

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-86017; File No. SR-NYSEArca-2019-06)

June 3, 2019

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Certain Generic Listing Standards for Managed Fund Shares Applicable to Holdings of Fixed Income Securities

I. Introduction

On February 14, 2019, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend certain generic listing standards for Managed Fund Shares applicable to holdings of fixed income securities. The proposed rule change was published for comment in the Federal Register on March 6, 2019.<sup>3</sup> On April 18, 2019, pursuant to Section 19(b)(2) of the 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 On May 15, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the original filing in its entirety.<sup>6</sup> The Commission has

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<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. 85220 (February 28, 2019), 84 FR 8138.

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

<sup>5</sup> See Securities Exchange Act Release No. 85690, 84 FR 17204 (April 24, 2019). The Commission designated June 4, 2019 as the date by which the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> In Amendment No. 1, the Exchange: (1) clarified that non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities in the portfolio of a series of generically-listed Managed Fund Shares would satisfy all of the generic listing

received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1<sup>7</sup>

Commentary .01 to NYSE Arca Rule 8.600-E sets forth the generic listing standards for Managed Fund Shares.<sup>8</sup> Commentary .01(b) to NYSE Arca Rule 8.600-E sets forth the generic listing standards applicable to fixed income securities<sup>9</sup> in the portfolio of a series of Managed Fund Shares. Commentary .01(b)(5) currently provides that non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion

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standards of Commentary .01(b) to NYSE Arca Rule 8.600-E, as amended; (2) modified its argument supporting its proposed change; and (3) made other technical changes. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nysearca-2019-06/srnysearca201906-5524002-185227.pdf>.

<sup>7</sup> For a more detailed description of the proposal, see Amendment No. 1, supra note 6.

<sup>8</sup> The term “Managed Fund Share” means a security that (a) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value. See NYSE Arca Rule 8.600-E(c)(1).

<sup>9</sup> Commentary .01(b) to NYSE Arca Rule 8.600-E provides 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 (“GSE”) securities, municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper.

of the portfolio. The Exchange proposes to amend Commentary .01(b)(5) by deleting the reference to the “fixed income portion of the” portfolio, such that non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of the whole portfolio.

### 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>10</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>11</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 the generic listing standards for Managed Fund Shares, as proposed to be amended, would continue to be designed to prevent manipulation. As noted above, the Exchange proposes to amend Commentary .01(b)(5) to NYSE Arca Rule 8.600-E to allow non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities to account for no more than 20% of the weight of the whole portfolio (rather than the fixed income portion of the portfolio). Therefore, the proposed rule change would allow the Exchange to generically list and trade series of Managed Fund Shares that hold more non-

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<sup>10</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>11</sup> 15 U.S.C. 78f(b)(5).

agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities than is currently allowed under the generic listing standards (if assets other than fixed income securities are in the portfolio).<sup>12</sup> According to the Exchange, the proposal would allow increased portfolio diversification.<sup>13</sup> The Exchange also states that it has in place surveillance procedures that are adequate to properly monitor trading in series of Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.<sup>14</sup> The Commission notes that, as proposed, non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities must meet all the generic listing standards in Commentary .01(b) to NYSE Arca Rule 8.600-E.<sup>15</sup> In addition, the Commission notes that it has previously approved the listing and trading of Managed Fund Shares that could hold up to 20%

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<sup>12</sup> As the Exchange notes, currently, a fund holding 100% of its assets in fixed income securities could hold 20% of its entire portfolio's weight in non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities. See Amendment No. 1, supra note 6, at 5. In contrast, a fund holding 25% of its assets in fixed income securities, 25% in U.S. component stocks, and 50% in cash and cash equivalents could only hold 5% its entire portfolio's weight in non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities. See id. Under the proposal, each of these funds could hold 20% of its entire portfolio's weight in non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities.

<sup>13</sup> See id., at 4-5.

<sup>14</sup> See id., at 6. The Exchange or the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, or both, would communicate as needed regarding trading in Managed Fund Shares 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, could obtain trading information regarding trading in Managed Fund Shares from such markets and other entities. See id. In addition, the Exchange could obtain information regarding trading in Managed Fund Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. See id.

<sup>15</sup> See id., at 5.

of their total assets in non-agency, non-GSE, and privately-issued asset-backed and mortgage-backed securities.<sup>16</sup>

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NYSEArca-2019-06), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>16</sup> See, e.g., Securities Exchange Act Release Nos. 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR-NYSEArca-2018-15); 80946 (June 15, 2017), 82 FR 28126 (June 20, 2017) (SR-NASDAQ-2017-039); 74814 (April 27, 2015), 80 FR 24986 (May 1, 2015) (SR-NYSEArca-2014-107).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).