



8011-01

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-87382; File No. SR-NYSEArca-2019-04)

October 22, 2019

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to Amend NYSE Arca Rule 5.2-E(j)(3) to Adopt Generic Listing Standards for Investment Company Units Based on an Index or Portfolio of Municipal Securities

I. Introduction

On February 8, 2019, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or the “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt generic listing standards for Investment Company Units (“Units”) based on an index or portfolio of municipal securities. The proposed rule change was published for comment in the Federal Register on February 27, 2019.<sup>3</sup> On April 9, 2019, pursuant to Section 19(b)(2) of the Exchange 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 28, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act<sup>6</sup> to

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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. 85170 (Feb. 21, 2019), 84 FR 6451.

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

<sup>5</sup> See Securities Exchange Act Release No. 85573, 84 FR 15239 (Apr. 15, 2019). The Commission designated May 28, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

determine whether to approve or disapprove the proposed rule change.<sup>7</sup> On August 13, 2019, the Commission further extended the period for consideration of the proposed rule change to October 25, 2019.<sup>8</sup> On September 27, 2019, NYSE Arca filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.<sup>9</sup> On October 2, 2019, NYSE Arca filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1.<sup>10</sup> On October 10, 2019, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 2.<sup>11</sup> The Commission has received no comments on the proposal.

The Commission is publishing this notice and order to solicit comments from interested persons on the proposed rule change, as modified by Amendment No. 3, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

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<sup>7</sup> See Securities Exchange Act Release No. 85946, 84 FR 25599 (June 3, 2019).

<sup>8</sup> See Securities Exchange Act Release No. 86643, 84 FR 42963 (Aug. 19, 2019).

<sup>9</sup> Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2019-04/srnysearca201904-6224879-192613.pdf>.

<sup>10</sup> Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nysearca-2019-04/srnysearca201904-6245350-192767.pdf>.

<sup>11</sup> In Amendment No. 3, the Exchange: (1) clarified that its proposed requirement that an underlying index or portfolio must include a minimum of 13 “non-affiliated” issuers means a minimum of 13 “unique” issuers; (2) corrected the numbering of one provision of the proposed rule text; (3) made a conforming change within Commentary .03 to NYSE Arca Rule 5.2-E(j)(3); (4) prohibited its listing of Units issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of an index of Municipal Securities (as defined below); and (5) conformed its description of the scope of Commentary .03 to NYSE Arca Rule 5.2-E(j)(3) to the rule text. Amendment No. 3 is available at: <https://www.sec.gov/comments/sr-nysearca-2019-04/srnysearca201904-6283314-193347.pdf>.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 3<sup>12</sup>

NYSE Arca Rule 5.2-E(j)(3) permits the Exchange to list a series of Units based on an index or portfolio of underlying securities. Currently, NYSE Arca Rule 5.2-E(j)(3) includes generic listing standards for Units based on an index or portfolio of equity or fixed income securities or a combination thereof.

Municipal Securities<sup>13</sup> are a type of fixed income security, and therefore currently the Exchange may generically list and trade Units overlying an index or portfolio of Municipal Securities that satisfies the criteria of Commentary .02 to NYSE Arca Rule 5.2-E(j)(3). According to the Exchange, however, indexes and portfolios of Municipal Securities typically do not satisfy one of those requirements—namely, that components comprising at least 75% of the Fixed Income Securities<sup>14</sup> portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of \$100 million or more.<sup>15</sup> The Exchange states that Municipal Securities are generally issued with individual maturities of relatively small size, although they generally are constituents of a much larger municipal bond offering.<sup>16</sup>

### A. Proposed Commentary .02A to NYSE Arca Rule 5.2-E(j)(3)

#### 1. Applicability

Proposed Commentary .02A to NYSE Arca Rule 5.2-E(j)(3) provides generic listing standards for Units based on an index or portfolio comprised solely of Municipal Securities or Municipal Securities and cash. Because the current Commentary .02 to NYSE Arca Rule 5.2-

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<sup>12</sup> For a full description of the proposed rule change, see Amendment No. 3, supra note 11.

<sup>13</sup> The proposed rule defines the term “Municipal Securities” by incorporating the definition in Section 3(a)(29) of the Act. See Amendment No. 3, supra note 11, at 4 n.4.

<sup>14</sup> “Fixed Income Securities” are defined in Commentary .02 to NYSE Arca Rule 5.2-E(j)(3).

<sup>15</sup> See Amendment No. 3, supra note 11, at 4 n.5.

<sup>16</sup> See Amendment No. 3, supra note 11, at 4 n.5.

E(j)(3) also applies to Units based on an index or portfolio of Municipal Securities, the Exchange represents that it would apply existing Commentary .02 and proposed Commentary .02A in a “waterfall” manner.<sup>17</sup> Initially, the Exchange would evaluate the eligibility of a series of Units based on an index or portfolio of Municipal Securities (or Municipal Securities and cash) for listing pursuant to the generic listing standards of Commentary .02; if the underlying index or portfolio satisfies those criteria, the Exchange would list and trade the Units pursuant to that rule.<sup>18</sup> If, however, Units whose underlying index or portfolio of Municipal Securities does not satisfy all of the requirements of Commentary .02, the Exchange would apply proposed Commentary .02A.<sup>19</sup>

## 2. Proposed Generic Listing Standards

The Exchange states that Commentary .02A to NYSE Arca Rule 5.2-E(j)(3) includes many requirements that are more stringent than those applicable to an index or portfolio of fixed-income securities and cash. These heightened requirements, according to the Exchange, would deter potential manipulation of such Municipal Securities indices, even though the index or portfolio may include securities that have smaller original principal amounts outstanding than required under the existing Commentary .02 to NYSE Arca Rule 5.2-E(j)(3). The proposed quantitative requirements described below would apply on both an initial and continued basis to a Municipal Securities index or portfolio underlying a series of Units.

### a. Original Principal Amount Outstanding

As mentioned above, according to the Exchange, Municipal Securities are typically issued with individual maturities of relatively small size, although they generally are constituents

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<sup>17</sup> See id. at 5.

<sup>18</sup> See id. at 5-6.

<sup>19</sup> See proposed Commentary .02A to NYSE Arca Rule 5.2-E(j)(3).

of a much larger municipal bond offering.<sup>20</sup> In recognition of these smaller offering sizes, the Exchange proposes to reduce the minimum original principal amount outstanding requirement for component securities from at least \$100 million to at least \$5 million.<sup>21</sup> The Exchange also proposes that qualifying securities must be issued as part of a transaction of at least \$20 million.<sup>22</sup> Lastly, the Exchange proposes to increase the percentage weight of an index or portfolio that must satisfy the original principal amount outstanding requirement from 75% to 90%.<sup>23</sup>

The Exchange asserts that reducing the minimum original principal amount outstanding requirement for component securities will not make an index or portfolio more susceptible to manipulation.<sup>24</sup> The Exchange believes that its proposal to require that 90% of the weight of a Municipal Securities index or portfolio meet the original principal amount outstanding requirement (as opposed to 75% for fixed-income indices) will deter potential manipulation by ensuring that a greater portion of the index or portfolio meet this minimum size requirement.<sup>25</sup> The Exchange also notes that the Commission previously approved the listing and trading of Units where components comprising at least 90% of the weight of the underlying index have a minimum original principal amount outstanding of at least \$5 million and are issued as part of a transaction of at least \$20 million.<sup>26</sup>

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<sup>20</sup> See supra note 16 and accompanying text.

<sup>21</sup> See Amendment No. 3, supra note 11, at 6.

<sup>22</sup> See id.

<sup>23</sup> See id.

<sup>24</sup> See id. at 7.

<sup>25</sup> See id. at 7-8.

<sup>26</sup> See, e.g., Securities Exchange Act Release No. 84049 (Sep. 6, 2018), 83 FR 46228 (Sep. 12, 2018) (SR-NYSEArca-2018-38) (order approving, among other things, revisions to

b. Component Concentration

The Exchange proposes to reduce the maximum weight that any individual Municipal Security, and a group of five Municipal Securities, may comprise in a Municipal Securities index or portfolio.<sup>27</sup> The current generic listing standards for Units based on a fixed-income index or portfolio permit individual component securities to account for up to 30% of the weight of such index or portfolio and the top-five weighted component securities to account for up to 65% of the weight of such index or portfolio.<sup>28</sup> The Exchange proposes to reduce these thresholds to 10% for individual Municipal Securities and 30% for the five most heavily-weighted Municipal Securities in an index or portfolio.<sup>29</sup> The Exchange believes that this requirement will reduce the susceptibility to manipulation of a Municipal Securities index or portfolio underlying a series of Units.<sup>30</sup>

c. Issuer Diversification

The current generic listing standards for Units based on an index or portfolio of Fixed Income Securities do not include an issuer diversification requirement for indices comprised solely of Municipal Securities.<sup>31</sup>

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the continued listing criteria applicable to the iShares New York AMT-Free Muni Bond ETF).

<sup>27</sup> See Amendment No. 3, supra note 11, at 8.

<sup>28</sup> See id.

<sup>29</sup> See id.

<sup>30</sup> See id.

<sup>31</sup> Commentary .02(a)(5) to NYSE Arca Rule 5.2-E(j)(3) provides that an index or portfolio—other than one consisting entirely of exempted securities—must include securities from at least 13 non-affiliated issuers. Municipal Securities are included in the definition of exempted securities. Accordingly, the requirement related to 13 non-affiliated issuers does not apply to Municipal Securities. See Section 3(a)(12) of the Act.

The Exchange proposes a generic listing criterion that would require an index or portfolio of Municipal Securities or Municipal Securities and cash to include securities from at least 13 unique issuers.<sup>32</sup> The Exchange states that requiring such diversification will reduce the likelihood that an index or portfolio may be manipulated by ensuring that securities from a variety of issuers are represented in an index or portfolio of Municipal Securities.<sup>33</sup>

d. Minimum Number of Components

The current generic listing standards applicable to an index or portfolio of Fixed Income Securities do not require a minimum number of components.<sup>34</sup> In the proposed Commentary .02A to NYSE Arca Rule 5.2-E(j)(3), the Exchange proposes to require that an index or portfolio of Municipal Securities contain at least 500 component securities.<sup>35</sup> The Exchange asserts that this proposed requirement will ensure that a Municipal Securities index or portfolio would be sufficiently broad-based and diversified to make it less susceptible to manipulation.<sup>36</sup>

e. Listing of Units with Inverse Leveraged Exposure to an Index of Municipal Securities

Consistent with the requirement for an index or portfolio of Fixed Income Securities under the current Commentary .02 to NYSE Arca Rule 5.2-E(j)(3), the Exchange would not list Units issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of an index of Municipal Securities.<sup>37</sup>

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<sup>32</sup> See Amendment No. 3, supra note 11, at 9.

<sup>33</sup> See id.

<sup>34</sup> See id.

<sup>35</sup> See id.

<sup>36</sup> See id. at 10.

<sup>37</sup> See proposed Commentary .02A to NYSE Arca Rule 5.2-E(j)(3).

f. Additional Requirements

In addition to the quantitative requirements described above, the Exchange proposes to adopt additional rules related to: (1) index methodology and calculation; (2) dissemination of information; (3) initial shares outstanding; (4) hours of trading; (5) surveillance procedures; and (6) disclosures.

The Exchange proposes Commentary .02A(b) to NYSE Arca Rule 5.2-E(j)(3), which requires that: (i) if a Municipal Securities index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a “firewall” around the personnel who have access to information concerning changes and adjustments to the index; (ii) the current index value for Units listed pursuant to proposed Commentary .02A(a) to NYSE Arca Rule 5.2-E(j)(3) will be widely disseminated by one or more major market data vendors at least once per day and, if the index value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, the last official calculated index value must remain available throughout NYSE Arca Marketplace trading hours; and (iii) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority<sup>38</sup> or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Municipal Securities index.<sup>39</sup>

The Exchange proposes Commentary .02A(c) to NYSE Arca Rule 5.2-E(j)(3), which requires that one or more major market data vendors shall disseminate for each series of Units based on an index or portfolio of Municipal Securities an estimate, updated at least every 15

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<sup>38</sup> “Reporting Authority” is defined in NYSE Arca Rule 5.1-E(b)(16). See Amendment No. 3, supra note 11, at 11 n.14.

<sup>39</sup> See Amendment No. 3, supra note 11, at 10-11.

seconds during the Core Trading Session, of the value of a share of each series (the “Intraday Indicative Value” or “IIV”).<sup>40</sup> The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.<sup>41</sup> The Intraday Indicative Value may be calculated by the Exchange or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services.<sup>42</sup> If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout Exchange trading hours.<sup>43</sup>

The Exchange proposes Commentary .02A(d) to NYSE Arca Rule 5.2-E(j)(3), which requires that a minimum of 100,000 shares of a series of Units will be required to be outstanding at commencement of trading.<sup>44</sup>

The Exchange proposes Commentary .02A(e) to NYSE Arca Rule 5.2-E(j)(3), which specifies that the hours of trading for the Units will be as governed by NYSE Arca Rule 7.34-E(a).<sup>45</sup>

The Exchange proposes Commentary .02A(f) to NYSE Arca Rule 5.2-E(j)(3), which specifies that Units that are listed or traded pursuant to unlisted trading privileges will be subject to the Exchange’s written surveillance procedures.<sup>46</sup>

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<sup>40</sup> See id. at 11.

<sup>41</sup> See id.

<sup>42</sup> See id.

<sup>43</sup> See id.

<sup>44</sup> See id.

<sup>45</sup> See id.

<sup>46</sup> See id.

Lastly, proposed Commentary .02A(g) to NYSE Arca Rule 5.2-E(j)(3) incorporates the information circular requirement of Commentary .01(g) NYSE Arca Rule 5.2-E(j)(3).<sup>47</sup>

B. Proposed Amendments to Commentary .03 to NYSE Arca Rule 5.2-E(j)(3)

The Exchange also proposes to amend Commentary .03 to NYSE Arca Rule 5.2-E(j)(3) to allow the generic listing and trading of Units based on a combination of two or more types of indexes, including a combination index that includes Municipal Securities.<sup>48</sup> Currently, the scope of the rule allows the Exchange to generically list Units overlying a combination of indexes or an index or portfolio of component securities representing: (1) the U.S. or domestic equity market; (2) the international equity market; and (3) the fixed income market. To the extent that an index or portfolio of Municipal Securities is included in a combination, the proposed rule specifies that the Municipal Securities index or portfolio must satisfy all requirements of Commentary .02A to NYSE Arca Rule 5.2-E(j)(3).<sup>49</sup> Further, the Exchange's proposed rule would provide that it would not list Units issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a combination of indices that include a Municipal Securities Index.<sup>50</sup> The Exchange also proposes other conforming changes to Commentary .03 to specify that the current requirements related to index value dissemination and related continued listing standards will apply to indexes of Municipal Securities.<sup>51</sup>

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<sup>47</sup> See id. at 42.

<sup>48</sup> See id. at 10.

<sup>49</sup> See id.

<sup>50</sup> See id.

<sup>51</sup> See id.

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>52</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>53</sup> 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 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.

With respect to the quantitative requirements of Commentary .02A to NYSE Arca Rule 5.2-E(j)(3), the proposed original principal amount outstanding requirement is lower than what is currently applicable to Units based on an index or portfolio of Fixed Income Securities. The Commission notes, however, that the other proposed quantitative requirements (*i.e.*, component concentration, issuer diversification, and minimum number of components) are stricter than the existing generic listing requirements. Accordingly, the Commission believes that, taken together, the proposed Commentary .02A is sufficiently designed to prevent fraudulent and manipulative acts and practices. Specifically, the Commission believes that the generic listing requirements for an index or portfolio of Municipal Securities should help to ensure that an index underlying a series of Units will be sufficiently large, not concentrated, and diversified to prevent manipulation of that benchmark. The Commission further notes that it has previously approved

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<sup>52</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>53</sup> 15 U.S.C. 78f(b)(5).

proposed listing and trading of exchange traded funds with similar quantitative standards and those funds have not raised concerns regarding manipulation.<sup>54</sup>

The Commission also finds that the other proposed provisions of Commentary .02A to NYSE Arca Rule 5.2-E(j)(3) and the proposed amendments to Commentary .03 to NYSE Arca Rule 5.2-E(j)(3) are consistent with the Act. The provisions in the proposed Commentary .02A governing index methodology and calculation, dissemination of information, minimum number of shares outstanding at the commencement of trading, hours of trading, surveillance procedures, and information circulars are consistent with the existing requirements applicable to Units based on an index of U.S. fixed-income securities. Further, the proposed amendments to Commentary .03 are designed to extend the requirements related to the generic listing and trading of Units based on a combination of two or more types of indexes to an index of Municipal Securities.

In support of its proposal, the Exchange represents the following:

- (1) Units listed pursuant to proposed Commentary .02A to NYSE Arca Rule 5.2-E(j)(3) will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>55</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.<sup>56</sup> FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>57</sup> FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for

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<sup>54</sup> The Commission has previously approved the listing and trading of Units overlying municipal securities indices that satisfy the proposed initial and continued generic listing criteria. See, e.g., Securities Exchange Act Releases No. 82295 (Dec. 12, 2017), 82 FR 60056 (Dec. 18, 2017) (SR-NYSEArca-2017-56) and 84049, supra note 26.

<sup>55</sup> See Amendment No. 3, supra note 11, at 12.

<sup>56</sup> See id.

<sup>57</sup> See id.

surveillance purposes in connection with trading in the Shares.<sup>58</sup> FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's Trade Reporting and Compliance Engine.<sup>59</sup>

- (2) Units listed pursuant to the proposed generic listing rule will comply with all other requirements applicable to Units including, but not limited to, the applicable rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and the Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to Units.<sup>60</sup>
- (3) The Exchange has in place surveillance procedures relating to trading in the Units and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.<sup>61</sup> In addition, investors will have ready access to information regarding the IIV and quotation and last-sale information for the Units. Trade price and other information relating to municipal bonds is available through EMMA.<sup>62</sup>

This approval order is based on all of the Exchange's representations, including those set forth above. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act<sup>63</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 3 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

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<sup>58</sup> See *id.*

<sup>59</sup> See *id.*

<sup>60</sup> See *id.* at 13.

<sup>61</sup> See *id.* at 14.

<sup>62</sup> See *id.*

<sup>63</sup> 15 U.S.C. 78f(b)(5).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2019-04 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-2019-04. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2019-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the Federal Register. The Commission notes that Amendment No. 3

narrowed the scope of the proposal by prohibiting the of listing Units issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of an index of Municipal Securities. Amendment No. 3 also provided useful clarifications and corrections. The changes and additional information in Amendment No. 3 assisted the Commission in evaluating the Exchange's proposal and in determining that the proposed amendments to NYSE Arca Rule 5.2-E(j)(3) are consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>64</sup> to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>65</sup> that the proposed rule change (SR-NYSEArca-2019-04), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>66</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>64</sup> 15 U.S.C. 78s(b)(2).

<sup>65</sup> 15 U.S.C. 78s(b)(2).

<sup>66</sup> 17 CFR 200.30-3(a)(12).

