

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100597; File No. SR-NYSEARCA-2024-61)

July 25, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 1.1 and Rule 5.2-E(j)(6)

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 15, 2024, NYSE Arca, Inc. (“NYSE Arca” 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to (1) amend Rule 1.1 to include Exchange-Traded Fund Shares in the definition of “UTP Derivative Securities Product,” and (2) amend Rule 5.2-E(j)(6) to exclude Exchange-Traded Fund Shares when applying the quantitative generic listing criteria applicable to Equity Index-Linked Securities. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 1.1

The Exchange proposes to amend Rule 1.1, which sets forth definitions of terms used in Exchange rules, including the meanings of “Derivative Securities Product” and “UTP Derivative Securities Product.”

Specifically, the Exchange proposes to amend the definition of “UTP Derivative Securities Product” to include Exchange-Traded Fund Shares listed pursuant to NYSE Arca, Inc. (“NYSE Arca”) Rule 5.2-E(j)(8), Exchange-Traded Fund Shares listed pursuant to New York Stock Exchange LLC (“NYSE”) Rule 5.2(j)(8), Exchange-Traded Fund Shares listed pursuant to Cboe BZX Exchange, Inc. (“BZX”) Rule 14.11(l), and Exchange Traded Fund Shares listed pursuant to Nasdaq Stock Market LLC (“Nasdaq”) Rule 5704 as additional types of Exchange Traded Product (“ETPs”) that may trade on the Exchange pursuant to unlisted trading privileges (“UTP”).⁴

⁴ Exchange-Traded Fund Shares and Exchange Traded Fund Shares are substantially similar products that generally refer to shares of exchange-traded funds eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940. See Securities Exchange Act Release Nos. 88625 (April 13, 2020), 85 FR 21479 (April 17, 2020) (SR-NYSEArca-2019-81) (order approving NYSE Arca Rule 5.2-E(j)(8) governing the listing and trading of Exchange-Traded Fund Shares); 91029 (February 1, 2021), 86 FR 8420 (February 5, 2021) (SR-NYSE-2020-86) (order approving NYSE Rule 5.2(j)(8) governing the listing and trading of Exchange-Traded Fund Shares); 88566 (April 6, 2020), 85 FR 20312 (April 10, 2020) (SR-CboeBZX-2019-097) (order approving BZX Rule 14.11(l) governing the listing and trading of Exchange-Traded Fund Shares); 88561 (April 3, 2020), 85 FR 19984 (April 9, 2020) (SR-NASDAQ-2019-090) (order approving Nasdaq Rule 5704 governing the listing and trading of Exchange Traded Fund Shares).

To effect this change, the Exchange proposes to add a bullet point listing “Exchange-Traded Fund Shares listed pursuant to NYSE Arca, Inc. Rule 5.2-E(j)(8), New York Stock Exchange LLC Rule 5.2(j)(8), or Cboe BZX Exchange, Inc. Rule 14.11(l) and Exchange Traded Fund Shares listed pursuant to Nasdaq Stock Market LLC Rule 5704” in Rule 1.1 to include them in the enumerated list of Derivative Securities Products that may trade on the Exchange on a UTP basis. The Exchange also proposes non-substantive changes to accommodate the addition of this bullet point as the final item in the bulleted list in Rule 1.1.

The Exchange believes that the proposed change would ensure that the definition of “UTP Derivative Securities Product” in Rule 1.1 reflects a complete list of Derivative Securities Products that may trade on the Exchange pursuant to UTP, thereby improving the clarity and transparency of Exchange Rules.

Rule 5.2-E(j)(6)

Rule 5.2-E(j)(6) sets forth criteria applicable to Exchange listing of equity index-linked securities (“Equity Index-Linked Securities”), commodity-linked securities, currency-linked securities, fixed income index-linked securities, futures-linked securities, and multifactor index-linked securities.

As defined in Rule 5.2-E(j)(6)(B)(I)(1), Equity Index-Linked Securities are securities that provide for the payment at maturity (or earlier redemption) based on the performance of an underlying index or indexes of equity securities, securities of closed-end management investment companies registered under the Investment Company Act of 1940,⁵ and/or Investment Company Units. In addition to certain other generic listing criteria, Equity Index-Linked Securities must satisfy the generic quantitative initial and continued listing criteria under Rule 5.2-E(j)(6)(B)(I)

⁵ 15 U.S.C. 80-1.

in order to become, and continue to be, listed and traded on the Exchange. Certain of the applicable quantitative criteria specify minimum or maximum thresholds that must be satisfied with respect to, for example, market value, trading volume, and dollar weight of an index represented by a single component or groups of components.

Currently, Rule 5.2-E(j)(6)(B)(I)(1)(a) provides that each underlying index of an Equity Index-Linked Security is required to have at least ten component securities, provided, however, that there shall be no minimum number of component securities if one or more issues of Derivative Securities Products (i.e., Investment Company Units (as described in Rule 5.2-E(j)(3)) and securities described in Section 2 of Rule 8) or Index-Linked Securities (as described in Rule 5.2-E(j)(6)), constitute, at least in part, component securities underlying an issue of Equity Index-Linked Securities. The Exchange proposes to amend Rule 5.2-E(j)(6)(B)(I)(1)(a) to include Exchange-Traded Fund Shares, as described in Rule 5.2-E(j)(8), in the group of Derivative Securities Products to which the ten component security minimum would not apply. The Exchange also proposes to exclude Derivative Securities Products, consistent with this proposed change to the description of Derivative Securities Products in Rule 5.2-E(j)(6)(B)(I)(1)(a), from consideration when determining whether the applicable quantitative generic thresholds have been satisfied under the initial listing standards specified in Rules 5.2-E(j)(6)(B)(I)(1)(b)(i) through (iv) and the continued listing standards specified in Rules 5.2-E(j)(6)(B)(I)(2)(a)(i) and (ii). Thus, for example, when determining compliance with Rule 5.2-E(j)(6)(B)(I)(1)(b)(ii), component stocks, excluding Derivative Securities Products (which would, as proposed, include Exchange-Traded Fund Shares) or Index-Linked Securities, that in the aggregate account for at least 90% of the remaining index weight, excluding any Derivative Securities Products (including, as proposed, Exchange-Traded Fund Shares) or Index-Linked

Securities, would be required to have a minimum global monthly trading volume of 1,000,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months.

In addition, Rule 5.2-E(j)(6)(B)(I)(1)(a) currently provides that the securities described in Rule 5.2-E(j)(3), Section 2 of Rule 8, and Rule 5.2-E(j)(6), as referenced in Rule 5.2-E(j)(6)(B)(I)(1)(b)(2) and Rule 5.2-E(j)(6)(B)(I)(2)(a), shall include securities listed on another national securities exchange pursuant to substantially equivalent listing rules. The Exchange proposes to update this list to include a reference to Rule 5.2-E(j)(8), consistent with the proposed change described above. The Exchange also proposes non-substantive changes in two places in Rule 5.2-E(j)(6)(B)(I)(1)(a) to refer to “Section 2 of Rule 8-E” (instead of “Section 2 of Rule 8”) to reflect the current NYSE Arca rule numbering convention. Finally, the Exchange proposes non-substantive changes to delete the extra spaces that appear in the term “Index-Linked Securities” in Rules 5.2-E(j)(6)(B)(I)(1)(b)(ii), 5.2-E(j)(6)(B)(I)(2)(a)(i), and 5.2-E(j)(6)(B)(I)(2)(a)(ii).

The Exchange notes that the inclusion of Exchange-Traded Fund Shares in the group of Derivative Securities Products that are excepted from the generic listing and continued listing criteria specified above for Equity Index-Linked Securities would align the Exchange’s rules with the listing criteria for Equity Index-Linked Securities on at least one other equity exchange.⁶

⁶ See, e.g., BZX Rule 14.11(d)(2)(K)(i)(a) (describing listing criteria for Equity Index-Linked Securities, including that “each underlying index is required to have at least ten (10) component securities; provided, however, that there shall be no minimum number of component securities if one or more issues of Derivative Securities Products (which are defined in Rule 14.11(c)(3)(A)(i)(a))...constitute, at least in part, component securities underlying an issue of Equity Index-Linked Securities”); BZX Rule 14.11(c)(3)(A)(i)(a) (defining “Derivative Securities Products” to include Index Fund Shares, Portfolio Depositary Receipts, Trust Issued Receipts, ETF Shares, and Managed Fund Shares); and BZX 14.11(l) (defining Exchange-Traded Fund Shares or ETF Shares). Cf. Nasdaq Rule 5705(b)(3)(A)(i)(a) (describing listing criteria for Index Fund Shares, including that “Component stocks (excluding “Derivative Securities Products” as defined in this subsection a.) that in the aggregate account for at least 90% of the weight of the U.S. Component Stocks portion of the index or portfolio (excluding Derivative Securities Products) each

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, because it is designed to remove impediments to and perfect the mechanism of a free and open market, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The proposed rule change with respect to the definition of “UTP Derivative Securities Products” in Rule 1.1 is designed to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and, in general, to protect investors and the public interest because it modifies Rule 1.1 to state the complete list of Derivative Securities Products that may trade on a UTP basis on the Exchange, providing specificity, clarity, and transparency in the Exchange’s rules. Moreover, the proposed rule change would facilitate the trading of additional types of Derivative Securities Products on the Exchange pursuant to UTP, thereby enhancing competition among market participants for the benefit of investors and the marketplace.

The Exchange believes that the proposed change with respect to Rule 5.2-E(j)(6) is designed to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and, in general, to protect investors and the public interest because including Exchange-Traded Fund Shares as Derivative Securities Products excepted from certain generic listing and continued listing criteria for Equity Index-Linked

shall have a minimum market value of at least \$75 million” and defining “Derivative Securities Products” as including Exchange Traded Fund Shares listed under Nasdaq Rule 5704).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) & (5).

Securities would facilitate the listing and trading of additional types of Equity Index-Linked Securities. The Exchange further believes the proposed change would remove impediments to and perfect the mechanism of a free and open market and promote competition, to the benefit of investors and the marketplace, because the proposed change would amend the Exchange's rules to be consistent with the listing criteria for Equity Index-Linked Securities on at least one other equity exchange.⁹

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would provide the public and investors with up-to-date information about the types of Derivative Securities Products that can trade on the Exchange on a UTP basis and would promote competition by providing for additional types of Derivative Securities Products that may trade on the Exchange pursuant to UTP. The Exchange also believes that the proposed change would encourage competition by enabling additional types of Equity Index-Linked Securities to be listed on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

Pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not

⁹ See note 6, *supra*.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.¹²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed rule change, which adds Exchange-Traded Fund Shares (or Exchange Traded Fund Shares, as the case may be) to the definition of “UTP Derivative Securities Product” in NYSE Arca Rule 1.1 and modifies certain listing standards applicable to Equity Index-Linked Securities, conforms to substantially similar rules of other exchanges¹⁴ and raises no unique or novel legal or regulatory issues. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁵

¹² In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ See, e.g., BZX Rule 1.5(ee) (incorporating “Exchange-Traded Fund Shares” in the definition of UTP Derivative Securities); and BZX Rule 14.11(d)(2)(K)(i)(a) and (b) (setting forth the initial and continued listing standards for Equity Index-Linked Securities).

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

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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-61 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-2024-61. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-61 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12), (59).