

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–2017–60, and should be submitted on or before June 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

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

[FR Doc. 2017–11357 Filed 5–31–17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80796; File No. SR–BatsBZX–2017–37]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of Proposed Rule Change To Eliminate Requirements That Will Be Duplicative of CAT

May 26, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on May 15, 2017, Bats BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III 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 filed a proposal to modify requirements for the collection of information that is duplicative of information intended to be collected for the consolidated audit trail (“CAT”) adopted pursuant to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”).<sup>3</sup> The Exchange will announce the implementation date of the proposed rule change and effective date of the retirement of any

related systems by Regulatory Circular that will be published once the options exchanges determine the thresholds for accuracy and reliability described below have been met and that the Plan Processor for CAT is sufficiently meeting all of its obligations under the CAT NMS Plan.

The text of the proposed rule change is available at the Exchange’s Web site at [www.bats.com](http://www.bats.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 Exchange 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 these 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

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, MIAx PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>4</sup> NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>5</sup> (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>6</sup> and

<sup>4</sup> 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 Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

<sup>5</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

<sup>6</sup> 15 U.S.C. 78k–1.

Rule 608 of Regulation NMS thereunder,<sup>7</sup> the CAT NMS Plan.<sup>8</sup> 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,<sup>9</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>10</sup> The Plan is designed to create, implement and maintain a 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. Pursuant to Appendix C of the CAT NMS Plan, each Participant is required to conduct analyses of which of its existing trade and order data rules and systems require the collection of information that is duplicative of information collected for the CAT.<sup>11</sup> In addition, among other things, Section C.9 of Appendix C to the Plan, as modified by the Commission, requires each Participant to “file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC’s approval of the CAT NMS Plan.”<sup>12</sup> The Plan notes that “the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.”<sup>13</sup>

After conducting its analysis of its rules in accordance with the CAT NMS Plan, the Exchange determined Rules 22.7 and 24.4 require the reporting of information intended to be collected by the CAT. Therefore, the Exchange believes those provisions will no longer be necessary once the CAT is operational and proposes to modify those Rules as described below. Additionally, the Exchange describes below additional reporting requirements that it may reduce for which no rule changes are necessary. These changes will be implemented in accordance with the timeline described below.

<sup>7</sup> 17 CFR 242.608.

<sup>8</sup> 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.

<sup>9</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>10</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

<sup>11</sup> Appendix C of CAT NMS Plan, Approval Order at 85010.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>19</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein, or in the CAT Compliance Rule Series or in the CAT NMS Plan.

Initially, the Exchange notes that options exchanges, including the Exchange, utilize consolidated options audit trail system (“COATS”) to collect and review data regarding options orders, quotes and transactions. The Participants have provided COATS technical specifications to the Plan Processor for the CAT for use in developing the Technical Specifications for the CAT, and the Participants are working with the Plan Processor to include the necessary COATS data elements in the CAT Technical Specifications. Accordingly, although the Technical Specifications for the CAT have not yet been finalized, the Exchange and the other options exchanges propose to eliminate COATS in accordance with the proposed timeline discussed below. The Exchange notes that it does not have any specific rules or requirements related to COATS but refers to its retirement below in an effort to provide transparency.

#### (1) Market Maker Equity Order Reports

Rule 22.7(b) requires Market Makers, upon request and in the prescribed form, report to the Exchange every order entered by the Market Maker for the purchase or sale of (1) a security underlying options traded on the Exchange, or (2) a security convertible into or exchangeable for such underlying security, as well as opening and closing positions in all such securities held in each account reported pursuant to Rule 22.7(a). The report pertaining to orders must include the terms of each order, identification of the brokerage firms through which the orders were entered, the times of entry or cancellation, the times report of execution were received and, if all or part of the order was executed, the quantity and execution price. CAT will require Market Makers to report order information for such securities. Therefore, this rule provision as it relates to order reports is duplicative of CAT requirements, and the Exchange proposes to delete it. CAT does not require reporting of positions, so the Exchange will maintain the position reporting requirement in Rule 22.7(b). The Exchange also proposes a conforming change to the rule name and Interpretation and Policy .01.

#### (2) EBS

Rule 24.4 is the Exchange’s rule regarding the automated submission of specific trading data to the Exchange upon request using the Electronic Blue Sheet (“EBS”) system. Rule 24.4

requires an Options Member<sup>14</sup> to submit requested trade data elements in such automated format as may be prescribed by the Exchange from time to time, in regard to a transaction(s) that is the subject of the particular request for information. The Rule sets forth in paragraphs (b) and (c) the data elements required if the transaction was a proprietary transaction or if it was effected for a customer account, respectively. Paragraph (d) provides an Options Member must submit such other information as may from time to time be required. Paragraph (e) permits the Exchange to grant exceptions from these requirements in such cases and for such time periods as it deems appropriate.

The Exchange proposes to amend Rule 24.4 to state it will request information under the Rule only if the information is not available in the CAT because, for example, the transaction(s) in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT. In essence, under the proposed rule change, the Exchange will make requests under Rule 24.4 if and only if the information is not otherwise available through the CAT.

Once broker-dealer reporting to the CAT has begun, the CAT will contain the data the Participants would otherwise have requested via the EBS system for purposes of NMS Securities and OTC Equity Securities. Consequently, the Exchange will not need to use the EBS system or request information pursuant to Rule 24.4 for NMS Securities or OTC Equity Securities for time periods after CAT reporting has begun if the appropriate accuracy and reliability thresholds are achieved, including an acceptable accuracy rate for customer and account information. However, Rule 24.4 cannot be completely eliminated immediately upon the CAT achieving the appropriate thresholds because Exchange staff may still need to request information pursuant to Rule 24.4 for trading activity occurring before a member was reporting to the CAT.<sup>15</sup> In addition, Rule 24.4 applies to information regarding transactions involving securities that

<sup>14</sup> An Options Member is a Member of the Exchange that is registered to participate in options trading on BZX Options. See Rule 16.1(a)(38). A Member is a registered broker or dealer that has been admitted to membership in the Exchange. See Rule 1.5(n).

<sup>15</sup> Firms are required to maintain the trade information for pre-CAT transactions in equities and options pursuant to applicable rules, such as books and records retention requirements, for the relevant time period, which is generally three or six years depending upon the record. See 17 CFR 240.17a-3(a), 240.17a-4.

will not be reportable to the CAT, such as fixed-income securities; thus, the rule must remain in effect with respect to those transactions indefinitely or until those transactions are captured in the CAT.

#### (3) Other Reports

Various other Exchange Rules require Members to report information to the Exchange upon request.<sup>16</sup> While the Exchange believes it is necessary to retain these Rules to ensure it has access to the necessary data to perform its regulatory duties and meet its surveillance obligations, it expects it will need to make fewer information requests pursuant to these Rule once Members begin reporting to the CAT and accuracy and reliability standards are met.

#### (4) Timeline for Elimination of Duplicative Rules

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.<sup>17</sup> As discussed in more detail below, the Exchange believes the Rule provisions and related systems described above may be retired at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and the Exchange has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow the Exchange to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

The Exchange believes the proposed rule changes should not be effective until all Participants and Industry Members that report data pursuant to the Rules described above are reporting comparable data to the CAT. In this way, the Exchange will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether “the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.”<sup>18</sup> The Exchange believes COATS should not be retired until all Participants and

<sup>16</sup> See, e.g., Rule 4.2 (Furnishing of Records).

<sup>17</sup> *Id.* [sic]

<sup>18</sup> *Id.*

Industry Members that report data to COATS are reporting comparable data to the CAT. While the early submission of options data to the CAT by Small Industry Members could expedite the retirement of COATS, the Exchange believes that it premature [sic] to consider such a change and that additional analysis would be necessary to determine whether such early reporting by Small Industry Members would be feasible.

The CAT NMS Plan requires that this rule filing address “whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.”<sup>19</sup> The Exchange believes that a single cut-over from the reporting requirements described above to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from such reporting requirements on a firm-by-firm basis. The Exchange believes that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the options exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from reports received pursuant to the above requirements and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, the Exchange does not believe that such exemptions would be an appropriate use of limited resources.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide “specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.”<sup>20</sup> The Exchange believes that it is critical that the CAT Data be sufficiently accurate and reliable for the Exchange to perform the regulatory functions that it now performs using the

information it receives pursuant to the reporting requirements described above. Accordingly, the Exchange believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

The Exchange believes (and the other options exchanges with respect to COATS and EBS) believe that, before reporting requirements may be modified or eliminated, as applicable, and related systems may be retired, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).<sup>21</sup> The Exchange proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. The Exchange believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. The Exchange proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. In addition, with respect to COATS, the Exchange proposes to measure the error rates for options only, not equity securities, as only options are subject to COATS. The 2% and 5% error rates are in line with the proposed retirement threshold for FINRA’s Order Audit Trail System (“OATS”).

In addition to these minimum error rates before reporting requirements may be modified or eliminated, as applicable, and related systems may be retired, the Exchange believes that during the minimum 180-day period during which the thresholds are calculated, the Exchange’s use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow the Exchange to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. The Exchange believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been

run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

If the Commission approves the proposed rule change, the Exchange will announce the date for modification or elimination, as applicable, of reporting requirements and retirement of related systems and the implementation date of the proposed rule change via Regulatory Circular that will be published once the Exchange (and other options exchanges with respect to COATS and EBS) determines that the thresholds for accuracy and reliability described above have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Exchange Act,<sup>22</sup> which requires, among other things, that Exchange Rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealer. The Exchange believes that this proposal is consistent with the Exchange Act because it fulfills the obligation in the CAT NMS Plan for the Exchange to submit a proposed rule change to eliminate or modify duplicative rules. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”<sup>23</sup> As this proposal implements the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

Moreover, the purpose of the proposed rule change is to amend rules that require the submission of duplicative data to the Exchange. The elimination of such duplicative requirements will reduce unnecessary costs and other compliance burdens for the Exchange and its Members, and therefore, will enhance the efficiency of the securities markets. Furthermore, the Exchange believes that the approach set forth in the proposed rule change strikes

<sup>21</sup> The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. See CAT NMS Plan, at C-15.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> Approval Order at 84697.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

the appropriate balance between ensuring that the Exchange is able to continue to fulfill its statutory obligation to protect investors and the public interest by ensuring its surveillance of market activity remains accurate and effective while also establishing a reasonable timeframe for elimination or modification of its rules that will be rendered duplicative after implementation of the CAT.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

Section 6(b)(8) of the Exchange Act<sup>24</sup> requires that Exchange Rules not impose any burden on competition that is not necessary or appropriate. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange notes that the proposed rule change implements the requirements of the CAT NMS Plan approved by the Commission regarding the elimination of rules and systems that are duplicative the CAT, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. Similarly, all exchanges and FINRA are proposing the elimination of reporting requirements related to COATS and EBS, as well as other duplicative rules, to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive rule filing and, therefore, it does not raise competition issues between and among the self-regulatory organizations and/or their members.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Although written comments on the proposed rule change were not solicited, the Exchange received comments from two commenters, the Financial Information Forum ("FIF") and the Securities Industry and Financial Markets Association ("SIFMA"), regarding the retirement of systems related to the CAT.<sup>25</sup> In its comment letters, with regard to the retirement of duplicative systems more generally, FIF recommended that the Participants continue the effort to incorporate

current reporting obligations into the CAT in order to replace existing reportable systems with the CAT. In addition, FIF further recommended that, once a CAT Reporter achieved satisfactory reporting data quality, the CAT Reporter should be exempt from reporting to any duplicative reporting systems. FIF believed that these recommendations "would serve both an underlying regulatory objective of more immediate and accurate access to data as well as an industry objective of reduced costs and burdens of regulatory oversight."<sup>26</sup> In its comments about EBS specifically, FIF stated that the retirement of the EBS requirements should be a high priority, and that the CAT should be designed to include the requisite data elements to permit the rapid retirement of EBS.<sup>27</sup> Similarly, SIFMA stated that "the establishment of the CAT must be accompanied by the prompt elimination of duplicative systems," and "recommend[ed] that the initial technical specifications be designed to facilitate the immediate retirement of . . . duplicative reporting systems."<sup>28</sup>

As discussed above, the Exchange agrees with the commenters that the reporting requirements proposed to be modified or eliminated should be replaced by the CAT reporting requirements as soon as accurate and reliable CAT Data is available. To this end, the Exchange anticipates that the CAT will be designed to collect the data necessary to permit the modification or elimination, as applicable, of these reporting requirements and the retirement of related systems. However, as discussed above, the Exchange disagrees with the recommendation to provide individual exemptions to those CAT Reporters who obtain satisfactory data reporting quality.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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-BatsBZX-2017-37 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-BatsBZX-2017-37. 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 such filing will also 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-BatsBZX-2017-37 and should be submitted on or before June 22, 2017.

<sup>24</sup> 15 U.S.C. 78f(b)(8).

<sup>25</sup> Letter from William H. Hebert, FIF, to Participants re: Milestone for Participants' rule change filings to eliminate/modify duplicative rules (Apr. 12, 2017) ("FIF Letter"); Letter from William H. Hebert, FIF, to Brent J. Fields, SEC re: Milestone for Participants' rule change filings to eliminate/modify duplicative rules (Apr. 12, 2017); and Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017) ("SIFMA Letter") at 2.

<sup>26</sup> FIF Letter at 2.

<sup>27</sup> FIF Letter at 2.

<sup>28</sup> SIFMA Letter at 2.

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

**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)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> 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.<sup>4</sup> On May 10, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> 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,<sup>6</sup> Non-US Component Stocks,<sup>7</sup> US Component Stocks and Non-US Component Stocks, and Fixed Income Securities<sup>8</sup> that meets specified criteria. While “Investment Companies,”<sup>9</sup> 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)(A)(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

<sup>6</sup> “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.

<sup>7</sup> “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).

<sup>8</sup> 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.

<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

#### 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.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> 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.<sup>14</sup>

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment

<sup>10</sup> See Amendment No. 1, *supra* note 5, at 6.

<sup>11</sup> See Commentary .03 to NYSE Arca Equities Rule 5.2(j)(3).

<sup>12</sup> 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).

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

<sup>14</sup> 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.

<sup>29</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 Securities Exchange Act Release No. 80415 (April 10, 2017), 82 FR 18067.

<sup>5</sup> 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.