

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84348; File No. SR-NYSEArca-2018-57)

October 3, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 4 and 6, to List and Trade Shares of the Amplify BlackSwan Growth & Treasury Core ETF Under Commentary .02 to NYSE Arca Rule 5.2-E(j)(3)

I. Introduction

On July 31, 2018, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Amplify BlackSwan Growth & Treasury Core ETF (“Fund”) under Commentary .02 to NYSE Arca Rule 5.2-E(j)(3). On August 10, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original filing in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on August 20, 2018.³ On September 10, 2018, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1, in its entirety. On September 24, 2018, the Exchange filed Amendment No. 3 to the proposed rule change. On September 28, 2018, the Exchange filed Amendment No. 4 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment Nos. 1, 2, and 3,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 83845 (August 14, 2018), 83 FR 42188 (“Notice”).

in its entirety.⁴ On October 1, 2018, the Exchange submitted and withdrew Amendment No. 5 to the proposed rule change. On October 1, 2018, the Exchange also filed Amendment No. 6 to the proposed rule change.⁵ The Commission received no comments on the proposed rule change.

This order grants approval of the proposed rule change, as modified by Amendment Nos. 4 and 6.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 4 and 6⁶

The Exchange proposes to list and trade the Shares under Commentary .02 to NYSE Arca Rule 5.2-E(j)(3), which governs the listing and trading of Investment Company Units on the Exchange. The Fund will be an index-based exchange traded fund (“ETF”). The Shares will be

⁴ In Amendment No. 4, the Exchange: (i) amended the description of the Fund’s sub-advisers, the Index Provider (as defined below), and the Index Committee (as defined below); (ii) represented that the Index Provider has implemented and will maintain procedures designed to prevent the use and dissemination of material non-public information regarding the Index (as defined below); (iii) amended the name of the Index; (iv) stated that the Exchange believes that surveillances by other exchanges on which SPY LEAPS trade should help to protect against market manipulation of the Fund’s Shares and SPY LEAPS; (v) clarified that statements and representations in the filing regarding the description of, or limitations on, the Index shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange; (vi) stated that the value of the Index will be widely disseminated by one or more major market data vendors at least once per day; (vii) clarified the availability of certain information on the Fund’s website; and (viii) made certain technical and conforming changes. Amendment No. 4 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2018-57/nysearca201857.htm>. Amendment No. 4 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues.

⁵ In Amendment No. 6, the Exchange: (i) clarified that the Index Provider is not registered as an investment adviser and is not affiliated with an investment adviser; and (ii) made certain technical and conforming changes. Amendment No. 6 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2018-57/nysearca201857.htm>. Amendment No. 6 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues.

⁶ For more information regarding the Fund and the Shares, see Amendment No. 4, supra note 4 and Amendment No. 6, supra note 5.

offered by the Amplify ETF Trust (“Trust”), which is registered with the Commission as an investment company and has filed a registration statement on Form N-1A (“Registration Statement”) with the Commission on behalf of the Fund.⁷

Amplify Investments LLC will be the Fund’s investment adviser (“Adviser”). CSAT Investment Advisory, L.P., d/b/a Exponential ETFs and ARG Investment Services LLC will be the Fund’s sub-advisers (“Sub-Advisers”).⁸ U.S. Bancorp Fund Services, LLC will be the administrator, custodian, and fund accounting and transfer agent for the Fund. Quasar Distributors LLC will serve as the distributor for the Fund.

A. The Fund’s Underlying Index

According to the Exchange, the Fund will seek investment results that generally correspond (before fees and expenses) to the price and yield of the S-Network BlackSwan Core Total Return Index (“Index”). The Index was created and is maintained by S-Network Global

⁷ The Exchange states that, on June 26, 2018, the Trust filed a Registration Statement on Form N-1A on behalf of the Fund (File Nos. 333-207937 and 811-23108). In addition, the Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 Act. See Investment Company Act Release No. 31822 (September 14, 2015) (File No. 812-14424).

⁸ The Exchange represents that the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund’s portfolio. The Exchange represents that the Sub-Advisers are not registered as a broker-dealer or affiliated with a broker-dealer. The Exchange further represents that, in the event (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

Networks, Inc. (“Index Provider”).⁹ The Index is also compiled and calculated by the Index Provider.

According to the Exchange, the Index is a rules-based, quantitative index that seeks to provide capital protection against the unpredictable, rare, and highly disruptive events that have come to be referred to as “Black Swans.” The Index endeavors to provide investment returns that correspond to those of the S&P 500 Index, while mitigating against significant losses.

The Index is composed of U.S. Treasury securities and long-dated call options (“LEAPS”)¹⁰ on the SPDR S&P 500 ETF Trust (“SPY”)¹¹ (which options are referred to herein as “SPY LEAPS”). Twice a year, in June and December, on the Index reconstitution and rebalance date, the Index places 90% of its index market capitalization in the portfolio of U.S. Treasury securities and 10% of its index market capitalization in the portfolio of SPY LEAPS. The U.S. Treasury portfolio of the Index is composed of 2-, 3-, 5-, 7-, 10-, and 30-year U.S. Treasury securities that cumulatively provide a portfolio duration that matches the initial duration of the 10-year U.S. Treasury security.¹² The SPY LEAPS portfolio of the Index is

⁹ According to the Exchange, the Index Provider is not registered as an investment adviser or broker-dealer and is not affiliated with an investment adviser or broker-dealer. The Exchange states that the Index Provider has implemented and will maintain procedures designed to prevent the use and dissemination of material non-public information regarding the Index. In addition, the Exchange states that the Index Provider is not affiliated with the Fund, the Adviser, or the Sub-Advisers.

¹⁰ LEAPS are long-term options traded on U.S. options exchanges.

¹¹ Shares of SPY are listed and traded on the Exchange.

¹² The Exchange states that the treasury position holds 5% of its allocated portion of Index market capitalization in a “barbell” portfolio of 2- and 30-year treasuries, and 95% of its allocated portion of Index market capitalization in a core portfolio that invests in 3-, 5-, 7-, 10-, and 30-year treasuries.

composed of in-the-money SPY LEAPS that, at the time of purchase, have expirations of at least one year and one day in the future and expire in either June or December, as applicable.¹³

The Index is governed by a committee (“Index Committee”) that is responsible for overseeing the activities of the Index Provider and approving all changes to the Index related to its semi-annual reconstitutions and rebalances. According to the Exchange, all members of the Index Committee and their advisors must comply with the Index Provider’s code of conduct and ethics with respect to the disclosure and use of material non-public information.

B. The Fund’s Principal Investments

Under normal market conditions,¹⁴ the Fund will invest at least 80% of its total assets in the securities that comprise the Index, which, as described above, are U.S. Treasury securities and SPY LEAPS.

C. The Fund’s Non-Principal Investments

While, under normal market conditions, the Fund will invest at least 80% of its total assets in securities that comprise the Index, the Fund may also hold cash and cash equivalents.¹⁵

¹³ The Exchange states that the SPY LEAPS will generally have a delta of 70 at the time of purchase, and should there not be a 70-delta option, the closest option above 70 will be utilized. The Exchange states that the options portion of the Index holds 5% of the Index market capitalization in June 70-delta SPY LEAPS and 5% in December 70-delta SPY LEAPS. At each June reconstitution, the Index liquidates its existing June SPY LEAPS and purchases SPY LEAPS that expire the following June. The December SPY LEAPS positions will remain unchanged at each June reconstitution. At each December reconstitution, the Index liquidates its existing December SPY LEAPS and purchases SPY LEAPS that expire the following December. The June SPY LEAPS positions will remain unchanged at each December reconstitution. Net gains or losses derived from the reconstitutions of the SPY LEAPS positions will be added to or subtracted from the U.S. Treasury portfolio at each reconstitution.

¹⁴ The term “normal market conditions” is as that term is defined in NYSE Arca Rule 8.600-E(c)(5).

¹⁵ The term “cash equivalents” has the meaning specified in Commentary .01(c) to NYSE Arca Rule 8.600-E.

D. Application of Generic Listing Requirements

The Exchange represents that it has submitted the proposed rule change because the Index does not meet all of the generic listing requirements of Commentary .02(a) to NYSE Arca Rule 5.2-E(j)(3). Specifically, because the Index includes SPY LEAPS, the Index does not satisfy the requirement set forth in Commentary .02(a)(1) to NYSE Arca Rule 5.2-E(j)(3), which states that the index or portfolio underlying a series of Investment Company Units must consist of (i) only Fixed Income Securities¹⁶ or (ii) Fixed Income Securities and cash. The Exchange represents that, with the exception of the requirement in Commentary .02(a)(1) to NYSE Arca Rule 5.2-E(j)(3), the Index and the Fund will meet each of the initial and continued listing criteria in NYSE Arca Rule 5.2-E(j)(3) and NYSE Arca Rule 5.5-E(g)(2).

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 4 and 6, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 4 and 6, is consistent with Section 6(b)(5) of the Act,¹⁸ 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

¹⁶ Commentary .02 to NYSE Arca Rule 5.2-E(j)(3) states that "Fixed Income Securities" are 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.

¹⁷ 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).

¹⁸ 15 U.S.C. 78f(b)(5).

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.

As discussed above, the Shares do not qualify for generic listing under Commentary .02 to NYSE Arca Rule 5.2-E(j)(3) because the Index includes SPY LEAPS. The Commission notes that the Exchange represents that, other than Commentary .02(a)(1) to NYSE Arca Rule 5.2-E(j)(3), the Shares will meet the initial and continued listing criteria under NYSE Arca Rules 5.2-E(j)(3) and 5.5-E(g)(2). The Commission also notes that SPY LEAPS are traded on U.S. options exchanges, SPY is listed and traded on the Exchange, and SPY is based on the S&P 500 Index.¹⁹

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²⁰ which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line. Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, the Intraday Indicative Value ("IIV") (as defined in NYSE Arca Rule 5.2-E(j)(3), Commentary .02(c)) will be widely disseminated at least every 15 seconds

¹⁹ The Exchange also notes that the S&P 500 Index would meet the generic listing standards applicable to an index composed of U.S. Component Stocks in Commentary .01(a) to NYSE Arca Rule 5.2-E(j)(3).

²⁰ 15 U.S.C. 78k-1(a)(1)(C)(iii).

during the Core Trading Session by one or more major market data vendors.²¹ The value of the Index will be widely disseminated by one or more major market data vendors at least once per day. Information about the Index constituents, the weighting of the constituents, the Index's methodology, and the Index's rules will be available on the Index Provider's website. Quotation and last sale information for SPY LEAPS will be available from the exchange on which they are traded and through the Options Price Reporting Authority. The intraday, closing, and settlement prices of exchange-traded options also will be available from the options exchanges, automated quotation systems, published or other public sources, or online information services. Price information on U.S. Treasury securities and cash equivalents will be available from major broker-dealer firms or market data vendors, automated quotation systems, published or other public sources, or online information services.

The Fund's website, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund and additional data relating to the net asset value ("NAV") and other applicable quantitative information. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website information regarding each portfolio holding of the Fund. In addition, a portfolio composition file, which will include the security names and quantities of securities and other assets required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated prior to the opening of the Exchange via the National Securities Clearing Corporation.

The Commission also believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent

²¹ The Exchange states that all Fund holdings will be included in calculating the IIV.

trading when a reasonable degree of transparency cannot be assured. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading the Shares inadvisable. In addition, trading in the Shares will be subject to NYSE Arca Rule 5.5-E(g)(2)(b), which sets forth circumstances under which Shares of the Fund may and/or will be halted. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily every day the New York Stock Exchange is open and that the NAV will be made available to all market participants at the same time. Under NYSE Arca Rule 7.18-E(d)(2), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading until such time as the NAV is available to all market participants.

In support of this proposal, the Exchange represents that:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rules 5.2-E(j)(3) and 5.5(E)(g)(2), except that the Index will not meet the requirements of NYSE Arca Rule 5.2-E(j)(3), Commentary .02(a)(1) in that the Index will include SPY LEAPS.
- (2) The Shares will comply with all other requirements applicable to Investment Company Units, including the dissemination of key information such as the Index value, the NAV, and the IIV, rules governing the trading of equity securities, trading hours, trading halts, firewalls for the Index Provider, Adviser and Sub-Advisers, surveillance, and the Information Bulletin, as set forth in Exchange rules applicable to Investment Company Units and the orders approving such rules.

- (3) The Shares will be subject to the existing trading surveillances administered by the Exchange and Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to deter and detect violations of Exchange rules and applicable federal securities laws relating to trading on the Exchange.²²
- (4) The Exchange, or FINRA on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and SPY LEAPS with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and the Exchange, or FINRA on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and SPY LEAPS from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and SPY LEAPS from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA’s Trade Reporting and Compliance Engine.
- (5) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

²² The Exchange states that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

- (6) The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. The Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2x or -2x) of the Index.
- (7) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act.²³
- (8) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.
- (9) All statements and representations made in the filing regarding (a) the description of the Index, portfolio or reference asset, (b) limitations on the Index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in the rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange. In addition, the issuer is required to notify the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor²⁴ for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

²³ 17 CFR 240.10A-3.

²⁴ The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment Nos. 4 and 6.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 4 and 6, is consistent with Section 6(b)(5) of the Act²⁵ and Section 11A(a)(1)(C)(iii) of the Act²⁶ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-NYSEArca-2018-57), as modified by Amendment Nos. 4 and 6 be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Eduardo A. Aleman
Assistant Secretary

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).