



8011-01  
SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81411; File No. SR-NYSEArca-2017-84)

August 16, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Extend the Implementation Date For Certain Changes to the NYSE Arca Rule 5 and Rule 8 Series

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 3, 2017, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“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 extend the date on which certain changes to the NYSE Arca Rule 5 and Rule 8 series are implemented. The proposed change is available on the Exchange’s website at [www.nyse.com](http://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 it received on the proposed rule change. The text of those statements may be examined at the places

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

On January 6, 2017, the Exchange filed a proposed rule change, as subsequently amended by Amendments No. 1 and 2 thereto (as amended, the "Proposed Rule Change"), to adopt certain changes to the NYSE Arca Rules 5 and 8 series to add additional continued listing standards for exchange-traded funds ("ETFs") as well as clarify the procedures that the Exchange will undertake when an ETF is noncompliant with applicable rules. Given the scope of the amendments specified in the Proposed Rule Change, the Exchange proposed that such amendments not be implemented until October 1, 2017. On March 9, 2017, the Commission granted accelerated approval of the Proposed Rule Change, including the October 1, 2017 implementation date.<sup>4</sup> The Exchange now proposes to extend the implementation date of the amendments specified in the Proposed Rule Change to July 1, 2018.

Since the Proposed Rule Change was approved, the Exchange has engaged in extensive conversations with issuers of listed ETFs, industry advocacy groups and index providers to discuss the new rule requirements and offer guidance on rule interpretation and application. As a result of these conversations, ETF issuers have expressed concern about their ability to have in place systems and procedures to ensure compliance by the current October 1, 2017 implementation date. In particular, listed ETF issuers, and industry advocacy groups on their behalf, have explained that issuers will require time to design and test new compliance systems

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<sup>4</sup> See Securities Exchange Act Release No. 80189 (March 9, 2017), 82 FR 13889 (March 15, 2017) (SR-NYSEArca-2017-01).

as well as engage in discussions with third-party providers to source and track new data elements required for rule compliance.<sup>5</sup>

The Exchange believes it is appropriate to extend the implementation date of the Proposed Rule Change to July 1, 2018 to provide listed ETF issuers with the time needed to develop and test their compliance procedures. In support of its proposal, the Exchange notes that the Proposed Rule Change imposes significant new compliance requirements on issuers that they have not been subject to previously. To meet these new compliance requirements, issuers must develop internal systems as well as coordinate with third-party service providers, such as index providers, to develop procedures by which they can obtain essential data. Listed issuers have informed the Exchange that they are unable to complete this extensive project by the pending October 1, 2017 implementation date. The Exchange believes that it is critical for listed ETFs issuers to have the appropriate procedures and systems in place to monitor and evidence ETF compliance with the new continued listing rules before such rules are implemented. Therefore, the Exchange proposes to extend the implementation date for the Proposed Rule Change until July 1, 2018.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections [sic] 6(b)(5)<sup>7</sup> of the Act, in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and

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<sup>5</sup> See, for example, Letter, dated July 11, 2017, from Dorothy Donohue, Acting General Counsel, Investment Company Institute to Brent J. Fields, Secretary, Securities and Exchange Commission, available at <https://www.sec.gov/comments/sr-nasdaq-2016-135/nasdaq2016135-1846208-5175.pdf>. [sic]

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 Exchange believes that the proposed amendment is consistent with the protection of investors because it will enable listed issuers to have the systems and procedures needed to monitor and evidence compliance with the Proposed Rule Change prior to such rule being implemented. Providing listed issuers with additional time to ensure that they have adequate compliance systems in place furthers the protection of investors and the public interest because it will enhance investor confidence that listed issuers are complying with Exchange rules.

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 not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange notes that the proposed rule change will facilitate listed issuer ability to monitor and evidence compliance with approved continued listing rules by providing issuers with additional time to develop and test their internal systems and procedures prior to the implementation date.

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

The Exchange received a copy of a letter from the Investment Company Institute, on behalf of listed ETF issuers, to the Securities and Exchange Commission.<sup>8</sup> As described in Item 3 [sic], above, the Investment Company Institute detailed challenges that listed ETF issuers are facing in developing compliance systems to address the amendments contained in the Proposed

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<sup>8</sup> See Footnote 5, supra.

Rule Change and have requested that the implementation date for such amendments be extended to July 1, 2018.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2017-84 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-2017-84. 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-2017-84 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.<sup>9</sup>

Robert W. Errett  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).

