

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75846; File No. SR-NYSEArca-2015-78)

September 4, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 3 of NYSE Arca Equities Rule 8 to extend the effectiveness of the ETP Incentive Program for additional one-year pilot period, ending September 4, 2016

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 3, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 Section 3 of NYSE Arca Equities Rule 8 (Trading of Certain Equity Derivatives) to extend the effectiveness of the ETP Incentive Program for additional one-year pilot period, ending September 4, 2016. The text of 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Section 3 of NYSE Arca Equities Rule 8 (Trading of Certain Equity Derivatives) to extend the effectiveness of the ETP Incentive Program⁴ for an additional one-year pilot period, ending September 4, 2016.⁵

⁴ The Commission approved the ETP Incentive Program on a pilot basis in Securities Exchange Act Release No. 69706 (June 6, 2013), 78 FR 35340 (June 12, 2013) (SR-NYSEArca-2013-34) (“ETP Incentive Program Release”). The Exchange subsequently filed to extend the original pilot program for the ETP Incentive Program until September 4, 2015. See Securities Exchange Act Release No. 72963 (September 3, 2014), 79 FR 53492 (September 9, 2014) (SR-NYSEArca-2014-99) (notice of filing and immediate effectiveness of proposed rule change extending effectiveness of the ETP Incentive Program until September 4, 2015). In addition, the Exchange recently filed a proposed rule change to amend Rules 7.25(c) and 8.800(b) to provide that exchange-traded products (“ETPs”) already listed on the Exchange can be admitted to the ETP Incentive Program on a monthly basis rather than at the beginning of each quarter. See Securities Exchange Act Release No. 75282 (June 24, 2015), 80 FR 37340 (June 30, 2015) (SR-NYSEArca-2015-52) (notice of filing and immediate effectiveness of proposed rule change amending NYSE Arca Equities Rules 7.25 and 8.800 to allow an issuer to elect for its ETP to participate in the Crowd Participant Program or the ETP Incentive Program monthly rather than quarterly and to extend the effectiveness of the Crowd Participant Program until June 23, 2016). In SR-NYSEArca-2015-52, the Exchange stated that the Exchange anticipates that expanding the opportunity for issuers to enter the ETP Incentive Program will facilitate the provision of extra liquidity to lower-volume ETPs by incentivizing more Market Makers to take Lead Market Maker (“LMM”) assignments in certain lower-volume ETPs.

⁵ The ETP Incentive Program is scheduled to end on September 4, 2015. For purposes of the ETP Incentive Program, ETPs include securities listed on the Exchange under the following rules: NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(5) (Equity Gold Shares), 8.100 (Portfolio Depositary Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.600 (Managed Fund Shares), and 8.700 (Managed Trust

The ETP Incentive Program is a pilot program designed to incentivize quoting and trading in ETPs and to add competition among existing qualified Market Makers.⁶ In addition, the ETP Incentive Program is designed to enhance the market quality for ETPs by incentivizing Market Makers to take LMM⁷ assignments in certain lower-volume ETPs by offering an alternative fee structure for such LMMs that would be funded from the Exchange's general revenues. The ETP Incentive Program is designed to improve the quality of market for lower-volume ETPs, thereby incentivizing issuers to list them on the Exchange. Moreover, as described in the ETP Incentive Program Release, the Exchange believes that the ETP Incentive Program, which is entirely voluntary, encourages competition among markets for issuers' listings and among Market Makers for LMM assignments.

The Exchange proposes to extend the current operation of the ETP Incentive Program for an additional year to allow the Commission, the Exchange, LMMs, and issuers to further assess the impact of such program before proposing to make it available to other securities and

Securities).

⁶ A Market Maker is an Equity Trading Permit Holder that acts as a Market Maker pursuant to NYSE Arca Equities Rule 7. See NYSE Arca Equities Rule 1.1(v). An Equity Trading Permit Holder is a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit. See NYSE Arca Equities Rule 1.1(n).

⁷ The LMM program is designed to incentivize firms to take on the LMM designation and foster liquidity provision and stability in the market. In order to accomplish this, the Exchange currently provides LMMs with an opportunity to receive incrementally higher transaction credits and incur incrementally lower transaction fees ("LMM Rates") compared to standard liquidity maker-taker rates ("Standard Rates"). The Exchange generally employs a maker-taker transactional fee structure, whereby an Equity Trading Permit Holder that removes liquidity is charged a fee ("Take Rate"), and an Equity Trading Permit Holder that provides liquidity receives a credit ("Make Rate"). See Trading Fee Schedule, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

implementing the programs on a permanent basis.⁸ Issuers began participating in the ETP Incentive Program following the extension of the first pilot period. The Exchange believes that extending the ETP Incentive Program pilot period for an additional year will provide additional time to assess the impact of the program for these issuers and to provide time for additional issuers to participate in the ETP Incentive Program so that the Commission, the Exchange, LMMs, and issuers may assess the impact of the program before making it available to other securities or implementing it on a permanent basis.⁹

Prior to the end of the pilot period ending September 4, 2016, the Exchange proposes to post a report relating to the ETP Incentive Program (the “Assessment Report”) on its website five months before the end of the pilot period or at the time it files to terminate the pilot, whichever comes first. The proposed Assessment Report would list the program objectives that are the focus of the pilot and, for each, provide (a) a statistical analysis that includes evidence that is sufficient to inform a reader about whether the program has met those objectives during the pilot period, along with (b) a narrative explanation of whether and how the evidence indicates the pilot has met the objective, including both strengths and weaknesses of the evidence in this regard. The Assessment Report also would include a discussion of (a) the procedures used in selecting any samples that are used in constructing tables or statistics for inclusion in the Assessment Report, (b) the definitions of any variables and statistics reported in the tables, including test statistics, (c) the statistical significance levels of any test statistics and (d) other

⁸ The Exchange notes that any proposed further continuance of the ETP Incentive Program, a proposal to make the ETP Incentive Program permanent, or a proposal to make such program available to other securities would require a rule filing with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder.

⁹ The Exchange has provided to the Commission monthly market quality reports relating to the ETP Incentive Program for the period October 2014 through July 2015, which are posted to the Exchange’s website at <https://www.nyse.com/products/etp-incentive-program>.

statistical or qualitative information that may enhance the usefulness of the Assessment Report as a basis for evaluating the performance of the program. The Assessment Report would present statistics on product performance relative to the performance of comparable or other suitable benchmark products (including test statistics that permit the reader to evaluate the statistical significance of any differences reported or discussed in the report), along with information on the procedures that were used to identify those comparable or benchmark products, the characteristics of each comparable or benchmark products, the characteristics of each product that is the focus of the pilot, the procedures used in selecting the time horizon of the sample and the sensitivity of reported statistics to changes in the time horizon of the sample.

This filing is not otherwise intended to address any other issues and the Exchange is not aware of any problems that Equity Trading Permit Holders or issuers would have in complying with the monthly selection provision [sic] or the proposed extension of the pilot program.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is 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 Exchange believes that the ETP Incentive Program is designed to enhance the market quality for ETPs by incentivizing Market Makers to take LMM assignments in certain lower volume ETPs by offering an alternative fee structure for such LMMs that would be funded from the Exchange's general revenues. The ETP Incentive Program is designed to improve the quality

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

of market for lower-volume ETPs, thereby incentivizing them to list on the Exchange.

Moreover, as described in the ETP Incentive Program Release, the Exchange believes that the ETP Incentive Program, which is entirely voluntary, encourages competition among markets for issuers' listings and among Market Makers for LMM assignments.

The Exchange believes that, by providing additional time for issuers to participate in the ETP Incentive Program, through an extension of the pilot period until September 4, 2016, the ETP Incentive Program would continue to provide an opportunity for rewarding competitive liquidity-providing LMMs, with associated requirements for quoting by LMMs at the National Best Bid or National Best Offer. The ETP Incentive Program, therefore, has the potential to enhance competition among liquidity providers and thereby improve execution quality on the Exchange. An extension of such pilot period will permit additional time for the Commission, the Exchange, LMMs, and issuers to assess the impact of the ETP Incentive Program before making it available to other securities. The Exchange will continue to monitor the efficacy of the ETP Incentive Program during the extended pilot period.

The Exchange will continue to monitor the efficacy of the ETP Incentive Program during the extended pilot period. Prior to the end of the pilot period ending September 4, 2016, the Exchange proposes to post an Assessment Report on its website five months before the end of the pilot period or at the time it files to terminate the pilot, whichever comes first. The proposed Assessment Report would list the program objectives that are the focus of the pilot as well as additional information described above.

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 extension to the pilot period for the ETP Incentive Program is not designed to address any competitive issues but rather to program [sic] additional time for the Commission, the Exchange, LMMs and issuers to assess the impact of such program.

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

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) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay to allow the ETP Incentive Program to continue without interruption after September 4, 2015. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹² As stated in the proposal, the Exchange seeks to extend the current operation of the ETP Incentive Program for an additional year and does not propose any substantive changes to the program. The Exchange states that

¹² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

issuers began participating in the ETP Incentive Program following the extension of the first pilot period. The Exchange believes that extending the ETP Incentive Program pilot period for an additional year will provide additional time to assess the impact of the program for these issuers and to provide time for additional issuers to participate in the ETP Incentive Program so that the Commission, the Exchange, LMMs, and issuers may assess the impact of the program. The Commission notes that the Exchange will continue to monitor the efficacy of the ETP Incentive Program during the extended pilot period and will post the Assessment Report on its website prior to the end of the pilot period. Because the proposed change does not alter the substantive terms of the ETP Incentive Program and does not raise any novel or unique regulatory issues, the Commission designates the proposed rule change as operative upon filing.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2015-78 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2015-78. This file number should be included on the subject line if e-mail 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 (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSEArca-2015-78 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Brent J. Fields
Secretary

¹³ 17 CFR 200.30-3(a)(12).