

proposed new products on the Exchange, just as they are currently traded on other exchanges. The proposed changes do nothing more than match Exchange rules with what is currently available on other exchanges. The Exchange believes that by conforming its rules and allowing trading opportunities on the Exchange that are already allowed by rule on another market, the proposal would offer another venue for trading Exchange Traded Products and thereby promote broader competition among exchanges. The Exchange believes that individuals and entities permitted to make markets on the Exchange in the proposed new products should enhance competition within the mechanism of a free and open market and a national market system, and customers and other investors in the national market system should benefit from more depth and liquidity in the market for the proposed new products.

The proposed change is not designed to address any competitive issue, but rather to adopt new rules that are word-for-word identical to the rules of NYSE Arca (other than with respects[sic] to certain non-substantive and technical amendments described above), to support the Exchange's new Pillar trading platform. As discussed in detail above, with this rule filing, the Exchange is not proposing to change its core functionality, but rather to adopt a rule numbering framework and rules based on the rules of NYSE Arca. The Exchange believes that the proposed rule change would promote consistent use of terminology to support the Pillar trading platform on both the Exchange and its affiliate, NYSE Arca, thus making the Exchange's rules easier to navigate.

#### *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. To the contrary, the current variances between the Exchange's rules for the trading pursuant to UTP and the rules of other exchanges limit competition in that there are certain products that the Exchange cannot trade pursuant to UTP, while other exchanges can trade such products. Thus, approval of the proposed rule change will promote competition because it will allow the Exchange to compete with other national securities exchanges for the trading of securities pursuant to UTP.

#### *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 up to 90 days (i) as the Commission may designate 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-NYSEMKT-2016-103 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-NYSEMKT-2016-103. 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-NYSEMKT-2016-103 and should be submitted on or before December 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>80</sup>

**Brent J. Fields,**  
*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-79399; File No. SR-NASDAQ-2016-135]**

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Continued Listing Requirements for Exchange-Traded Products**

November 25, 2016.

On September 30, 2016, The NASDAQ Stock Market LLC ("Nasdaq") 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: (a) The continued listing requirements for exchange-traded products in the Nasdaq Rule 5700 Series; and (b) certain requirements under Nasdaq Rule 5810 (Notification of Deficiency by the Listing Qualifications Department). The proposed rule change was published for comment in the **Federal Register** on October 17, 2016.<sup>3</sup> The Commission received no comment letters on the proposed rule change.

<sup>80</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.

<sup>3</sup> See Securities Exchange Act Release No. 79081 (October 11, 2016), 81 FR 71548.

Section 19(b)(2) of the Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 1, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates January 15, 2017, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-NASDAQ-2016-135).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-28826 Filed 11-30-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79402; File No. SR-NYSEArca-2016-131]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Relating To Listing and Trading of Shares of the Virtus Enhanced U.S. Equity ETF Under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3)

November 25, 2016.

#### I. Introduction

On October 3, 2016, NYSE Arca, Inc. (“Exchange”) 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 list and trade shares (“Shares”) of the Virtus Enhanced U.S. Equity ETF (“Fund”), a series of Virtus ETF Trust II (“Trust”), under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) (“Investment Company Units”). The proposed rule change was published for comment in the **Federal Register** on October 20, 2016.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

#### II. Exchange’s Description of the Proposal<sup>4</sup>

The Exchange proposes to list and trade Shares of the Fund under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units on the Exchange. The Exchange represents that it has submitted the proposed rule change because the underlying index of the Fund does not meet all of the generic listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3), applicable to the listing of Investment Company Units based upon an index of “US Component Stocks.” Specifically, as discussed in the Notice,<sup>5</sup> options on the S&P 500 index may be Index components. Consequently, the Index is not composed entirely of US Component Stocks, and therefore the Shares do not satisfy the requirements for generic listing under Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3).

The Fund will be an index-based exchange traded fund (“ETF”). The Shares will be offered by the Trust, which is registered with the Commission as an investment company and has filed a registration statement on Form N-1A (the “Registration Statement”) with the Commission on behalf of the Fund.<sup>6</sup>

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

<sup>3</sup> See Securities Exchange Act Release No. 79101 (October 14, 2016), 81 FR 72630 (“Notice”).

<sup>4</sup> The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value (“NAV”), distributions, and taxes, among other things, can be found in the Notice, and the Registration Statement, as applicable. See Notice, *supra* note 3, and Registration Statement, *infra* note 6.

<sup>5</sup> See Notice, *supra* note 3, 81 FR at 72631.

<sup>6</sup> The Exchange represents that, on September 1, 2016, the Trust filed a Registration Statement on Form N-1A under the Securities and Exchange Act of 1933 and the Investment Company Act of 1940 (“1940 Act”) (File Nos. 333-206600 and 811-23078). According to the Exchange, the Trust has obtained certain exemptive relief from the Commission under the 1940 Act. See Investment

The investment adviser to the Fund will be Virtus ETF Advisers LLC (“Adviser”). ETF Distributors LLC will serve as the distributor (“Distributor”) of Fund shares on an agency basis. The Bank of New York Mellon (“Administrator”) will be the administrator, custodian and transfer agent for the Fund.

#### A. The Fund’s Principal Investments

According to the Exchange, the Fund’s investment objective is to seek investment results that, before fees and expenses, closely correspond to the price and yield performance of the Rampart Enhanced U.S. Equity Index (“Index”).<sup>7</sup> Under normal market conditions,<sup>8</sup> the Fund will invest not less than 80% of its total assets in component securities of the Index. Additionally, under normal market conditions, the Fund will invest not less than 80% of its total assets in U.S. exchange-traded common stocks. The Fund will also seek to generate additional income by writing SPX call options and will seek additional capital appreciation by purchasing SPX call options.

#### B. The Fund’s Non-Principal Investments

While the Fund, under normal market conditions will invest at least 80% of its net assets in the securities and financial instruments described above, the Fund may invest its remaining assets in the securities and financial instruments described below.

The Fund may invest in short-term, high quality securities issued or guaranteed by the U.S. government (in addition to U.S. Treasury securities) and non-U.S. governments, and each of their agencies and instrumentalities; debt securities issued by U.S. government sponsored enterprises; repurchase

Company Act Release No. 30825 (December 11, 2013) (File No. 812-14212).

<sup>7</sup> According to the Exchange, the Index was developed by Rampart Investment Management Company, LLC (“Index Provider”), and is calculated and maintained by NYSE Global Index Group (“Index Calculation Agent”). The Index Provider is affiliated with the Adviser and the Distributor. The Index Calculation Agent is not affiliated with the Adviser, Distributor, Administrator, or the Trust.

<sup>8</sup> The term “normal market conditions” is defined in NYSE Arca Equities Rule 8.600(c)(5). On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objectives. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

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

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

<sup>6</sup> 17 CFR 200.30-3(a)(31).

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