

In adopting Rule 10b-17, the Commission stated its concern that the failure of an issuer to provide timely announcements of record dates may have misleading and deceptive effects.<sup>3</sup> For example, the Commission stated that if buyers and sellers (and their brokers) do not have knowledge that these rights may be forthcoming, they could suffer losses.<sup>4</sup> Also, the Commission found that “some issuers made belated declarations of stock splits or dividends with the apparent knowledge that this action would have a manipulative effect on the market for their securities.”<sup>5</sup> The letter represents, as had the prior requests, that the concerns that the Commission raised in adopting Rule 10b-17 will not be implicated if exemptive relief, subject to the conditions below, is granted to the Trust.

We find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rule 10b-17 to any issuer of an actively managed ETF including the Trust. Specifically, other than receiving a delayed notice of the cash distributed and the shares outstanding, market participants will receive timely notification of the existence and timing of a pending distribution as the Fund will comply with all other requirements of Rule 10b-17.<sup>6</sup> Further, the provision of the information required under Rule 10b-17(b)(1)(v)(a) and (b) the day before the ex-dividend date should allow market participants time to update their systems to reflect the accurate price once trading begins on the ex-dividend date.

### Conclusion

It Is Hereby Ordered, pursuant to Rule 10b-17(b)(2), that any issuer of an actively managed ETF is exempt from the requirements of Rule 10b-17(b)(1)(v)(a) and (b) with respect to transactions in shares of the actively managed ETF, subject to the following conditions:

- The issuer must comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The issuer must provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the national

<sup>3</sup> Exchange Act Release No. 9192 (Jun. 7, 1971); 36 FR 11513 (Jun. 15, 1971).

<sup>4</sup> See *id.*

<sup>5</sup> *Id.*

<sup>6</sup> Rule 10b-17(b)(1)(v)(a) and (b). We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of such ETFs. This is because it is not possible for these ETFs to accurately project ten days in advance the composition of the dividend that would be paid on a particular record date.

securities exchange upon which shares of the ETF are registered pursuant to section 12 of the Exchange Act (“Exchange”) as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, particularly Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, such transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Kevin M. O'Neill,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67213; File No. SR-NYSEARCA-2012-61]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 2.23 To Prescribe The Registered Proprietary Traders Examination (Series 56) As the Qualifying Examination for Registered Market Makers, Market Maker Authorized Traders, and Floor Brokers

June 19, 2012.

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 June 13, 2012, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the

<sup>1</sup> 17 CFR 200.30-3(a)(9).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 15 U.S.C. 78a.

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

Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii)<sup>4</sup> of the Act and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 2.23 to prescribe the Registered Proprietary Traders Examination (Series 56) (the “Series 56 Examination”) as the qualifying examination for registered Market Makers, Market Maker Authorized Traders (“MMAT’s”), and Floor Brokers. 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend NYSE Arca Rule 2.23 to prescribe the Series 56 Examination as the qualifying examination for registered Market Makers, MMATs, and Floor Brokers.

NYSE Arca Rule 2.23 currently specifies that the successful completion of the Series 44 examination and an orientation program for such examination is required in order to register as a Market Maker or a MMAT.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

The Exchange proposes to change the prescribed examination for Market Makers and MMATs to the Series 56 Examination. In addition, NYSE Arca Rule 2.23 currently specifies that Floor Brokers must successfully complete the Series 45 within five years of the application date for an OTP and have been an OTP Holder within six months of the application date for an OTP. The Exchange proposes to change the prescribed examination for Floor Brokers to the Series 56 Examination and replace the other requirements of the rule with the successful completion of an orientation program. The requirement to participate in an orientation program is consistent with registration requirements for Market Makers on NYSE Arca.

The Series 56 Examination was developed by a committee comprised of industry representatives, Exchange staff and staff from other SROs. The Series 56 examination tests a candidate's knowledge of proprietary trading generally and the industry rules applicable to trading of equity securities and listed options contracts. The Series 56 examination covers, among other things, recordkeeping and recording requirements; types and characteristics of securities and investments; trading practices; and display, execution, and trading systems.<sup>6</sup> As such the Exchange believes that an applicant who has passed the Series 56 is proven to be qualified to act in the capacity of a Market Maker, Floor Broker and/or MMAT on NYSE Arca.

While NYSE Arca will no longer be offering the Series 44 or Series 45 as qualifying exams to new applicants, the Exchange will continue to recognize any individual who has passed one of those exams as having successfully completed a qualifying exam. An individual presently registered as a Market Maker, MMAT or Floor Broker on NYSE Arca, who has previously passed a qualifying exam as prescribed by the Exchange, will not be required to take the Series 56 as a condition of their continued registration.

Following effectiveness of the proposed rule change, the Exchange will issue a Regulatory Bulletin announcing the implementation date within 30 days from the operative date of the rule change.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section

<sup>6</sup> The Exchange previously submitted detailed content outline for the Series 56 to the Commission. See Securities Exchange Act Release No. 66483 (February 28, 2012), 77 FR 13168 (March 5, 2012) (SR-NYSEArca-2012-16).

6(b)<sup>7</sup> of the Securities Exchange Act of 1934 ("Act") in general, and furthers the objectives of (1) Section 6(c)(3)(B)<sup>8</sup> of the Act, pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed, among other things, 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 Exchange believes that prescribing the Series 56 Examination for Market Makers, MMATs, and Floor Brokers is appropriate because the Series 56 Examination addresses industry topics that establish the foundation for the regulatory and procedural knowledge necessary for individuals required to register as Market Makers, MMATs, and Floor Brokers. In addition, the Series 56 Examination is shared by other exchanges and has become the industry standard.<sup>10</sup> Accordingly, adopting the Series 56 Examination will help to promote consistency in examination requirements and uniformity across markets.

The Exchange also believes it is appropriate to adopt an orientation program for Floor Brokers so that Floor Broker requirements will be more closely aligned with those of Market Makers and MMATs. The Exchange will continue to educate its OTP Holders regarding the requirements that are unique to the Exchange through its orientation programs to ensure that all OTP Holders will continue to be properly registered, trained, and qualified to perform their functions, which will protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

<sup>8</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See Securities Exchange Act Release No. 64699 (June 17, 2011), 76 FR 36945 (June 23, 2011) (SR-CBOE-2011-056). See Securities Exchange Act Release No. 65054 (August 8, 2011), 76 FR 50277 (August 12, 2011) (SR-ISE-2011-36).

## 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing.

The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.<sup>15</sup> Waiver of the 30-day operative delay will enable an associated person of an OTP Firm to qualify as a Market Maker, MMAT or Floor Broker on NYSE Arca by passing the Series 56 exam, which is shared by the other options exchanges. In addition, requiring Floor Brokers to participate in an orientation program will make the requirements for Floor Brokers more similar to the requirements for Market Makers and MMATs. The Commission hereby waives the operative delay making the filing effective and operative upon filing.

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such 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 Number SR-NYSEARCA-2012-61 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEARCA-2012-61. 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. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-

NYSEARCA-2012-61 and should be submitted on or before July 16, 2012.

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

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67216; File No. SR-ISE-2012-52]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Allow Competitive Market Makers To Use Their Membership Points To Enter Multiple Quotes in an Options Class

June 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 6, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("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 Substance of the Proposed Rule Change

The Exchange proposes to adopt .03 of the Supplementary Material to Rule 802 (Appointment of Market Makers) to allow Competitive Market Makers ("CMMs") to use their membership points to enter multiple quotes in an options class. The text of the proposed rule change is available on the Exchange's Internet Web site at <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 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

On August 11, 2011, the Exchange changed the structure of CMM appointments to give market makers flexibility to choose the options classes to which they are appointed.<sup>3</sup> On October 3, 2011, the Exchange made three refinements to the point values assigned to certain options classes.<sup>4</sup> Currently, under this structure, the Exchange assigns points to each options class equal to its percentage of overall industry volume (not including exclusively-traded index options), rounded down to the nearest hundredth of a percentage, with a maximum of 15 points. New listings are assigned a point value of zero for the remainder of the quarter in which it was listed. A CMM is then permitted to seek appointments to options classes that total twenty points for the first CMM trading right owned or leased by a member, and ten points for each subsequent CMM trading right owned or leased by the same member.<sup>5</sup>

The Exchange is now proposing to adopt .03 of the Supplementary Material to Rule 802 (Appointment of Market Makers) to allow CMMs to use their membership points to enter multiple quotes in an options class. The quoting requirements in ISE Rules will be applicable to each set of quotes that a CMM enters in an options class. In other words, CMMs will not be permitted to aggregate multiple quotes in an options class in order to meet the quoting requirements under ISE Rules. Additionally, there will be no restriction on a CMM seeking appointment to options classes in which it or an affiliated market-maker holds a CMM or

<sup>3</sup> See Securities Exchange Act Release No. 65100 (Aug. 11, 2011), 76 FR 51075 (Aug. 17, 2011) (order approving SR-ISE-2011-33).

<sup>4</sup> See Securities Exchange Act Release No. 65534 (October 12, 2011), 76 FR 64417 (October 18, 2011) (Notice of Filing and Immediate Effectiveness SR-ISE-2011-58).

<sup>5</sup> CMMs can select the options classes to which they seek appointment, but the Exchange retains the authority to make such appointments and to remove appointments from CMMs based on their performance. See ISE Rule 802.

<sup>16</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.