

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–NASDAQ–2015–028 and should be submitted on or before April 29, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015–07965 Filed 4–7–15; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74635; File No. SR–NYSEArca–2015–17]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 6.35 To Refine the Appointment Process Utilized by the Exchange

April 2, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on March 20, 2015, 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, II, and III 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.35 (Appointment of Market Makers) to refine the appointment process utilized by the Exchange. The text of the proposed rule change is available on the Exchange’s Web site 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 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 Rule 6.35 to refine the appointment process utilized by the Exchange. The Exchange believes this proposal, which is consistent with the rules of other option exchanges,<sup>4</sup> would simplify and enhance the efficiency of the appointment process for both Market Makers and the Exchange and add clarity to Exchange rules.

###### Current Appointment Process

To register as a Market Maker, an applicant must file an application with the Exchange on a form or forms prescribed by the Exchange.<sup>5</sup> Once registered, a Market Maker may seek an appointment in one or more option classes pursuant to Rule 6.35. Specifically, this Rule provides that “[o]n a form or forms prescribed by the Exchange, a Market Maker must apply for an appointment in one or more classes of option contracts.”<sup>6</sup>

<sup>4</sup> See, e.g., BATS Exchange, Inc. (“BATS”) Rules 22.3(a),(b) (Market Maker Registration); NASDAQ OMX PHLX (“PHLX”) Rule 3212(b) (Registration as a Market Maker); NASDAQ Options Market (“NOM”), Chapter VII (Market Participants), Section 3(a),(b) (Continuing Market Maker Registration).

<sup>5</sup> See Rule 6.33 (Registration of Market Makers). See also Rule 6.32(a) (Market Maker Defined) (A “Market Maker is an individual who is registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Floor of the Exchange or for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the NYSE Arca OX electronic trading system. Registered Market Makers are designated as specialists on the Exchange for all purposes under the Securities Exchange Act of 1934 and the Rules and Regulations thereunder. A Market Maker on the Exchange will be either a Market Maker or a Lead Market Maker. Unless specified, or unless the context requires otherwise, the term Market Maker refers to both Market Makers and Lead Market Maker.”).

<sup>6</sup> See Rule 6.35(a).

In addition to having the authority to appoint one Lead Market Maker (“LMM”)<sup>7</sup> per option class, “[t]he Exchange may appoint an unlimited number of Market Makers in each class unless the number of Market Makers appointed to a particular option class should be limited” based on the Exchange’s judgment.<sup>8</sup> Further, the Rule provides that “Market Makers may select from among any option issues traded on the Exchange for inclusion in their appointment, subject to the approval of the Exchange. In considering the approval of the appointment of a Market Maker in each security,” the Exchange will consider the Market Maker’s preference; the financial resources available to the Market Maker; the Market Maker’s experience, expertise and past performance in making markets, including the Market Maker’s performance in other securities; the Market Maker’s operational capability; and the maintenance and enhancement of competition among Market Makers in each security in which they are appointed.<sup>9</sup> The Rule also sets forth the number of Options Trading Permits (“OTPs”) required of a Market Maker in order to have a specified number of options issues included in the Market Maker’s appointment (e.g., 1 OTP affords a Market Maker up to 100 option issues in their appointment, whereas 4 OTPs enables a Market Maker to include in their appointment all option issues traded on the Exchange).<sup>10</sup>

Under the current Rule, “Market Makers may change the option issues in their appointment, subject to the approval of the Exchange” provided requests for changes are “made in a form and manner prescribed by the Exchange.”<sup>11</sup> In addition, “Market Makers may withdraw from trading an option issue that is within their appointment by providing the Exchange with three business days’ written notice of such withdrawal.”<sup>12</sup> If Market Makers fail to provide this notice, they “may be subject to formal disciplinary

<sup>7</sup> An LMM is “is an individual or entity that has been deemed qualified by the Exchange for the purpose of making transactions on the Exchange in accordance with the provisions of Rule 6.82. Each LMM or nominee thereof must be registered with the Exchange as a Market Maker. Any OTP Holder or OTP Firm registered as a Market Maker with the Exchange is eligible to be qualified as an LMM.” See Rule 6.82(a)(1).

<sup>8</sup> See Rule 6.35(b).

<sup>9</sup> See Rule 6.35(c).

<sup>10</sup> See Rule 6.35(d).

<sup>11</sup> See Rule 6.35(e). In considering the change request, the Exchange will consider the factors set forth in Rule 6.35(c).

<sup>12</sup> See Rule 6.35(f).

<sup>12</sup> 17 CFR 200.30–3(a)(12).

<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.

action pursuant to Rule 10.”<sup>13</sup> Moreover, the Exchange “may suspend or terminate any appointment of a Market Maker in one or more option issues under this Rule whenever, in the Exchanges’ judgment, the interests of a fair and orderly market are best served by such action”<sup>14</sup> A Market Maker may seek review of any action taken by the Exchange.<sup>15</sup>

Finally, under the current Rule, the Exchange periodically conducts evaluations of Market Makers to determine whether they have fulfilled performance standards.<sup>16</sup> If the Exchange finds that a Market Maker has not met the performance standards, the Exchange may take action, including suspending, terminating or restricting a Market Maker’s appointment or registration, after providing the Market Maker an opportunity to be heard.<sup>17</sup>

#### Proposed Appointment Process

The Exchange proposes to modify Rule 6.35 to refine the current appointment process. Presently, Market Makers must apply for an appointment in an options class, which, as discussed further below, is done by submitting an email to the Exchange. The Exchange proposes to modify Rule 6.35(a) to provide that, rather than apply for an appointment, “a Market Maker may register for an appointment in one or more classes of option contracts,” in a form and manner prescribed by the Exchange.<sup>18</sup> The Exchange would

<sup>13</sup> *Id.* Rule 10 sets forth the procedures for Exchange disciplinary proceedings and appeals, with Rule 10.5 specifically providing the due process for the formal hearing process and Rule 10.7 requiring that any decision by the Exchange must include a statement of findings and conclusions, with the reasons therefore upon all material issues presented in the record. Further, where a penalty is imposed, the Exchange’s decision must include a statement specifying the acts or practices in which the Respondent has been found to have engaged, or which the Respondent has been found to have omitted.

<sup>14</sup> See Rule 6.35(g).

<sup>15</sup> See Rule 6.35(h). Per Rule 6.35(i), Market Makers are also subject to a trading requirement, such that “[a]t least 75% of the trading activity of a Market Maker (measured in terms of contract volume per quarter) must be in classes within the Market Maker’s appointment” and a failure to comply with the 75% contract volume requirement may result in the imposition of a fine or initiation of formal disciplinary action, pursuant to Rule 10 (Disciplinary Proceedings and Appeals). The Exchange is not proposing any changes to Rule 6.35(i).

<sup>16</sup> See Rule 6.25(j) [sic].

<sup>17</sup> See Rule 6.35(j)(1). See also Rule 6.35(j)(2) (“If a Market Maker’s appointment in an option issue or issues has been terminated pursuant to this subsection (j), the Market Maker may not be re-appointed as a Market Maker in that option issue or issues for a period not to exceed 6 months.”).

<sup>18</sup> See proposed Rule 6.35(a) (“On a form or forms prescribed by the Exchange, a Market Maker may register for an appointment in one or more classes

continue to have authority to appoint one LMM per option class. Similarly, there would continue to be an unlimited number of Market Makers appointed to an options class, unless the Exchange restricted such appointments following Commission review and approval. The Exchange is proposing a change to the text in Rule 6.36(b) [sic] to reflect the proposed changes in Rule 6.35(a) to provide that “[a]n unlimited number of Market Makers may register in each class,” subject to any limits imposed by the Exchange.<sup>19</sup>

In addition, to simplify a Market Maker’s ability to select and make changes to its appointment, the Exchange proposes to modify Rule 6.35(c) to replace the existing rule text with text that provides that “[a] Market Maker may select or withdraw option issues included in their appointment by submitting a request via an Exchange-approved electronic interface with the Exchange on a day when the Exchange is open for business.”<sup>20</sup> The modified rule would also provide that an appointment would become effective by no later than the following business day, whereas a Market Maker’s request to withdraw option issues from its appointment would not become effective until the following business day.<sup>21</sup> Thus, as proposed, a Market Maker could be appointed to an options issue on the same day it submits a request to the Exchange, depending on availability of Exchange resources to process the request that day, but such addition to its appointment would be effective no later than the following business day. A Market Maker, however, would not be able to withdraw an options issue from its appointment on the same day that it submits the request; instead, the Exchange will only process such requests on an overnight basis for effectiveness on the following business day. Before any additions to a Market Maker’s appointment would become effective, the Exchange would be required to confirm “that the Market Maker’s appointment will not exceed that permitted under paragraph (d) of

of option contracts, subject to paragraph (d) of this Rule.”). As discussed, paragraph (d) of the Rule provides that the number of options permitted in a Market Maker’s appointment is determined by the number of OTPs that the Market Maker has.

<sup>19</sup> See proposed Rule 6.35(b) (“The Exchange may appoint one LMM per option class. An unlimited number of Market Makers may register in each class unless the number of Market Makers appointed to a particular option class should be limited whenever, in the Exchange’s judgment, quotation system capacity in an option class or classes is not sufficient to support additional Market Makers in such class or classes.”).

<sup>20</sup> See proposed Rule 6.35(c).

<sup>21</sup> *Id.*

this Rule”<sup>22</sup> and confirm receipt of the Market Maker’s request.<sup>23</sup> Confirmation of receipt is designed to ensure that the request was successfully transmitted to the Exchange (*i.e.*, there was no system failure or human error on either side of the electronic transaction that prevented transmission and receipt of the Market Maker’s request). Presently, Market Makers can select issues in their appointment or make changes thereto, pursuant to proposed Rule 6.35(c), by submitting an email [sic] the Exchange which is “the Exchange-approved electronic interface” at this time.<sup>24</sup>

Consistent with this proposed change, the Exchange proposes to delete paragraphs (e) and (f) of Rule 6.35, which describe how Market Makers can change their appointment or withdraw from issues in their appointment because these provisions are rendered superfluous by the proposed changes to Rule 6.35(c).<sup>25</sup>

The Exchange believes that the proposed changes to how Market Makers select and modify their appointments would enable Market Makers to manage their appointments with more flexibility and in a timelier manner which, in turn, would reduce the time and resources expended by Market Makers and the Exchange on the appointment process. The Exchange believes this proposal would provide Market Makers with more efficient access to the securities in which they want to make markets and disseminate competitive quotations, which would provide additional liquidity and enhance competition in those securities. The Exchange would retain the ability to suspend or terminate any appointment of a Market Maker if necessary to maintain a fair and orderly market.<sup>26</sup> The Exchange also notes that the proposed changes to

<sup>22</sup> *Id.* Proposed changes to Rule 6.35(d) are discussed below.

<sup>23</sup> The Exchange is also required to confirm receipt of requests to withdraw option issues from a Market Maker’s appointment. See proposed Rule 6.35(c).

<sup>24</sup> The Exchange will announce by Trader Update the email address that Market Makers should utilize to make selections in, or changes to, their appointment pursuant to this Rule.

<sup>25</sup> The Exchange proposes to designate subparagraphs (e) and (f) as Reserved.

<sup>26</sup> See Rule 6.35(g). The Exchange, however, proposes to correct the possessive form of “Exchange” (from “Exchanges’ judgment” to “Exchange’s judgment”) in this paragraph to correct a typo in the existing rule text, which adds clarity to Exchange rules. See proposed Rule 6.35(g) (“The Exchange may suspend or terminate any appointment of a Market Maker in one or more option issues under this Rule whenever, in the Exchange’s judgment, the interests of a fair and orderly market are best served by such action.”).

Rule 6.35(a), (b)<sup>27</sup> and (c)<sup>28</sup> are consistent with the rules of other exchanges and therefore raise no new or novel issues.

As noted above, paragraph (d) of Rule 6.35 sets forth the number of OTPs a Market Maker must have in order to have a specified number of options issues included in the Market Maker's appointment. The Exchange recently amended the Arca Options Fee Schedule to include this information together with its OTP fees for Market Makers.<sup>29</sup> Accordingly, the Exchange proposes to delete the detailed information on the number of option issues a Market Maker may include in its assignment in relation to the number of OTPs the Market Maker has and modify paragraph (d) of the Rule to read that "[a] Market Maker must have the number of OTPs required under the Fee Schedule for its appointment as a Market Maker in option issues."<sup>30</sup> The Exchange believes that removing this redundancy would improve the clarity of its rules.<sup>31</sup>

<sup>27</sup> See e.g., BATS Rules 22.3(a) ("An Options Member that has qualified as an Options Market Maker may register to make markets in individual series of options"); NOM, Chapter VII, Section 3(a) ("An Options Participant that has qualified as an Options Market Maker may register to make markets in individual options.").

<sup>28</sup> See e.g., PHLX Rule 3212(b) ("A PSX Market Maker may become registered in an issue by entering a registration request via an Exchange approved electronic interface with PSX's systems or by contacting PSX Market Operations. Registration shall become effective on the day the registration request is entered"); PHLX Rule 3220(a) ("A market maker may voluntarily terminate its registration in a security by withdrawing its two-sided quotation from PSX. A PSX Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker for one (1) business day."). See also BATS Rules 22.3(b) ("An Options Market Maker may become registered in a series by entering a registration request via an Exchange approved electronic interface with the Exchange's systems by 9:00 a.m. Eastern time. Registration shall become effective on the day the registration request is entered"); NOM, Chapter VII, Section 3(b) ("An Options Market Maker may become registered in an option by entering a registration request via a Nasdaq approved electronic interface with Nasdaq's systems. Registration shall become effective on the day the registration request is entered.").

<sup>29</sup> See Securities Exchange Act Release No. 34-74382 (February 26, 2015), 80 FR 11713 (March 4, 2015) (SR-NYSEARCA-2015-10). See also NYSE Arca Options Fee Schedule (describing "Number of Option Issues Permitted in Market Maker's Assignment" based on the number of OTPs held and the associated costs), available here, [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf).

<sup>30</sup> See proposed Rule 6.35(d).

<sup>31</sup> See, e.g., NYSE Amex Options Fee Schedule (Section III.A., Monthly ATP Fees) (describing "Number Of Issues Permitted In A Market Makers Quoting Assignment" based on the number of permits held and the associated costs), available here, [https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE\\_Amex\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf). See also Securities Exchange Act Release No. 67505 (July 26, 2012), 77 FR 45292 [sic]

The Exchange also proposes to modify the text in paragraph (h) of the Rule. As proposed, a Market Maker would continue to be permitted to "seek review of any action taken by the Exchange, in accordance with Rule 10, as applicable." However, to clarify the rule text, the Exchange proposes to delete the unnecessary clause "including the denial of the appointment for, or the termination or suspension of, a Market Maker's appointment in an option issue or issues."<sup>32</sup> The Exchange's denial, termination, or suspension of a Market Maker's appointment would continue to be reviewable under Rule 10, as would other applicable actions taken by the Exchange under Rule 6.35.<sup>33</sup>

Rule 6.35(j) states that the Exchange will conduct periodic evaluations of Market Makers to determine whether they have fulfilled the requisite performance standards. The Exchange proposes to add "the financial resources available to the Market Maker" and "the Market Maker's operational capability" as factors the Exchange will consider in its evaluations conducted pursuant to Rule 6.35(j).<sup>34</sup> The additional considerations the Exchange proposes to include in its periodic evaluations under Rule 6.35(j) are currently among the considerations of the Exchange in approving a Market Maker's appointment.<sup>35</sup> In connection with the Exchange's proposed changes to the process for Market Makers' appointments to options classes, the Exchange proposes to eliminate these approval provisions. Because financial resources and operational capability are important considerations in a Market Maker's performance, the Exchange proposes to retain these factors for consideration in the Exchange's

(July 31, 2012) (SR-NYSEMKT-2012-24) (filing for immediate effectiveness to add information regarding ATP Fees previously found in NYSE Amex Rule 923NY(d)(1)-(4) to Fee Schedule).

<sup>32</sup> See Rule 6.35(h) ("A Market Maker may seek review of any action taken by the Exchange pursuant to this Rule in accordance with Rule 10, as applicable.").

<sup>33</sup> *Id.*

<sup>34</sup> See proposed Rule 6.35(j) ("The Exchange will periodically conduct an evaluation of Market Makers to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, competition among Market Makers, observance of ethical standards, and administrative factors. The Exchange may consider any relevant information including, but not limited to, the results of a Market Maker evaluation, trading data, a Market Maker's regulatory history, the financial resources available to the Market Maker, the Market Maker's operational capability, and such other factors and data as may be pertinent in the circumstances.").

<sup>35</sup> See Rule 6.35(c)(2) and (4).

periodic evaluation of Market Maker performance.<sup>36</sup>

Finally, the Exchange proposes to modify Rule 6.35(j)(2) to reflect the proposed changes to the Market Maker appointment process. Specifically, the Exchange proposes to change the reference to a Market Maker being "re-appointed" by the Exchange if an option issue or issues has been terminated pursuant to this subsection (j), and to instead provide that "the Exchange may restrict a Market Maker's registration as a Market Maker in that option issue or issues for a period not to exceed 6 months."<sup>37</sup> This proposal continues to give the Exchange discretion to suspend that Market Maker's appointment in the affected option issue(s) for a full six months, or to allow that Market Maker to resume that appointment earlier than the prescribed six-month period, based on the Exchange's evaluation of the facts and circumstances. The Exchange believes the proposed change is necessary so that Rule 6.35(j)(2) is consistent with the proposed changes in paragraphs (a), (b), and (c) of Rule 6.35 to the process for Market Makers to register and change their appointments to options classes.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>38</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),<sup>39</sup> 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 Exchange believes that the proposed rule change removes impediments to a free and open market because it would enable Market Makers to manage their appointments with more flexibility and in a timelier manner. The Exchange believes the

<sup>36</sup> The Exchange is not proposing any changes to Rule 6.35(j)(1), which sets forth the actions that the Exchange may take, after affording a Market Maker written notice and an opportunity for hearing pursuant to Rule 10.5, should the Exchange find a Market Maker is failing to meet minimum performance standards. See Rule 6.35(j)(1).

<sup>37</sup> See proposed Rule 6.35(j)(2) ("If a Market Maker's appointment in an option issue or issues has been terminated pursuant to this subsection (j), the Market Maker may not register as a Market Maker in that option issue or issues for a period not to exceed 6 months.").

<sup>38</sup> 15 U.S.C. 78f(b).

<sup>39</sup> 15 U.S.C. 78f(b)(5).

proposed change would reduce the burden on both Market Makers and Exchange staff, which would result in a fair and reasonable use of resources to the benefit of all market participants. In particular, the proposal to allow Market Makers to select their appointments, and make changes thereto, via an Exchange-approved electronic interface is consistent with [sic] Act because it would provide Market Makers with more efficient access to the securities in which they want to make markets and thus more quickly begin disseminating competitive quotations in those securities, which would provide additional liquidity and enhance competition in those securities. The Exchange also believes that preventing Market Makers from being able to withdraw an option issue from its appointment on the same day that it submits the request (as such requests are processed on an overnight basis for effectiveness on the following business day) would serve to promote just and equitable principles of trade and benefit investors and the public interest.

In addition, the Exchange believes that the proposal to allow Market Makers to make selections or changes to their appointment without first obtaining explicit Exchange approval is likewise consistent with the Act. First, because financial resources and operational capability are important considerations in a Market Maker's performance, the Exchange proposes to retain these factors for consideration in the Exchange's periodic evaluation of Market Maker performance. The Exchange believes that adding these factors to the Exchange's consideration would remove impediments to and perfect the mechanism of a free and open market and would benefit investors and the public interest. In addition, as noted above, the Exchange would continue to have authority to suspend or terminate any Market Maker appointment in the interest of a fair and orderly market, including if necessary to prevent fraudulent and manipulative acts and practices and protect investors, or if a Market Maker does not satisfy its obligations with respect to an appointment.<sup>40</sup> The Exchange would also retain the ability to restrict a Market Maker's registration in option issues for up to six months if a Market Maker's appointment in that option issue or issues had been previously terminated

<sup>40</sup> See Rule 6.35(g). See also Rule 6.33 (regarding the Exchange's ability to suspend or terminate a Market Maker's registration based on "a determination of any substantial or continued failure by such Market Maker to engage in dealings in accordance with Rules 6.37, 6.37A or 6.37B", which outline the obligations of Market Makers).

under the rule, and continues to give the Exchange discretion to allow the Market Maker to resume that appointment earlier than the prescribed six-month period or to maintain the suspension for the entire period. Finally, the Exchange is not proposing changes to the disciplinary and appeals process for Market Makers that do not meet the minimum performance standards. Accordingly, the Exchange believes this proposal is consistent with Section 6(d) of the Exchange Act.<sup>41</sup>

The proposed rule change would not result in unfair discrimination, as it applies to all Market Makers. Further, the proposed rule change would reduce the burden on Market Makers to manage their appointments and thus provide liquidity to the Exchange. Nevertheless, Market Makers would still be required to comply with certain obligations to maintain their status as a Market Maker, including that they provide continuous, two-sided quotations in their appointed securities.<sup>42</sup>

Finally, as noted above, the proposed modifications to the appointment process would align the rules of the Exchange with the rules of other options exchanges, where Market Makers presently have the ability to select and make changes to their appointment via an Exchange-approved electronic interface.<sup>43</sup> The Exchange believes this consistency across exchanges would remove impediments to and perfect the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand the appointment process.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it provides the same relief to a group of similarly situated market participants—Market Makers. The proposed rule change would reduce the burden on Market Makers to manage their appointments and thus provide liquidity to the Exchange.

The Exchange does not believe the proposed rule change would help Market Makers to the detriment of market participants on other exchanges, particularly because the proposed functionality is similar to functionality already available on other exchanges.<sup>44</sup>

<sup>41</sup> 15 U.S.C. 78ff(d).

<sup>42</sup> See Rule 6.37B.

<sup>43</sup> See *supra* nn. 4, 27, 28.

<sup>44</sup> *Id.*

Market Makers would still be subject to the same obligations with respect to its appointments; the proposed rule change would make the appointment process more efficient for Market Makers. The Exchange believes that the proposed rule change would relieve any burden on, or otherwise promote, competition, as it would enable Market Makers to manage their appointments with more flexibility and in a timelier manner. The Exchange believes this would provide Market Makers with more efficient access to the securities in which they want to make markets and thus more quickly begin disseminating competitive quotations in those securities, which would provide additional liquidity and enhance competition in those securities.

#### *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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-17 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–2015–17. 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 Web site (<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 Web site 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 such 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–2015–17, and should be submitted on or before April 29, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015–07963 Filed 4–7–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31544; File No. 812–14401]

### Janus ETF Trust, et al.; Notice of Application

April 1, 2015.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an

exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

**SUMMARY:** Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (“Shares”) redeemable in large aggregations only (“Creation Units”); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (“NAV”); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Creation Units in-kind in a master-feeder structure.

**Applicants:** Janus ETF Trust (the “Trust”), Janus Capital Management LLC (the “Initial Adviser”), and Janus Distributors LLC (the “Distributor”).

**DATES: Filing Dates:** The application was filed on December 18, 2014, and amended on March 20, 2015.

**Hearing or Notification of Hearing:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 27, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: 151 Detroit Street, Denver, Colorado 80206.

**FOR FURTHER INFORMATION CONTACT:** David J. Marcinkus, Senior Counsel at

(202) 551–6882, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

### Applicants' Representations

1. Janus ETF Trust is organized as a Delaware statutory trust. The Trust will be registered under the Act as an open-end management investment company.

2. The Initial Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”) and will be the investment adviser to the initial series of the Trust (the “Initial Fund”). Any other Adviser (defined below) will also be registered as an investment adviser under the Advisers Act. Each Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a “Sub-Adviser”). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust will enter into a distribution agreement with the Distributor. The distributor for the Initial Fund will be the Distributor. The Distributor is a broker-dealer (“Broker”) registered under the Securities Exchange Act of 1934 (the “Exchange Act”) and will act as distributor and principal underwriter of one or more of the Funds. The distributor of any Fund may be an affiliated person, as defined in section 2(a)(3) of the Act (“Affiliated Person”), or an affiliated person of an Affiliated Person (“Second-Tier Affiliate”), of that Fund's Adviser and/or Sub-Advisers. No distributor will be affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the Initial Fund and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future that operate as an exchanged-traded fund (“ETF”) and that track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an “Underlying Index”) (together, the “Future Funds”). Any Future Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an “Adviser”) and (b) comply

<sup>45</sup> 17 CFR 200.30–3(a)(12).