

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67066; File No. SR-NYSEArca-2012-46)

May 29, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Extension of Unlisted Trading Privileges to New Derivative Securities Products That Are Listed on Another Exchange and to Make Other Conforming and Technical Amendments

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on May 16, 2012, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 has designated the proposed rule change as constituting a rule change under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 amend NYSE Arca Equities Rule 5.1(a) to set forth rules regarding the extension of unlisted trading privileges (“UTP”) to a new derivative securities product that is listed on another exchange and to make other conforming and technical amendments. The text of 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 5.1(a) to set forth rules regarding the extension of UTP to a new derivative securities product⁵ that is listed on another exchange and to make other technical and conforming amendments. The purpose of the proposed rule change is to amend the Exchange’s rules to consolidate into a single rule certain requirements for trading products on the Exchange pursuant to UTP that have been established in various new product proposals previously approved by the Commission.

Under current NYSE Arca Equities Rule 5.1, only listed or UTP securities may be dealt in on the Corporation. Securities may be listed or admitted to UTP on a “when issued” or “when distributed” basis. The Exchange proposes to clarify the Rule by putting the current text of the Rule in a new subparagraph (a)(1) and adding text to note that a security must be eligible for UTP under Section 12(f) of the Securities Exchange Act of 1934 (the “Act”). The Exchange also proposes to add text that would provide that unlisted trading privileges may be extended to any

⁵ A “new derivative securities product” means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. See 17 CFR 240.19b-4(e).

security that is an NMS Stock (as defined in Rule 600 of Regulation NMS under the Act) that is listed on another national securities exchange and any such security would be subject to all the Exchange trading rules applicable to NMS Stocks, unless otherwise noted.

The Exchange proposes to add a new Rule 5.1(a)(2) to govern new derivative securities products. Any new derivative securities product would be subject to all Exchange trading rules applicable to equity securities, unless otherwise noted. Under proposed NYSE Arca Equities Rule 5.1(a)(2)(i), the Exchange would file a Form 19b-4(e) with the Commission for any security that is a new derivative securities product as defined in Rule 19b-4(e) under the Act.⁶

Under proposed NYSE Arca Equities Rule 5.1(a)(2)(ii), the Exchange would distribute an information circular prior to the commencement of trading in such a new derivative securities product that generally would include the same information as the information circular provided by the listing exchange, including (1) the special risks of trading the new derivative securities product, (2) the Exchange's rules that will apply to the new derivative securities product, including the suitability rule,⁷ (3) information about the dissemination of value of the underlying assets or indices, and (4) the risk of trading during irregular trading hours due to the lack of calculation or dissemination of the intraday indicative value or a similar value.

Proposed NYSE Arca Equities Rule 5.1(a)(2)(iii) would remind ETP Holders⁸ that they are subject to the prospectus delivery requirements under the Securities Act of 1933, as amended (the "Securities Act"), unless the new derivative securities product is the subject of an order by

⁶ See supra note 5.

⁷ See NYSE Arca Equities Rule 9.2(a)(2).

⁸ The term "ETP Holder" refers to a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an Equity Trading Permit. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act. See NYSE Arca Equities Rule 1(n).

the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940, as amended (the “1940 Act”), and the product is not otherwise subject to prospectus delivery requirements under the Securities Act. The Exchange would inform its ETP Holders regarding the application of the provisions of this new subparagraph to a particular series of exchange-traded funds governed by the 1940 Act by means of an information circular.

Proposed NYSE Arca Equities Rule 5.1(a)(2)(iv) would address trading halts in the new derivative securities products traded on the Exchange pursuant to UTP. Under the proposed rule change, if a temporary interruption occurs in the calculation or wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument and the listing market halts trading in the product, the Exchange, upon notification by the listing market of such halt due to such temporary interruption, also would immediately halt trading in that product on the Exchange. If the intraday indicative value (or similar value) or the value of the underlying index or instrument continues not to be calculated or widely available as of the commencement of trading on the Exchange on the next business day, the Exchange would not commence trading of the product that day. If an interruption in the calculation or wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument continues, the Exchange could resume trading in the product only if calculation and wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument resumes or trading in such series resumes in the listing market. The Exchange also would halt trading in a new derivative securities product listed on the Exchange for which a net asset value (and in the case of managed fund shares or actively managed exchange-traded funds, a “disclosed portfolio”) is disseminated if the Exchange

became aware that the net asset value or, if applicable, the disclosed portfolio was not being disseminated to all market participants at the same time. The Exchange would maintain the trading halt until such time as the Exchange became aware that the net asset value and, if applicable, the disclosed portfolio was available to all market participants. Nothing in the proposed rule would limit the power of the Exchange under the Rules (including without limitation Rules 7.12, 7.13, 7.18, and 7.34) or procedures of the Exchange with respect to the Exchange's ability to suspend trading in any securities if such suspension is necessary for the protection of investors or in the public interest.

Proposed NYSE Arca Equities Rule 5.1(a)(v) would provide for restrictions for any ETP Holder registered as a Market Maker in a new derivative securities product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities (collectively, "Reference Assets"). Specifically, the ETP Holder acting as a registered Market Maker in a new derivative securities product must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the new derivative securities product shall trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which an ETP Holder acting as a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. A Market Maker would be required, in a manner

prescribed by the Exchange, to file with the Exchange and keep current a list identifying any accounts (“Related Instrument Trading Accounts”) for which Related Instruments are traded (1) in which the Market Maker holds an interest, (2) over which it has investment discretion, or (3) in which it shares in the profits and/or losses. In addition, a Market Maker would not be permitted to have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account that has not been reported to the Exchange as required by the proposed rule. In addition to the existing obligations under Exchange rules regarding the production of books and records, a Market Maker would be required, upon request by the Exchange, to make available to the Exchange any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Market Maker for which Related Instruments are traded. Finally, a Market Maker could not use any material nonpublic information in connection with trading a Related Instrument.

The Exchange represents that its surveillance procedures for new derivative securities products traded on NYSE Arca Equities pursuant to UTP would be similar to the procedures used for equity securities traded on the Exchange and would incorporate and rely upon existing Exchange surveillance systems. The Exchange would closely monitor activity in new derivative securities products traded on the Exchange pursuant to UTP and deter any potential improper trading activity. The proposed rule change also provides that the Exchange would enter into a comprehensive surveillance sharing agreement (“CSSA”) with a market that trades components of the index or portfolio on which the new derivative securities product is based to the same extent that the listing exchange’s rules require the listing market to enter into a CSSA with such market.

Lastly, the Exchange proposes to remove references in NYSE Arca Equities Rule 5.2(j)(3) Commentaries .01, .02, and .03; Rule 8.100 Commentaries .01, .02, and .03; and Rule 8.202 Commentary .04 that refer to the current UTP policy. The Exchange proposes to delete these references as they will be rendered obsolete by the proposed rule change or are unnecessary. The proposed deletions address the dissemination of information, surveillance procedures, and disclosures that are addressed by the proposed rule change, or cross-reference the Exchange’s trading hours in a manner that is unnecessary. The Exchange also proposes to amend the definitions of “UTP Listing Market” in NYSE Arca Equities Rules 1(jj) and to amend the provisions for UTP regulatory halts in NYSE Arca Equities 7.18 to reflect that securities traded UTP may be listed on any exchange.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁹ in general and furthers the objectives of Section 6(b)(5)¹⁰ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change also is consistent with Section 11A(a)(1) of the Act,¹¹ in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets, and Section 12(f) of the Act,¹² which governs the trading of securities pursuant to UTP

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78k-1(a)(1).

¹² 15 U.S.C. 78l(f).

consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities. The Exchange believes that the proposed amendment is consistent with the goal of removing impediments to a free and open market because it will harmonize NYSE Arca's UTP policy with rules of other exchanges, further promote fair competition in trading among exchanges, and be consistent with the requirements for UTP under the Act.

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.

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

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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the 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 asked the Commission to waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because such waiver should benefit investors by creating, without undue delay, additional competition in the trading of new derivative securities products, subject to consistent and reasonable standards. Proposed NYSE Arca Equities Rule 5.1(a) is closely modeled after similar rules of other national securities exchanges¹⁵ and does not raise any novel or significant regulatory issues. Therefore, the Commission designates the proposed rule change as operative upon filing.

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 Exchange 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2012-46 on the subject line.

¹⁵ See BATS Exchange Rule 14.1 and Securities Exchange Act Release No. 58623 (September 23, 2008), 73 FR 57169 (October 1, 2008) (SR-BATS-2008-004); National Stock Exchange Rule 15.9 and Securities Exchange Act Release No. 57448 (March 6, 2008), 73 FR 13597 (March 13, 2008) (SR-NSX-2008-05); NASDAQ OMX PHLX Rule 803(o) and Securities Exchange Act Release No. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR-Phlx-2008-34); NASDAQ Marketplace Rule 5740 and Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR-NASDAQ-2009-018).

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2012-46. This file number should be included on the subject line if e-mail 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; 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-2012-46 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).