

burden intramarket competition because the proposed rates would apply uniformly to all Members.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>12</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BatsEDGA-2017-04 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 No. SR-BatsEDGA-2017-04. 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 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 No. SR-BatsEDGA-2017-04, and should be submitted on or before April 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80189; File No. SR-NYSEArca-2017-01]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Amending the NYSE Arca Equities Rule 5 and Rule 8 Series**

March 9, 2017.

**I. Introduction**

On January 6, 2017, NYSE Arca, Inc. ("Exchange" or "Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the NYSE Arca Equities Rule ("Rule") 5 and Rule 8 Series to add specific continued listing standards for exchange-traded products ("ETPs") and to specify the delisting procedures for these products. The proposed rule

change was published for comment in the **Federal Register** on January 25, 2017.<sup>3</sup> On February 10, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the original proposal. On March 6, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the original proposal, as modified by Amendment No. 1.<sup>4</sup> The Commission received nine comment letters on the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

<sup>3</sup> See Securities Exchange Act Release No. 79834 (January 18, 2017), 82 FR 8444.

<sup>4</sup> In Amendment No. 2, the Exchange: (i) Further amended rules within the Rule 5 and Rule 8 Series to reflect that certain listing requirements (including certain statements or representations in rule filings for the listing and trading of specific products) apply on an initial and ongoing basis; (ii) further amended rules within the Rule 5 and Rule 8 Series to consistently state that the Exchange will maintain surveillance procedures for listed products and will initiate delisting proceedings if continued listing requirements are not maintained; (iii) further amended rules within the Rule 5 and Rule 8 Series to provide that, in a rule filing to list and trade a product, all statements or representations regarding the applicability of Exchange listing rules (including, for example, statements and representations related to the dissemination of the intraday indicative value and index value, as applicable) specified in such rule filing constitute continued listing requirements; (iv) specified an implementation date for the proposed changes; and (v) made other technical, clarifying, and conforming changes throughout the Rule 5 and Rule 8 Series. Amendment No. 2 is available at <https://www.sec.gov/comments/sr-nysearca-2017-01/nysearca201701-1618319-137048.pdf>.

<sup>5</sup> See Letters to Brent J. Fields, Secretary, Commission, from David W. Blass, General Counsel, Investment Company Institute, dated January 12, 2017 ("ICI Letter"); Anna Paglia, Head of Legal, Invesco PowerShares Capital Management LLC, dated February 10, 2017 ("PowerShares Letter"); Steven Price, SVP, Director of Distribution Services and Chief Compliance Officer, ALPS Distributors, Inc., ALPS Portfolio Solutions Distributor, Inc., dated February 10, 2017 ("ALPS Letter"); James E. Ross, Executive Vice President and Chairman, Global SPDR Business, State Street Global Advisors, dated February 13, 2017 ("SSGA Letter"); Samara Cohen, Managing Director, U.S. Head of iShares Capital Markets, Joanne Medero, Managing Director, Government Relations & Public Policy, and Deepa Damre, Managing Director, Legal & Compliance, BlackRock, Inc., dated February 14, 2017 ("BlackRock Letter"); Peter K. Ewing, Senior Vice President, Northern Trust Investments, Inc., dated February 14, 2017 ("NTI Letter"); Ryan Louvar, General Counsel, WisdomTree Asset Management, Inc., dated February 15, 2017 ("WisdomTree Letter"); Kevin McCarthy, Senior Managing Director, Nuveen Fund Advisors, LLC, dated February 15, 2017 ("Nuveen Letter"); and Matthew B. Farber, Assistant General Counsel, First Trust Advisors L.P., dated February 23, 2017 ("First Trust Letter").

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 2

The Exchange proposes to amend the Rule 5 and Rule 8 Series to specify continued listing requirements for ETPs listed under those rules, which include products listed pursuant to Rule 19b-4(e) under the Act (“generically-listed products”) and products listed pursuant to proposed rule changes filed with the Commission (“non-generically-listed products”).<sup>6</sup>

The Exchange also proposes to amend the Rule 5 and Rule 8 Series to specify issuer notification requirements related to failures to comply with continued listing requirements. Specifically, the Exchange proposes to amend Rule 5.2(b) to require an issuer with securities listed under Rule 5.2 or Rule 8 to promptly notify the Exchange after the issuer becomes aware of any non-compliance by the issuer with the applicable continued listing requirements of Rule 5.2, Rule 5.5, or Rule 8.<sup>7</sup> As proposed, the Exchange would initiate delisting proceedings for a product listed under the Rule 5 or Rule 8 Series if any of its continued listing requirements (including those set forth in an Exchange Rule and those set forth in an applicable proposed rule change) is not continuously maintained.

The Exchange also proposes to amend Rule 5.5(m) to specify the delisting procedures for products listed under the Rule 5 and Rule 8 Series. According to the Exchange, listed ETPs are currently subject to the delisting procedures in Rule 5.5(m). The Exchange notes that, under Rule 5.5(m), it has the discretion to offer non-compliant issuers the opportunity to submit a plan to regain compliance.<sup>8</sup> If such a plan is accepted, non-compliant issuers are afforded a cure period to regain compliance.

Finally, the Exchange proposes to make conforming and technical changes throughout the Rule 5 and Rule 8 Series

to maintain consistency in its rules. For example, the Exchange proposes to consistently use the language “initiate delisting proceedings under Rule 5.5(m)” when describing the delisting procedures for a product that fails to meet continued listing requirements;<sup>9</sup> and consistently reflect that delisting “following the initial twelve month period following . . . commencement of trading on the Corporation” only applies to the record/beneficial holder, number of shares issued and outstanding, and the market value of shares issued and outstanding requirements.<sup>10</sup>

The Exchange proposes to implement the rule changes by October 1, 2017.

## III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange 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.

The Commission received nine comment letters that express concerns regarding the proposal.<sup>13</sup> First, commenters question how an ETF, especially one that uses indexes established and maintained by unaffiliated third parties, would comply with the proposed rules, and how the Exchange would enforce them.<sup>14</sup>

Commenters assert that it would be unrealistic to anticipate that an ETF could ensure that an unaffiliated index complies with the initial listing standards on an ongoing basis, and express concern that an equity-index ETF, through no action of its own, could see certain of the constituent securities of the unaffiliated index fall below the listing requirements.<sup>15</sup> One commenter believes that even if a third party index provider was amenable to changes to an underlying index that would allow an ETF to regain compliance with the continued listing standards, it is unlikely that the ETF would be able to formulate a compliance plan within 45 calendar days of the Exchange staff's notification.<sup>16</sup> Second, commenters argue that the proposal would provide for unfair discrimination because the proposed rules would result in differential treatment of ETFs as compared to other securities (*e.g.*, common stock).<sup>17</sup> Commenters believe that the continued listing standards for equity securities generally differ from the initial listing standards, whereas the proposed ETF continued listing standards would be the same as the initial listing standards.<sup>18</sup> Third, commenters assert that the proposal provides no explanation or evidence regarding the potential manipulation of ETFs under the current rules, or how the proposal would reduce the potential for manipulation.<sup>19</sup> One commenter also believes that significant compliance enhancements could be required to ensure proper and continuous testing of securities held in an index, and questions how this type of testing would enhance investor protection.<sup>20</sup>

The Commission believes that the proposal is consistent with the Act. As the Commission previously stated, the development, implementation, and enforcement of standards governing the initial and continued listing of securities on an exchange are activities of critical importance to financial markets and the investing public.<sup>21</sup> Once a security has been approved for initial listing, continued listing criteria allow an exchange to monitor the status and trading characteristics of that issue

<sup>6</sup> See *infra* notes 29–31 and accompanying text. The Exchange also proposes to amend the requirement to delist a product if, following the initial 12-month period following commencement of trading on the Exchange, there are fewer than 50 record and/or beneficial holders of the listed product for 30 or more consecutive trading days, by deleting the threshold of “30 or more consecutive trading days.” See, *e.g.*, proposed changes to Rule 5.5(g)(2)(a)(1).

<sup>7</sup> The Exchange also proposes to specify issuer notification requirements in the product listing rules within the Rule 5 and Rule 8 Series. See, *e.g.*, proposed Rules 5.2(j)(2)(G) and 8.100(e).

<sup>8</sup> Similarly, other exchanges' delisting procedures for ETPs provide that, under certain circumstances, the exchange may accept and review an issuer's plan to regain compliance. See, *e.g.*, Securities Exchange Act Release No. 79784 (January 12, 2017), 82 FR 6664, 6665 (January 19, 2017) (SR–NASDAQ–2016–135).

<sup>9</sup> See, *e.g.*, proposed changes to Rules 5.5(g)(2)(a) and 8.100(f)(2)(i).

<sup>10</sup> See, *e.g.*, proposed changes to Rule 8.200(d)(2); see also, *e.g.*, Rule 8.200, Commentary .02(d)(2) (currently applying the twelve month threshold only to the record/beneficial holder, number of shares issued and outstanding, and market value of shares issued and outstanding requirements for certain Trust Issued Receipts).

<sup>11</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>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See *supra* note 5.

<sup>14</sup> See ICI Letter at 1–2; see also PowerShares Letter at 1; SSGA Letter at 1; BlackRock Letter at 1–2; and Nuveen Letter at 1. The Commission notes that the ALPS Letter, NTI Letter, WisdomTree Letter, and First Trust Letter also express general support for all the views expressed in the ICI Letter.

<sup>15</sup> See ICI Letter at 1–3; see also PowerShares Letter at 2; SSGA Letter at 1; BlackRock Letter at 2; and Nuveen Letter at 2.

<sup>16</sup> See BlackRock Letter at 2.

<sup>17</sup> See ICI Letter at 2; see also PowerShares Letter at 1; SSGA Letter at 1; and Nuveen Letter at 1–2.

<sup>18</sup> See ICI Letter at 2; see also Nuveen Letter at 1–2.

<sup>19</sup> See ICI Letter at 2; see also PowerShares Letter at 1–2; SSGA Letter at 1; and Nuveen Letter at 2.

<sup>20</sup> See BlackRock Letter at 2.

<sup>21</sup> See, *e.g.*, Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148, 55152 (September 6, 2011) (SR–BATS–2011–018).

to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

With respect to commenters' concerns regarding the inability of certain ETFs to assure compliance with the proposal, the Commission believes that a variety of means are available to ETP (including ETF) issuers to monitor for a product's compliance with the continued listing standards. For example, information regarding the composition of a third party index may be publicly available, or may be obtained from the index provider pursuant to provisions in the index licensing agreement, so that the ETP issuer can monitor its compliance on an ongoing basis. If an index approaches the thresholds set forth in the continued listing standards, the issuer may decide to engage in discussions with the index provider regarding potential modifications to the index so that the ETP can continue to be listed on the Exchange. If an index provider is unwilling to modify the index in order to comply with the Exchange's listing requirements, the Exchange may submit a rule proposal to continue to list the product based on the index.<sup>22</sup> Moreover, as noted below, the listing standards that address the index composition with respect to certain index-based ETPs already apply equally on an initial and ongoing basis,<sup>23</sup> so some ETP issuers should have experience complying with these requirements. With respect to commenters' questions regarding the Exchange's enforcement of the proposed continued listing requirements, the Commission notes that the Exchange is proposing to apply its existing delisting procedures to products listed under the Rule 5 and Rule 8 Series, rather than adopting new delisting procedures for these products.

With respect to commenters' concerns that the proposed listing standards would treat ETPs fundamentally differently than other types of listed equity securities, the Commission notes that ETPs and other types of equity securities each have certain listing

standards that are higher on an initial basis and lower on a continuing basis.<sup>24</sup> Similarly, ETPs and other types of equity securities each have certain listing standards that are the same on an initial and continuing basis.<sup>25</sup> In fact, the listing standards that address the index composition with respect to certain index-based ETPs already apply equally on an initial and ongoing basis.<sup>26</sup>

Finally, with respect to commenters' questions regarding the purpose of the proposal and its impact on the potential for manipulation and investor protection, the Commission notes that, in approving a wide variety of ETP listing standards, including standards that apply to underlying indexes or portfolios, the Commission has consistently explained that these standards, among other things,<sup>27</sup> are

<sup>24</sup> See, e.g., Rule 8.202, Commentary .04(a) (requiring a minimum of 100,000 shares of a series of Currency Trust Shares to be outstanding at commencement of trading); and Rule 8.202(e)(2)(ii) (requiring 50,000 Currency Trust Shares issued and outstanding for continued listing).

<sup>25</sup> See, e.g., Rule 5.2(c) (requiring at least 400 public beneficial holders for the initial listing of common stock on the Exchange under the Alternate Listing Requirements); and Rule 5.5(b) (requiring at least 400 public beneficial holders as one option for the continued listing of common stock on the Exchange).

<sup>26</sup> See Rule 5.2(j)(6)(B)(IV) (setting forth the initial and continued listing requirements for Fixed Income Index-Linked Securities and stating that "[t]he Corporation will commence delisting or removal proceedings if any of the initial listing criteria described above are not continuously maintained"). The Commission also notes that ETPs are structurally different from other types of equity securities. See Securities Exchange Act Release No. 53142 (January 19, 2006), 71 FR 4180, 4182 and 4187 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities, stating that "[a]n Index Security, just like an ETF, derives its value by reference to the underlying index. For this reason, the Commission has required that markets that list index based securities monitor the qualifications of not just the actual security (e.g., the ETF, index option, or Index Securities), but also of the underlying indexes (and of the index providers)," and where the NASD stated that "[i]n contrast to a typical corporate security (e.g., a share of common stock of a corporation), whose value is determined by the interplay of supply and demand in the marketplace, the fair value of an index-based security can be determined only by reference to the underlying index itself, which is a proprietary creation of the particular index provider. For this reason, the Commission has always required that markets that list or trade index-based securities continuously monitor the qualifications of not just the actual securities being traded (e.g., exchange-traded funds ('ETF'), index options, or Index Securities), but also of the underlying indexes and of the index providers.").

<sup>27</sup> See, e.g., Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66997 (November 17, 2006) (SR-AMEX-2006-78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that "the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading

intended to reduce the potential for manipulation by assuring that the ETP is sufficiently broad-based, and that the components of an index or portfolio underlying an ETP are adequately capitalized, sufficiently liquid, and that no one stock dominates the index.<sup>28</sup>

in unregistered securities" and that "the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs" and that "by requiring pricing information for both the relevant underlying index and the ETF to be readily available and disseminated, the proposal is designed to ensure a fair and orderly market for ETFs"; 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities and stating that "[t]he Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities"); 34758 (September 30, 1994), 59 FR 50943, 50945-46 (October 6, 1994) (SR-NASD-94-49) (approving listing standards for Selected Equity-Linked Debt Securities ("SEEDS") and stating that "the listing standards and issuance restrictions should help to reduce the likelihood of any adverse market impact on the securities underlying SEEDS," and where the NASD stated that "the proposed numerical, quantitative listing standards should ensure that only substantial companies capable of meeting their contingent obligations created by SEEDS are able to list such products on Nasdaq").

<sup>28</sup> See, e.g., Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66996-97 (November 17, 2006) (SR-AMEX-2006-78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that standards related to the composition of an index or portfolio underlying an ETF "are designed, among other things, to require that components of an index or portfolio underlying an ETF are adequately capitalized and sufficiently liquid, and that no one stock dominates the index" and that "[t]aken together, the Commission finds that these standards are reasonably designed to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and that when applied in conjunction with the other applicable listing requirements, will permit the listing only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation"); 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities and stating that the listing standards for Index-Linked Securities, including minimum market capitalization, monthly trading volume, and relative weight requirements "are designed to ensure that the trading markets for index components underlying Index Securities are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. The Commission believes that these requirements should significantly minimize the potential for [] manipulation."); 78397 (July 22, 2016), 81 FR 49320, 49324-25 (July 27, 2016) (SR-NYSEArca-2015-110) (approving generic listing standards for Managed Fund Shares, noting the Exchange's statement that the proposed requirements for Managed Fund Shares are based in large part on the generic listing criteria currently applicable to Investment Company Units and stating that "the Commission believes that this is an appropriate

<sup>22</sup> The Commission also notes that the Exchange may preemptively submit a rule proposal to provide for the continued listing of a specific product where the underlying index is approaching thresholds in the continued listing requirements, but has not yet fallen below those thresholds (i.e., submit a rule proposal before the delisting procedures are triggered).

For an example of an exchange rule proposal to continue the listing of a product that no longer meets generic listing standards, see Securities Exchange Act Release No. 57320 (February 13, 2008), 73 FR 9395 (February 20, 2008) (SR-NYSEArca-2008-15).

<sup>23</sup> See *infra* note 26 and accompanying text.

For exchange listing standards to effectively achieve their goals, including to effectively address the potential for manipulation of a listed ETP, their application cannot be linked to only a single point in time (*i.e.*, the time of initial listing). Instead, they must be applied on an ongoing basis. The Commission notes that, currently, certain provisions within the Rule 5 and Rule 8 Series impose specific listing requirements on an initial basis, without imposing ongoing listing requirements that are intended to achieve the same goals as these initial listing requirements.<sup>29</sup> To fill this gap, the proposal would specify that certain listing requirements in the Rule 5 and Rule 8 Series apply both on an initial and ongoing basis, rather than only at the time of initial listing.<sup>30</sup> Also, with respect to non-generically listed products, the Exchange proposes to amend the Rule 5 and Rule 8 Series to state that all statements or representations in the proposed rule change regarding: (i) The description of the index, portfolio, or reference asset (as applicable to a specific product); (ii) limitations on index, portfolio holdings, or reference assets (as applicable to a specific product); or (iii) the applicability of Exchange listing rules (including, for example, statements and representations related to the dissemination of the intraday indicative value and index value, as applicable) specified in the proposed rule change

approach with respect to underlying asset classes covered by the existing generic standards, because the mere addition of active management to an ETF portfolio that would qualify for generic listing as an index-based ETF should not affect the portfolio's susceptibility to manipulation<sup>31</sup>).

<sup>29</sup> Moreover, certain of the listing requirements do not explicitly state that they apply on an ongoing, as well as initial, basis. In these cases, the proposal would make explicit that the requirements apply both on an initial and ongoing basis. *See, e.g.*, proposed changes to Rule 8.100, Commentary .01(b) and (c) (making explicit that, for Portfolio Depository Receipts overlying an equity index or portfolio, requirements related to index methodology and index value dissemination, as well as intraday indicative value dissemination, apply on an initial and ongoing basis); proposed changes to Rule 5.2(j)(6)(A)(e) (making explicit that, for Index-Linked Securities, the requirement related to tangible net worth applies on an initial and ongoing basis); proposed changes to Rule 5.2(j)(7), Commentary .03 (making explicit that, for Trust Certificates, requirements related to the qualifications of a trustee and changes to a trustee apply on an initial and ongoing basis).

<sup>30</sup> For example, current Rule 8.100, Commentary .01(a) sets forth requirements for component stocks of an index or portfolio underlying a series of generically-listed Portfolio Depository Receipts, which apply upon initial listing. These requirements include, for example, minimum market value, minimum monthly trading volume, and concentration limits for the component stocks. The proposal would specify that these requirements apply both on an initial and continued basis.

constitute continued listing requirements.<sup>31</sup>

Because the proposal specifies continued listing requirements for products listed pursuant to the Rule 5 and Rule 8 Series, the Commission believes the proposal is designed to achieve on a continuing basis the goals of the listing requirements, including ensuring that the Exchange lists products that are not susceptible to manipulation and maintaining fair and orderly markets for the listed products. In particular,<sup>32</sup> the Commission believes that the proposal is designed to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio underlying a listed product;<sup>33</sup> provide transparency regarding the components of an index or portfolio underlying a listed product;<sup>34</sup> ensure that there is adequate liquidity in the listed product itself;<sup>35</sup> and provide timely and fair disclosure of useful information that

<sup>31</sup> The Commission notes that it has approved proposed rule changes for the listing and trading of ETPs that included similar representations. *See, e.g.*, Securities Exchange Act Release No. 77548 (April 6, 2016), 81 FR 21626, 21630 (April 12, 2016) (SR-NASDAQ-2015-161). The Commission also notes that similar types of requirements exist in the Exchange's rules. *See, e.g.*, Rule 8.100, Commentary .01(b) and (c) (setting forth, among other things, index value dissemination and intraday indicative value dissemination requirements for certain generically-listed Portfolio Depository Receipts).

<sup>32</sup> *See also supra* notes 27–28 (noting additional goals of the ETP listing standards).

<sup>33</sup> For example, as proposed, the requirements under Rule 8.100, Commentary .01(a)(A), including minimum market value and minimum monthly trading volume requirements for components of the index or portfolio underlying Portfolio Depository Receipts, would apply both on an initial and ongoing basis. Also, for non-generically listed products, the proposal would provide that statements or representations made in the proposed rule changes relating to the description of the index or portfolio, among other things, constitute continued listing requirements. *See, e.g.*, proposed Rule 8.100(e).

<sup>34</sup> For example, as proposed, the requirements under Rule 8.100, Commentary .01(a)(A), including the requirement that components of the index or portfolio underlying Portfolio Depository Receipts be exchange-listed and NMS stocks, would apply both on an initial and ongoing basis.

<sup>35</sup> For example, the Exchange proposes to amend Rule 5.2(j)(2) to explicitly provide that listing requirements for Equity-Linked Notes ("ELNs") apply both on an initial and ongoing basis, including, for example, the minimum public distribution of an issue of ELNs.

The Commission also believes that the proposal to delete the threshold of "30 or more consecutive trading days" in the requirements for the number of beneficial and/or record holders is consistent with the goal of ensuring that there is adequate liquidity in the listed product on an ongoing basis. As proposed, the Exchange would initiate delisting proceedings for a product if it fails to comply with the minimum number of beneficial and/or record holder requirement, even if the non-compliance does not continue for 30 consecutive trading days. *See supra* note 6.

may be necessary to price the listed product.<sup>36</sup> Moreover, the Commission believes that the proposal to require an issuer to notify the Exchange of its failures to comply with continued listing requirements would supplement the Exchange's own surveillance of the listed products.<sup>37</sup>

As noted above, the proposal specifies the delisting procedures for products listed pursuant to the Rule 5 and Rule 8 Series. The Commission believes that the proposed amendments to Rule 5.5(m) would provide transparency regarding the process that the Exchange will follow if a listed product fails to meet its continued listing requirements. Also, as noted above, the proposed delisting procedures already exist and are not novel.

Finally, the Commission believes that the conforming and technical proposed changes do not raise novel issues, are designed to further the goals of the listing standards, and provide clarity and consistency in the Exchange's rules.

For the reasons discussed above, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act.

#### IV. Accelerated Approval of Amendment No. 2

As noted above, in Amendment No. 2, the Exchange: (i) Further amended rules within the Rule 5 and Rule 8 Series to reflect that certain listing requirements (including certain statements or representations in rule filings for the listing and trading of specific products) apply on an initial and ongoing basis; (ii) further amended rules within the Rule 5 and Rule 8 Series to consistently state that the Exchange will maintain surveillance procedures for listed products and will initiate delisting proceedings if continued listing requirements are not maintained; (iii) further amended rules within the Rule 5 and Rule 8 Series to provide that, in

<sup>36</sup> For example, the proposed changes to Rule 8.100, Commentary .01(b) and (c) would make explicit that the requirements related to the dissemination of the value of the index underlying Portfolio Depository Receipts and the intraday indicative value for Portfolio Depository Receipts apply on an initial and ongoing basis.

<sup>37</sup> The Commission notes that the concept of issuer notification is not novel. For example, in connection with its proposal to adopt generic listing standards for Managed Fund Shares, the Exchange stated that, prior to listing pursuant to the generic listing standards, an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. *See* Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320, 49324 (July 27, 2016) (SR-NYSEArca-2015-110).

a rule filing to list and trade a product, all statements or representations regarding the applicability of Exchange listing rules (including, for example, statements and representations related to the dissemination of the intraday indicative value and index value, as applicable) specified in such rule filing constitute continued listing requirements; (iv) specified an implementation date for the proposed changes; and (v) made other technical, clarifying, and conforming changes throughout the Rule 5 and Rule 8 Series. The Commission believes that Amendment No. 2 furthers the goals of the proposed rule change as discussed above, enhances consistency between the Exchange's proposal and recently approved proposals from other exchanges,<sup>38</sup> and provides clarity and consistency within the Exchange's rules. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>39</sup> to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

#### V. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 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-2017-01 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2017-01. 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 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-2017-01 and should be submitted on or before April 5, 2017.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change (SR-NYSEArca-2017-01), as modified by Amendment No. 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-05090 Filed 3-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80184; File No. SR-ISEGemini-2017-09]

### Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

March 9, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 27, 2017, ISE Gemini, LLC ("ISE Gemini" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and

II, below, which Items have been prepared by the Exchange. 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 the Schedule of Fees to (1) eliminate fees and rebates for trades in Calpine Corporation executed on February 27-28, 2017, and (2) modify the Exchange's average daily volume calculation for March 2017.

The text of the proposed rule change is available on the Exchange's Web site at [www.ise.com](http://www.ise.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 Exchange 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 these 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 aspects of such statements.

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

###### 1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees to (1) eliminate fees and rebates for trades in Calpine Corporation ("CPN") executed on February 27-28, 2017, and (2) modify the Exchange's average daily volume ("ADV") calculation for March 2017. These changes are both being made in connection with the migration of the Exchange's trading system to the Nasdaq INET technology, which is scheduled to begin on February 27, 2017.

The Exchange will launch its re-platformed INET trading system beginning with a single symbol—CPN—on February 27, 2017. The Exchange proposes to eliminate fees and rebates for trades in options overlying Symbol CPN executed on the INET trading system during the last two trading days of the month, *i.e.*, February 27-28, 2017. Because the Exchange is eliminating fees and rebates for trades in this

<sup>38</sup> See Securities Exchange Act Release Nos. 79784 (January 12, 2017), 82 FR 6664 (January 19, 2017) (SR-NASDAQ-2016-135) and 80169 (March 7, 2017) (SR-BatsBZX-2016-80).

<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.