securities linked to VSTOXX Futures would be required to meet both the initial and continued listing standards under NYSE Arca Equities Rule 5.2(j)(6)(B)(V) or be subject to delisting or removal proceedings, which include: (i) That the value of the Futures Reference Asset be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Exchange’s Core Trading Session; (ii) for Futures-Linked Securities that are periodically redeemable, the indicative value of the securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Exchange’s Core Trading Session; (iii) the aggregate market value or the principal amount of the Futures-Linked Securities must be at least \$400,000; (iv) the value of the Futures Reference Asset is no longer calculated or available and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of Rule 5.2(j)(6); or (v) if such other event occurs or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable. Any Futures-Linked Securities linked to VSTOXX Futures would also be required to meet the listing standards applicable to all Index-Linked Securities in Rule 5.2(j)(6). All Index-Linked Securities listed pursuant to NYSE Arca Equities Rule 5.2(j)(6) are included within the definition of “security” or “securities” as such terms are used in the Exchange rules and, as such, are subject to Exchange rules and procedures that

<sup>10</sup> 17 CFR 240.10A-3.

<sup>11</sup> Eurex is a member of the ISG and, as such, the Exchange may obtain information regarding trading in the underlying VSTOXX Futures contracts. For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

currently govern the trading of securities on the Exchange. Trading in the securities may be halted under the conditions specified in NYSE Arca Equities Rule 5.2(j)(6)(E).

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>14</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would facilitate the listing and trading of additional types of Futures-Linked Securities, which will enhance competition among market participants, to the benefit of investors and the marketplace and provide investors with the ability to better diversify and hedge their portfolios using an exchange listed security without having to trade directly in the underlying futures contracts. The Exchange believes that this would reduce the time frame for bringing Futures-Linked Securities linked to VSTOXX Futures to market, thereby reducing the burdens on issuers and other market participants and promoting competition. The proposed rule change would enhance competition among listing exchanges because the proposed rule is based on an approved listing standard on BZX.

#### *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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup> Because the 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 prior to 30 days from the date on which it was filed, 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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>18</sup> the Commission may 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 Exchange asserts that waiving the operative delay would be consistent with the protection of investors and the public interest because the Commission has already approved a substantially identical proposed rule change submitted by another national securities exchange. In addition, the Exchange asserts that a waiver would accommodate listing and trading, including trading pursuant to unlisted trading privileges, of an issue of Future-Linked Securities based on VSTOXX Futures without additional delay, and would thereby promote intermarket competition in listing and trading such securities, to the benefit of the investing public.

The Commission believes that waiving the operative delay with respect to the proposed rule change is consistent with the protection of investors and the public interest because the proposal does not raise any regulatory issues that were not already addressed by the Commission when approving a substantially identical proposal by another national securities exchange.<sup>19</sup> Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>20</sup>

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend the 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 Commission will institute proceedings under Section 19(b)(2)(B)<sup>21</sup> of the Act 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2017-08 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-2017-08. This file number should be included on the subject line if email 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 10:00 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-

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 satisfied this requirement.

<sup>19</sup> See note 7, *supra*.

<sup>20</sup> For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> 15 U.S.C. 78f(b)(8).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

NYSEArca-2017-08 and should be submitted on or before March 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017-02735 Filed 2-9-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79976; File No. SR-NYSEArca-2017-02]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Rules Related to Flexible Exchange Options

February 6, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 25, 2017, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 Exchange. 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 certain rules related to Flexible Exchange (“FLEX”) Options. The proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://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

The purpose of this filing is to amend certain rules related to FLEX Options, as described below.

FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options.<sup>4</sup> The Exchange is proposing to allow FLEX Options in ByRDs, make available additional settlement styles, modify how exercise prices and premiums are expressed, change certain provisions relating to floor-based trading, and modify other related provisions pertaining to FLEX Options.

##### FLEX Options for Binary Return Derivatives Contracts (“ByRDs”)

The Exchange proposes to modify its rules to enable market participants to trade FLEX options contracts in ByRDs.<sup>5</sup> Specifically, the Exchange proposes to add a new definition of “FLEX ByRDs,” which would be a “Binary Return Derivatives contract on any ByRD-eligible underlying security that is subject to the rules in this Section.”<sup>6</sup> The Exchange also proposes to revise Rule 5.30(b)(15) to include FLEX ByRDs in the definition of “Series of FLEX Options.”<sup>7</sup> Because FLEX ByRDs would have to be settled in cash, based on the Volume-Weighted Average Price (or VWAP) of the underlying security, market participants could not modify these terms.<sup>8</sup> However, market participants may trade FLEX ByRDs with non-standard strike prices and/or non-standard expiration dates. Regarding position limits, the Exchange proposes to add paragraph (b)(ii) to Rule 5.35 to provide that positions in FLEX

ByRDs shall be the same as Non-FLEX ByRDs, as set forth in Rule 5.86(a), except that positions in FLEX ByRDs shall be aggregated with positions in Non-FLEX ByRDs on the same or similar underlying for the purpose of calculating position limits.<sup>9</sup> The Exchange also proposes to include in proposed Rule 5.35(b)(ii) that “[f]or purposes of the position limits established under this Rule, long positions in ‘Finish Low’ and short positions in ‘Finish High’ Binary Return Derivatives shall be considered to be on the same side of the market; and short positions in ‘Finish Low’ and long positions in ‘Finish High’ Binary Return Derivatives shall be considered to be on the same side of the market.”<sup>10</sup> Consistent with these changes, the Exchange also proposes to define Non-FLEX ByRDs as “a Non-FLEX Option that is a Binary Return Derivatives contract,” in new paragraph (b)(22) to Rule 5.30. The Exchange believes that FLEX ByRDs would enable market participants to negotiate terms that differ from standardized ByRDs, which would, in turn, provide greater opportunities for investors to manage risk through the use of FLEX Options.<sup>11</sup> The Exchange notes that the proposed rules related to FLEX ByRDs are materially identical to rules recently approved on another options exchange.<sup>12</sup>

##### Additional Settlement Styles for FLEX Options: Asian and Cliquet Style

The Exchange proposes to permit parties to FLEX Index Options on

<sup>9</sup> The Exchange also proposes to re-format Rule 5.35 to make clear the position limits that apply to each of FLEX Index Options and FLEX Equity Options. In this regard, the Exchange proposes to modify the title of the Rule 5.35 to remove reference to “Index” and re-titled it as “Position Limits for FLEX Options.” Further, the Exchange proposes reformatting changes to clarify that Rule 5.35(a), with proposed sub-parts (i) and (ii), refers to FLEX Index Options and proposed Rule 5.35(b), refers to FLEX Equity Options. Finally, the Exchange proposes to re-locate current paragraph (d) to Rule 5.35 regarding the aggregation of position limits for FLEX Index Options to proposed paragraph (a)(iii), which would add clarity and consistency to Exchange rules. See proposed Rule 5.35(a) and (b).

<sup>10</sup> See “Statutory Basis” section herein (in the third paragraph) for further discussion.

<sup>11</sup> The Exchange also proposes to modify Rule 5.32(f)(3)(ii) to provide that FLEX ByRDs must be settled the same as non-FLEX ByRDs. See proposed Rule 5.32(f)(3)(ii) (discussed herein under “Additional Updates to Reflect Trading in FLEX Options”); see also Rule 5.89 (Determination of the Settlement Price of ByRDs).

<sup>12</sup> See Securities Exchange Act Release Nos. 79125 (October 19, 2016), 81 FR 73452 (October 25, 2016) (“MKT Approval Order”) (order approving modifications to FLEX Options, including adding FLEX ByRDs); 78348 (July 15, 2016), 81 FR 47469 (July 21, 2016) (“MKT Notice”) (SR-NYSEMKT-2016-48). See also NYSE MKT Rules 900G(b)(16),(17), (22); 903G(c)(3)(i)-(ii); 906G(b)(ii).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>4</sup> See Rule 5.30(b)(4) (defining “FLEX option”). See generally Section 4, Flexible Exchange Options, Rules 5.30-5.44.

<sup>5</sup> ByRDs are European-style option contracts on individual stocks, exchange-traded funds (“ETFs”) and Index-Linked Securities that have a fixed return in cash based on a set strike price; satisfy specified listing criteria; and may only be exercised at expiration pursuant to the Rules of the Options Clearing Corporation (the “OCC”). See Rules 5.82(b), 5.90. For a description of “Exchange-Traded Fund Shares” and “Index-Linked Securities,” see also Rule 5.3(g) and (j).

<sup>6</sup> See proposed Rule 5.30(b)(19).

<sup>7</sup> See proposed Rule 5.30(b)(15) (proposing to add that a “Series of FLEX Options” would include, in the case of FLEX ByRDs, all such option contracts of the same class having the same expiration date, strike price, and exercise settlement amount).

<sup>8</sup> See “Statutory Basis” section herein (in the second paragraph) for further discussion.