

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>12</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that investors may continue to trade nonstandard expiration options listed by the Exchange as part of the pilot program on an uninterrupted basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2019-43 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-Phlx-2019-43. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2019-43 and should be submitted on or before November 18, 2019.

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

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87382; File No. SR-NYSEArca-2019-04]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Amend NYSE Arca Rule 5.2-E(j)(3) To Adopt Generic Listing Standards for Investment Company Units Based on an Index or Portfolio of Municipal Securities

October 22, 2019.

#### I. Introduction

On February 8, 2019, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or the "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt generic listing standards for Investment Company Units ("Units") based on an index or portfolio of municipal securities. The proposed rule change was published for comment in the **Federal Register** on February 27, 2019.<sup>3</sup> On April 9, 2019, pursuant to Section 19(b)(2) of the Exchange Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On May 28, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup>

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 85170 (Feb. 21, 2019), 84 FR 6451.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 85573, 84 FR 15239 (Apr. 15, 2019). The Commission designated May 28, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 85946, 84 FR 25599 (June 3, 2019).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission 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 satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

On August 13, 2019, the Commission further extended the period for consideration of the proposed rule change to October 25, 2019.<sup>8</sup> On September 27, 2019, NYSE Arca filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.<sup>9</sup> On October 2, 2019, NYSE Arca filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1.<sup>10</sup> On October 10, 2019, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 2.<sup>11</sup> The Commission has received no comments on the proposal.

The Commission is publishing this notice and order to solicit comments from interested persons on the proposed rule change, as modified by Amendment No. 3, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 3<sup>12</sup>

NYSE Arca Rule 5.2–E(j)(3) permits the Exchange to list a series of Units based on an index or portfolio of underlying securities. Currently, NYSE Arca Rule 5.2–E(j)(3) includes generic listing standards for Units based on an index or portfolio of equity or fixed income securities or a combination thereof.

Municipal Securities<sup>13</sup> are a type of fixed income security, and therefore

<sup>8</sup> See Securities Exchange Act Release No. 86643, 84 FR 42963 (Aug. 19, 2019).

<sup>9</sup> Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2019-04/srnysearca201904-6224879-192613.pdf>.

<sup>10</sup> Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nysearca-2019-04/srnysearca201904-6245350-192767.pdf>.

<sup>11</sup> In Amendment No. 3, the Exchange: (1) Clarified that its proposed requirement that an underlying index or portfolio must include a minimum of 13 “non-affiliated” issuers means a minimum of 13 “unique” issuers; (2) corrected the numbering of one provision of the proposed rule text; (3) made a conforming change within Commentary .03 to NYSE Arca Rule 5.2–E(j)(3); (4) prohibited its listing of Units issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds – 300% of the percentage performance on a given day of an index of Municipal Securities (as defined below); and (5) conformed its description of the scope of Commentary .03 to NYSE Arca Rule 5.2–E(j)(3) to the rule text. Amendment No. 3 is available at: <https://www.sec.gov/comments/sr-nysearca-2019-04/srnysearca201904-6283314-193347.pdf>.

<sup>12</sup> For a full description of the proposed rule change, see Amendment No. 3, *supra* note 11.

<sup>13</sup> The proposed rule defines the term “Municipal Securities” by incorporating the definition in

currently the Exchange may generically list and trade Units overlying an index or portfolio of Municipal Securities that satisfies the criteria of Commentary .02 to NYSE Arca Rule 5.2–E(j)(3). According to the Exchange, however, indexes and portfolios of Municipal Securities typically do not satisfy one of those requirements—namely, that components comprising at least 75% of the Fixed Income Securities<sup>14</sup> portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of \$100 million or more.<sup>15</sup> The Exchange states that Municipal Securities are generally issued with individual maturities of relatively small size, although they generally are constituents of a much larger municipal bond offering.<sup>16</sup>

### A. Proposed Commentary .02A to NYSE Arca Rule 5.2–E(j)(3)

#### 1. Applicability

Proposed Commentary .02A to NYSE Arca Rule 5.2–E(j)(3) provides generic listing standards for Units based on an index or portfolio comprised solely of Municipal Securities or Municipal Securities and cash. Because the current Commentary .02 to NYSE Arca Rule 5.2–E(j)(3) also applies to Units based on an index or portfolio of Municipal Securities, the Exchange represents that it would apply existing Commentary .02 and proposed Commentary .02A in a “waterfall” manner.<sup>17</sup> Initially, the Exchange would evaluate the eligibility of a series of Units based on an index or portfolio of Municipal Securities (or Municipal Securities and cash) for listing pursuant to the generic listing standards of Commentary .02; if the underlying index or portfolio satisfies those criteria, the Exchange would list and trade the Units pursuant to that rule.<sup>18</sup> If, however, Units whose underlying index or portfolio of Municipal Securities does not satisfy all of the requirements of Commentary .02, the Exchange would apply proposed Commentary .02A.<sup>19</sup>

#### 2. Proposed Generic Listing Standards

The Exchange states that Commentary .02A to NYSE Arca Rule 5.2–E(j)(3) includes many requirements that are more stringent than those applicable to an index or portfolio of fixed-income

securities and cash. These heightened requirements, according to the Exchange, would deter potential manipulation of such Municipal Securities indices, even though the index or portfolio may include securities that have smaller original principal amounts outstanding than required under the existing Commentary .02 to NYSE Arca Rule 5.2–E(j)(3). The proposed quantitative requirements described below would apply on both an initial and continued basis to a Municipal Securities index or portfolio underlying a series of Units.

#### a. Original Principal Amount Outstanding

As mentioned above, according to the Exchange, Municipal Securities are typically issued with individual maturities of relatively small size, although they generally are constituents of a much larger municipal bond offering.<sup>20</sup> In recognition of these smaller offering sizes, the Exchange proposes to reduce the minimum original principal amount outstanding requirement for component securities from at least \$100 million to at least \$5 million.<sup>21</sup> The Exchange also proposes that qualifying securities must be issued as part of a transaction of at least \$20 million.<sup>22</sup> Lastly, the Exchange proposes to increase the percentage weight of an index or portfolio that must satisfy the original principal amount outstanding requirement from 75% to 90%.<sup>23</sup>

The Exchange asserts that reducing the minimum original principal amount outstanding requirement for component securities will not make an index or portfolio more susceptible to manipulation.<sup>24</sup> The Exchange believes that its proposal to require that 90% of the weight of a Municipal Securities index or portfolio meet the original principal amount outstanding requirement (as opposed to 75% for fixed-income indices) will deter potential manipulation by ensuring that a greater portion of the index or portfolio meet this minimum size requirement.<sup>25</sup> The Exchange also notes that the Commission previously approved the listing and trading of Units where components comprising at least 90% of the weight of the underlying index have a minimum original principal amount outstanding of at least \$5 million and are issued as

Section 3(a)(29) of the Act. See Amendment No. 3, *supra* note 11, at 4 n.4.

<sup>14</sup> “Fixed Income Securities” are defined in Commentary .02 to NYSE Arca Rule 5.2–E(j)(3).

<sup>15</sup> See Amendment No. 3, *supra* note 11, at 4 n.5.

<sup>16</sup> See Amendment No. 3, *supra* note 11, at 4 n.5.

<sup>17</sup> See *id.* at 5.

<sup>18</sup> See *id.* at 5–6.

<sup>19</sup> See proposed Commentary .02A to NYSE Arca Rule 5.2–E(j)(3).

<sup>20</sup> See *supra* note 16 and accompanying text.

<sup>21</sup> See Amendment No. 3, *supra* note 11, at 6.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *id.* at 7.

<sup>25</sup> See *id.* at 7–8.

part of a transaction of at least \$20 million.<sup>26</sup>

#### b. Component Concentration

The Exchange proposes to reduce the maximum weight that any individual Municipal Security, and a group of five Municipal Securities, may comprise in a Municipal Securities index or portfolio.<sup>27</sup> The current generic listing standards for Units based on a fixed-income index or portfolio permit individual component securities to account for up to 30% of the weight of such index or portfolio and the top-five weighted component securities to account for up to 65% of the weight of such index or portfolio.<sup>28</sup> The Exchange proposes to reduce these thresholds to 10% for individual Municipal Securities and 30% for the five most heavily-weighted Municipal Securities in an index or portfolio.<sup>29</sup> The Exchange believes that this requirement will reduce the susceptibility to manipulation of a Municipal Securities index or portfolio underlying a series of Units.<sup>30</sup>

#### c. Issuer Diversification

The current generic listing standards for Units based on an index or portfolio of Fixed Income Securities do not include an issuer diversification requirement for indices comprised solely of Municipal Securities.<sup>31</sup>

The Exchange proposes a generic listing criterion that would require an index or portfolio of Municipal Securities or Municipal Securities and cash to include securities from at least 13 unique issuers.<sup>32</sup> The Exchange states that requiring such diversification will reduce the likelihood that an index or portfolio may be manipulated by ensuring that securities from a variety of issuers are represented in an index or portfolio of Municipal Securities.<sup>33</sup>

<sup>26</sup> See, e.g., Securities Exchange Act Release No. 84049 (Sep. 6, 2018), 83 FR 46228 (Sep. 12, 2018) (SR-NYSEArca-2018-38) (order approving, among other things, revisions to the continued listing criteria applicable to the iShares New York AMT-Free Muni Bond ETF).

<sup>27</sup> See Amendment No. 3, *supra* note 11, at 8.

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*

<sup>31</sup> Commentary .02(a)(5) to NYSE Arca Rule 5.2–E(j)(3) provides that an index or portfolio—other than one consisting entirely of exempted securities—must include securities from at least 13 non-affiliated issuers. Municipal Securities are included in the definition of exempted securities. Accordingly, the requirement related to 13 non-affiliated issuers does not apply to Municipal Securities. See Section 3(a)(12) of the Act.

<sup>32</sup> See Amendment No. 3, *supra* note 11, at 9.

<sup>33</sup> See *id.*

#### d. Minimum Number of Components

The current generic listing standards applicable to an index or portfolio of Fixed Income Securities do not require a minimum number of components.<sup>34</sup> In the proposed Commentary .02A to NYSE Arca Rule 5.2–E(j)(3), the Exchange proposes to require that an index or portfolio of Municipal Securities contain at least 500 component securities.<sup>35</sup> The Exchange asserts that this proposed requirement will ensure that a Municipal Securities index or portfolio would be sufficiently broad-based and diversified to make it less susceptible to manipulation.<sup>36</sup>

#### e. Listing of Units With Inverse Leveraged Exposure to an Index of Municipal Securities

Consistent with the requirement for an index or portfolio of Fixed Income Securities under the current Commentary .02 to NYSE Arca Rule 5.2–E(j)(3), the Exchange would not list Units issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds –300% of the percentage performance on a given day of an index of Municipal Securities.<sup>37</sup>

#### f. Additional Requirements

In addition to the quantitative requirements described above, the Exchange proposes to adopt additional rules related to: (1) Index methodology and calculation; (2) dissemination of information; (3) initial shares outstanding; (4) hours of trading; (5) surveillance procedures; and (6) disclosures.

The Exchange proposes Commentary .02A(b) to NYSE Arca Rule 5.2–E(j)(3), which requires that: (i) If a Municipal Securities index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a “firewall” around the personnel who have access to information concerning changes and adjustments to the index; (ii) the current index value for Units listed pursuant to proposed Commentary .02A(a) to NYSE Arca Rule 5.2–E(j)(3) will be widely disseminated by one or more major market data vendors at least once per day and, if the index value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, the last official calculated index value must remain

<sup>34</sup> See *id.*

<sup>35</sup> See *id.*

<sup>36</sup> See *id.* at 10.

<sup>37</sup> See proposed Commentary .02A to NYSE Arca Rule 5.2–E(j)(3).

available throughout NYSE Arca Marketplace trading hours; and (iii) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority<sup>38</sup> or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Municipal Securities index.<sup>39</sup>

The Exchange proposes Commentary .02A(c) to NYSE Arca Rule 5.2–E(j)(3), which requires that one or more major market data vendors shall disseminate for each series of Units based on an index or portfolio of Municipal Securities an estimate, updated at least every 15 seconds during the Core Trading Session, of the value of a share of each series (the “Intraday Indicative Value” or “IIV”).<sup>40</sup> The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.<sup>41</sup> The Intraday Indicative Value may be calculated by the Exchange or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services.<sup>42</sup> If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout Exchange trading hours.<sup>43</sup>

The Exchange proposes Commentary .02A(d) to NYSE Arca Rule 5.2–E(j)(3), which requires that a minimum of 100,000 shares of a series of Units will be required to be outstanding at commencement of trading.<sup>44</sup>

The Exchange proposes Commentary .02A(e) to NYSE Arca Rule 5.2–E(j)(3), which specifies that the hours of trading for the Units will be as governed by NYSE Arca Rule 7.34–E(a).<sup>45</sup>

The Exchange proposes Commentary .02A(f) to NYSE Arca Rule 5.2–E(j)(3), which specifies that Units that are listed

<sup>38</sup> “Reporting Authority” is defined in NYSE Arca Rule 5.1–E(b)(16). See Amendment No. 3, *supra* note 11, at 11 n.14.

<sup>39</sup> See Amendment No. 3, *supra* note 11, at 10–11.

<sup>40</sup> See *id.* at 11.

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See *id.*

or traded pursuant to unlisted trading privileges will be subject to the Exchange's written surveillance procedures.<sup>46</sup>

Lastly, proposed Commentary .02A(g) to NYSE Arca Rule 5.2–E(j)(3) incorporates the information circular requirement of Commentary .01(g) NYSE Arca Rule 5.2–E(j)(3).<sup>47</sup>

#### B. Proposed Amendments to Commentary .03 to NYSE Arca Rule 5.2–E(j)(3)

The Exchange also proposes to amend Commentary .03 to NYSE Arca Rule 5.2–E(j)(3) to allow the generic listing and trading of Units based on a combination of two or more types of indexes, including a combination index that includes Municipal Securities.<sup>48</sup> Currently, the scope of the rule allows the Exchange to generically list Units overlying a combination of indexes or an index or portfolio of component securities representing: (1) The U.S. or domestic equity market; (2) the international equity market; and (3) the fixed income market. To the extent that an index or portfolio of Municipal Securities is included in a combination, the proposed rule specifies that the Municipal Securities index or portfolio must satisfy all requirements of Commentary .02A to NYSE Arca Rule 5.2–E(j)(3).<sup>49</sup> Further, the Exchange's proposed rule would provide that it would not list Units issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds –300% of the percentage performance on a combination of indices that include a Municipal Securities Index.<sup>50</sup> The Exchange also proposes other conforming changes to Commentary .03 to specify that the current requirements related to index value dissemination and related continued listing standards will apply to indexes of Municipal Securities.<sup>51</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>52</sup> In

particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>53</sup> which requires, among other things, that the Exchange's rules 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.

With respect to the quantitative requirements of Commentary .02A to NYSE Arca Rule 5.2–E(j)(3), the proposed original principal amount outstanding requirement is lower than what is currently applicable to Units based on an index or portfolio of Fixed Income Securities. The Commission notes, however, that the other proposed quantitative requirements (*i.e.*, component concentration, issuer diversification, and minimum number of components) are stricter than the existing generic listing requirements. Accordingly, the Commission believes that, taken together, the proposed Commentary .02A is sufficiently designed to prevent fraudulent and manipulative acts and practices. Specifically, the Commission believes that the generic listing requirements for an index or portfolio of Municipal Securities should help to ensure that an index underlying a series of Units will be sufficiently large, not concentrated, and diversified to prevent manipulation of that benchmark. The Commission further notes that it has previously approved proposed listing and trading of exchange traded funds with similar quantitative standards and those funds had not raised concerns regarding manipulation.<sup>54</sup>

The Commission also finds that the other proposed provisions of Commentary .02A to NYSE Arca Rule 5.2–E(j)(3) and the proposed amendments to Commentary .03 to NYSE Arca Rule 5.2–E(j)(3) are consistent with the Act. The provisions in the proposed Commentary .02A governing index methodology and calculation, dissemination of information, minimum number of shares outstanding at the commencement of trading, hours of trading, surveillance procedures, and information circulars are consistent with the existing requirements

applicable to Units based on an index of U.S. fixed-income securities. Further, the proposed amendments to Commentary .03 are designed to extend the requirements related to the generic listing and trading of Units based on a combination of two or more types of indexes to an index of Municipal Securities.

In support of its proposal, the Exchange represents the following:

(1) Units listed pursuant to proposed Commentary .02A to NYSE Arca Rule 5.2–E(j)(3) will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>55</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.<sup>56</sup> FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>57</sup> FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.<sup>58</sup> FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's Trade Reporting and Compliance Engine.<sup>59</sup>

(2) Units listed pursuant to the proposed generic listing rule will comply with all other requirements applicable to Units including, but not limited to, the applicable rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and the Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to Units.<sup>60</sup>

(3) The Exchange has in place surveillance procedures relating to trading in the Units and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.<sup>61</sup> In addition, investors will have ready access to information regarding the IIV and quotation and last-sale information for the Units. Trade price and other information relating to municipal bonds is available through EMMA.<sup>62</sup>

This approval order is based on all of the Exchange's representations, including those set forth above. For the foregoing reasons, the Commission finds

<sup>46</sup> See *id.*

<sup>47</sup> See *id.* at 42.

<sup>48</sup> See *id.* at 10.

<sup>49</sup> See *id.*

<sup>50</sup> See *id.*

<sup>51</sup> See *id.*

<sup>52</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>53</sup> 15 U.S.C. 78f(b)(5).

<sup>54</sup> The Commission has previously approved the listing and trading of Units overlying municipal securities indices that satisfy the proposed initial and continued generic listing criteria. See, e.g., Securities Exchange Act Releases No. 82295 (Dec. 12, 2017), 82 FR 60056 (Dec. 18, 2017) (SR–NYSEArca–2017–56) and 84049, *supra* note 25.

<sup>55</sup> See Amendment No. 3, *supra* note 11, at 12.

<sup>56</sup> See *id.*

<sup>57</sup> See *id.*

<sup>58</sup> See *id.*

<sup>59</sup> See *id.*

<sup>60</sup> See *id.* at 13.

<sup>61</sup> See *id.* at 14.

<sup>62</sup> See *id.*

that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act<sup>63</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 3 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-2019-04 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-2019-04. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSEArca-2019-04 and should be submitted on or before November 18, 2019.

#### V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. The Commission notes that Amendment No. 3 narrowed the scope of the proposal by prohibiting the of listing Units issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of an index of Municipal Securities. Amendment No. 3 also provided useful clarifications and corrections. The changes and additional information in Amendment No. 3 assisted the Commission in evaluating the Exchange's proposal and in determining that the proposed amendments to NYSE Arca Rule 5.2-E(j)(3) are consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>64</sup> to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>65</sup> that the proposed rule change (SR-NYSEArca-2019-04), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>66</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87379; File No. SR-ISE-2019-27]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period To Permit the Listing and Trading of Options Based on 1/5 the Value of the Nasdaq-100 Index

October 22, 2019.

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 October 11, 2019, Nasdaq ISE, LLC ("ISE" or the "Exchange") 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 Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot to permit the listing and trading of options based on 1/5 the value of the Nasdaq-100 Index ("Nasdaq-100") currently set to expire on November 4, 2019.

#### 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 aspects of such statements.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

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

<sup>64</sup> 15 U.S.C. 78s(b)(2).

<sup>65</sup> 15 U.S.C. 78s(b)(2).

<sup>66</sup> 17 CFR 200.30-3(a)(12).

<sup>63</sup> 15 U.S.C. 78f(b)(5).