



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103267; File No. SR-NYSEARCA-2025-41]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 5.3-O Regarding the Criteria for Listing Options Exchange-Traded Fund Shares

June 16, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on June 10, 2025, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Rule 5.3-O regarding the criteria for listing options Exchange-Traded Fund Shares (“ETFs”). The proposed rule change is available on the Exchange’s website at 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Rule 5.3-O (Criteria for Underlying Securities) to modify the criteria for listing options ETFs (the “Rule”), as set forth in 5.3-O(g). The proposed changes are designed to clarify the listing criteria for ETF options and to streamline the Rule. This proposal is competitive as it will align the Rule with the criteria in place on Nasdaq ISE, LLC (“ISE”).³

Rule 5.3-O(g) describes the types of ETFs that may be deemed appropriate for options trading⁴ and subparagraphs (1) and (2) set forth the conditions that such ETFs must meet to qualify for options trading.

Rule 5.3-O(g)(1) provides that, to qualify for options trading, an ETF must either (A) meet the criteria and guidelines for underlying securities set forth in Rule 5.3-O(a) and (b);⁵ or (B) be available for creation and redemption each business day.⁶ The Exchange proposes to reorganize

³ See ISE, Options 4, Section 3(h) (setting forth criteria for listing options on ETFs). The Exchange notes that this proposal largely mirrors the changes that ISE made to its listing criteria for ETF options in 2021. See Securities Exchange Act Release Nos. 92226 (June 22, 2021), 86 FR 34096 (June 28, 2021) (SR-ISE-2021-14) (modifying, among other things, the criteria for listing options on ETFs, as set forth in Options 4, Section (h)).

⁴ Rule 5.3-O(g) permits options trading on ETFs that are traded on a national securities exchange and defined as an “NMS stock” in Rule 600 of Regulation NMS and that represent interests in (i) “Financial Instruments” and “Money Market Instruments”; (ii) a trust or similar entity that holds a specified non-U.S. currency; or (iii) “Commodity Pool ETFs”, or (v) “Managed Fund Shares”; provided that each ETF satisfy the conditions listed in Rules 5.3-O and 5.4-O.

⁵ Rules 5.3-O(a) and (b) provide that, among other requirements, an ETF be widely-held and actively traded with at least 7,000,000 shares outstanding, at least 2,000 beneficial owners, and trading volume of at least 2,400,000 shares in the preceding twelve months; and that the ETF is registered as an “NMS stock” as defined in Rule 600 of Regulation NMS, respectively.

⁶ Rule 5.3-O(g)(1)(B) requires that ETFs be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue ETFs in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

Rule 5.3-O(g)(1) to make clear that an ETF must meet one of the conditions set forth in subparagraphs (g)(1)(A) or (g)(1)(B) to be eligible for options trading.⁷ In this regard, the Exchange proposes to remove “; and” from the end of Rule 5.3-O(g)(1)(B) and to replace it with a period so that subparagraphs (g)(1) and (2) are not linked, but rather read independently.⁸

While Rule 5.3-O(g)(1) applies to all ETFs, the Exchange proposes to clarify that Rule 5.3-O(g)(2) applies to only international or global ETFs.⁹ Specifically, the Exchange proposes to amend Rule 5.3-O(g)(2) to provide, “Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, must meet the following criteria:”.¹⁰ This proposed rule text makes clear that Rule 5.3-O(g)(2) applies to the extent that an ETF is based on international or global indexes, or portfolios that include non-U.S. securities. In addition, the proposed text is intended to serve as a guidepost and clarify that (i) Rule 5.3-O(g)(2) does not apply to an ETF based on a U.S. domestic index or portfolio, and (ii) Rule 5.3-O(g)(2) includes ETFs that track a portfolio of non-U.S. securities rather than an index.

Currently, Rule 5.3-O(g)(2)(A) refers to ETFs that are listed pursuant to generic listing standards for series of portfolio depositary receipts or index fund shares based on international or global indexes under which a comprehensive surveillance agreement is not required. The Exchange proposes to remove the phrase “for series of portfolio depositary receipts and index fund shares

⁷ See proposed Rule 5.3-O(g)(1) and (g)(1)(A) providing that “(1) The Exchange-Traded Fund Shares either: (A) meet the criteria and guidelines for underlying securities set forth in Rule 5.3-O(a) and (b); or” satisfy Rule 5.3-O(g)(1)(B).

⁸ See proposed Rule 5.3-O(g)(1)(B). See also ISE, Options 4, Section 3(h)(1).

⁹ Current Rule 5.3-O(g)(2) lacks specificity and provides that “[t]he Exchange-Traded Fund Shares meet the following criteria:”, but the information that follows relates to international or global ETFs. See Rule 5.3-O(g)(2).

¹⁰ See proposed Rule 5.3-O(g)(2). See also ISE, Options 4, Section 3(h)(2).

based on international or global indexes.”¹¹ The Exchange notes that Rule 5.3-O(g)(i)¹² and (vi)¹³ currently permit the Exchange to list options on ETFs based on generic listing standards for portfolio depositary receipts and index fund shares without applying component-based requirements in Rule 5.3-O(g)(2)(B)(i)-(iii). Thus, the proposed change would streamline the Rule and, in so doing, make clear that Rule 5.3-O(g)(2)(A) applies to ETFs based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Rule 5.3-O(g)(1).

The Exchange also proposes to amend the term “comprehensive surveillance agreement” within Rule 5.3-O(g)(2)(A) and (g)(2)(B)(i)-(iii) to instead provide “comprehensive surveillance *sharing* agreement” (emphasis added), which will bring greater clarity to the term.¹⁴

In addition, the Exchange proposes to make several clarifying changes to Rule 5.3-O(g)(2)(B), which refers to ETFs based on international or global indexes, or portfolios that include non-U.S. securities, that are not listed pursuant to generic listing standards and for which a comprehensive surveillance sharing agreement is required. Specifically, the Exchange proposes to add the phrase “, if not available or applicable, the Exchange-Traded Fund’s” within Rule 5.3-O(g)(2)(B)(i), (ii), and (iii) to clarify that when component securities are not available, the portfolio

¹¹ See proposed Rule 5.3-O(g)(2)(A). See also ISE, Options 4, Section 3(h)(2).

¹² Rule 5.3-O(g)(i) concerns passive ETFs, i.e., shares or other securities that represent “an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities and/or financial instruments, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the ‘Financial Instruments’), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ‘Money Market Instruments’) constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments”

¹³ Rule 5.3-O(g)(vi) concerns active ETFs, i.e., shares or other securities that that represents “an interest in a registered investment company (‘Investment Company’) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (‘NAV’), and when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (‘Managed Fund Share’)”.

¹⁴ See proposed Rule 5.3-O(g)(2)(A) and (g)(2)(B)(i)-(iii). See also ISE, Options 4, Section 3(h)(2)(A)-(D).

of securities upon which the ETF is based can be used instead.¹⁵ The Exchange notes that “not available” is intended for cases where the Exchange does not have access to the index components, in which cases the Exchange would look to the portfolio components. The term “not applicable” is intended if the ETF is active and does not track an index and only the portfolio is available.

The Exchange also proposes to wordsmith Rule 5.3-O(g)(2)(B)(i), (ii), and (iii) to amend the phrase to provide, “any non-U.S. component securities of an index (including fixed income) on which the Exchange-Traded Fund Shares are based or if not available or applicable, the Exchange-Traded Fund’s portfolio of securities that are not subject to comprehensive surveillance sharing agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;”.¹⁶ The Exchange believes that the revised wording will bring greater clarity to the rule text.

Similarly, the Exchange proposes to wordsmith Rule 5.3-O(g)(2)(B)(ii), and (iii) to relocate the phrase “on which the Exchange-Traded Fund Shares are based” and add “or portfolio” to bring greater clarity to the rule text by conforming the rule text of Rule 5.3-O(g)(2)(B) (ii) and (iii) to the language within Rule 5.3-O(g)(2)(B)(i). This proposed change also adds transparency and promotes internal consistency in Exchange rules.

The Exchange proposes to modify the description of “Financial Instruments” in Rule 5.3-O(g)(i) to align with other options exchanges by adding the following: “including, but not limited to, stock index futures contracts, options on futures,”¹⁷ which will promote consistency across exchanges to the benefit of investors. The Exchange also proposes to modify the description of “Money Market Instruments” in Rule 5.3-O(g)(i) to align with other options exchanges by adding the following parenthetical: “(or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and

¹⁵ See proposed Rule 5.3-O(g)(2)(B)(i)-(iii). See also ISE, Options 4, Section 3(h)(2)(B)-(D).

¹⁶ See proposed Rule 5.3-O(g)(2)(B)(i). See also ISE, Options 4, Section 3(h)(2)(B).

¹⁷ See, e.g., NYSE American Rule 915, Commentary .06(i); ISE, Options 4, Section 3(h)(i). See also proposed Rule 5.3-O(g)(i).

Money Market Instruments)”,¹⁸ which will promote consistency across exchanges to the benefit of investors.

Technical Changes

First, the Exchange proposes to modify Rule 5.3-O(g) to replace the reference to “Rule 600(55) of Regulation NMS” with “Rule 600 of Regulation NMS” because the reference to paragraph (55) of that rule is no longer accurate.¹⁹ Next, the Exchange proposes a stylistic change to Rule 5.3-O(g) such that it ends with “provided that:” (instead of “provided:”) and directs market participants to subparagraphs (1) and (2) of Rule 5.3-O(g).²⁰

Further, the Exchange proposes to modify Rule 5.3-O(g)(ii), which describes an ETF that represents interests in a trust or similar entity that holds a specified non-U.S. currency, to define such interests as “Currency Trust Shares.”²¹ Consistent with this change, the Exchange also proposes to modify Rule 5.3-O(g)(2)(B)(iv) to replace reference to “Funds that hold a specified non-U.S. currency deposited with the trust” and “Funds” with the newly defined term of “Currency Trust Shares,” which adds clarity, transparency, and internal consistency to Exchange rules.²²

Finally, the Exchange proposes to modify Rules 5.3-O(g)(iii) and (g)(2)(B)(v) to replace reference to “Commodity Pool Units” with “Commodity Pool ETFs,” which will add internal consistency to the Rule, which describes “Exchange Fund Shares,” not Units.²³ The Exchange notes that other options exchanges, in their analogous listing rules, likewise use “Commodity

¹⁸ See, e.g., ISE, Options 4, Section 3(h)(ii). See also proposed Rule 5.3-O(g)(i).

¹⁹ See proposed Rule 5.3-O(g). Currently, the definition of “NMS stock” appears in paragraph 65 (not 55) of Rule 600 of Regulation NMS. See 17 CFR § 242.600(65).

²⁰ See proposed Rule 5.3-O(g). See also ISE, Options 4, Section 3(h).

²¹ See proposed Rule 5.3-O(g)(ii). See also ISE, Options 4, Section 3(h)(ii).

²² See proposed Rule 5.3-O(g)(2)(B)(iv). See also ISE, Options 4, Section 3(h)(2)(E).

²³ See proposed Rules 5.3-O(g)(iii) and (g)(2)(B)(v). Commodity Pool Units (now ETFs) “represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency.” See Rules 5.3-O(g)(iii).

Pool ETFs” to describe the same type of interest.²⁴

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁶ in particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that this proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to bring greater clarity to the qualification standards for listing options on ETFs, including by conforming such standards with those in place on ISE.²⁷ The Exchange believes the proposed changes to Rule 5.3-O(g)(1) make clear that all ETFs must satisfy one of its two conditions and that such conditions are independent of those that follow (i.e., those in Rule 5.3-O(g)(2)), which added clarity benefits all market participants. Further, the proposed change to make clear that Rule 5.3-O(g)(2) applies to only international or global ETFs will bring greater clarity to the qualification standards for listing options on such ETFs to the benefit of all market participants. The Exchange believes proposed Rule 5.3-O(g)(2) will serve as a guidepost and clarify that it does not apply to ETFs based on a U.S. domestic index or portfolio but does apply

²⁴ See, e.g., NYSE American Rule 915, Commentary .06(iii) and Commentary .06(b)(ii)(E). See also ISE, Options 4, Section 3(h)(iii) and (h)(2)(F).

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ See ISE, Options 4, Section 3(h).

to ETFs that track a portfolio of non-U.S. securities rather than an index. Additionally, the Exchange believes its proposed change to Rule 5.3-O(g)(i) to align the description of “Financial Instruments” and “Money Market Instruments” with other options exchanges will promote consistency across exchanges to the benefit of investors.

The proposed technical and stylistic changes proposed herein are consistent with the Act and will benefit all market participants because such changes are designed to streamline the Rule, which adds clarity, transparency, and internal consistency to Exchange rules making them easier to navigate and comprehend.

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. The proposed rule change is designed to improve the clarity, transparency, and accuracy of the Exchange’s listing criteria for ETF options, which criteria will apply uniformly to all ETFs in determining eligibility for options trading on the Exchange. Further, as noted herein, the proposed rule change will align with ISE Options 4, Section 3(h), and therefore promotes consistency across exchanges regarding the criteria for listing ETF options.

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 Act²⁸ and Rule 19b-4(f)(6) thereunder.²⁹ 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

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6).

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 Act³⁰ and Rule 19b-4(f)(6)(iii)³¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)³² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³³ 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 immediately upon filing. The Commission believes that waving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to immediately clarify and improve the accuracy of its Rule in a manner that conforms with ISE Options 4, Section 3(h) and does not introduce any novel regulatory issues. Accordingly, the Commission designates the proposed rule change to be operative upon filing.³⁴

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

³⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

³¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³² 17 CFR 240.19b-4(f)(6).

³³ 17 CFR 240.19b-4(f)(6)(iii).

³⁴ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2025-41 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-2025-41. 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 website (<https://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-NYSEARCA-2025-41 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-11296 Filed: 6/18/2025 8:45 am; Publication Date: 6/20/2025]