

Martha Redding  
Chief Counsel



March 19, 2014

**VIA E-MAIL**

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: Securities Exchange Act Rel. No. 34-71146 (SR-NYSEArca-2013-141)

Dear Ms. Murphy:

NYSE Arca, Inc. filed the attached amendment to the above-referenced filing on March 19, 2014.

Sincerely,

A handwritten signature in blue ink, appearing to be "M. Redding", written over the word "Sincerely,".

Encl. (Partial Amendment 2 to SR-NYSEArca-2013-141)

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 13      SECURITIES AND EXCHANGE COMMISSION      File No.\* SR - 2013 - \* 141  
 WASHINGTON, D.C. 20549      Form 19b-4      Amendment No. (req. for Amendments \*) 2

Filing by NYSE Arca  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/> Section 806(e)(2) <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to adopt new NYSE Arca Equities Rule 7 25 in order to create a Crowd Participant program to incent competitive quoting and trading volume in exchange traded products by Market Makers qualified with the Exchange as CPs

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Sudhir      Last Name \* Bhattacharyya  
 Title \* Vice President  
 E-mail \* sbhattacharyya@nyx.com  
 Telephone \* (212) 656-2920      Fax (212) 656-8101

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)  
 Chief Counsel

Date 03/19/2014  
 By Martha Redding  
 (Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1369837767371,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Additions: Underlined  
Deletions: [Bracketed]

File No. SR-NYSEArca-2013-141, Partial Amendment No. 2.

NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), submits this Partial Amendment No. 2 to the above-referenced proposed rule change, as described below.<sup>1</sup>

1. The Exchange proposes to amend proposed Rule 7.25(b)(4) that begins on page 66 of 73 of the Exhibit 5 to change, from two-million shares to one-million shares, the consolidated average daily volume (“CADV”) threshold applicable to eligibility to participate in the proposed Crowd Participant (“CP”) Program, as follows:

(4) with respect to an ETP that was listed on the Exchange before the commencement of the CP Program, the ETP has a consolidated average daily volume (“CADV”) of [two] one million shares or less for at least the preceding three months; and

2. The Exchange proposes a corresponding change to amend indented subparagraph 4 on page 7 of 73 of the 19b-4 (page 35 of 73 of the Exhibit 1), as follows:

(4) with respect to an ETP that was listed on the Exchange before the commencement of the CP Program, the ETP has a CADV of [two] one million shares or less for at least the preceding three months; and

3. The Exchange proposes to amend proposed Rule 7.25(i)(4) on page 70 of 73 of the Exhibit 5 to change, from two-million shares to one-million shares, the CADV threshold applicable to withdrawal from the CP Program, as follows:

(4) If an ETP maintains a CADV of [two] one million shares or more for three consecutive months, it shall be automatically withdrawn from the CP Program within one month thereafter. If after such automatic withdrawal the ETP fails to maintain a CADV of [two] one million shares or more for three consecutive months, the issuer of the ETP may reapply for the CP Program one month thereafter.

4. The Exchange proposes several corresponding changes to the 19b-4 (and Exhibit 1), as follows:

- a. To delete certain language in the first paragraph that begins on page 5 of 73 of the 19b-4 (page 31 of 73 of the Exhibit 1) referencing the threshold

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<sup>1</sup> See Securities Exchange Act Release No. 71146 (December 19, 2013), 78 FR 78426 (December 26, 2013) (SR-NYSEArca-2013-141).

as being different from the Exchange's "ETP Incentive Program," as follows:

Both the CP Program, if approved, and the ETP Incentive Program would be subject to one-year pilot periods. During these pilot periods, the Exchange would provide the Securities and Exchange Commission ("Commission") with certain market quality reports each month, which would also be posted on the Exchange's website. The analysis and market quality data provided in the CP Program reports would be identical to that of the ETP Incentive Program reports. The CP Program pilot reports would also compare, to the extent practicable, the CP Program against the ETP Incentive Program, including with respect to the potential impact that one program may have on the other and how the analysis included in the reports with respect to the CP Program, as described further below, compares to the Exchange's similar analysis with respect to the ETP Incentive Program. Other aspects of the CP Program that would be the same as, or substantially similar to, the ETP Incentive Program are (1) payment of an optional fee by a participating issuer, which would be credited to the Exchange's general revenues (although the fee amounts would differ between the CP Program and the ETP Incentive Program); (2) issuer eligibility (although the CP Program would permit an issuer's ETP to participate therein even if the issuer had suspended the issuance of new shares of such ETP, whereas the ETP Incentive Program does not); (3) the notifications provided by the Exchange on its website related to the CP Program; (4) the press releases, and the contents thereof, required of issuers whose ETPs are participating in the CP Program; and (5) the consolidated average daily volume ("CADV") threshold related to an ETP's "graduation" from the CP Program [(although the threshold under the CP Program would be two million shares, whereas the threshold under the ETP Incentive Program is one million shares)].

- b. To change the reference to the threshold from two million shares to one million shares in the last paragraph that begins on page 14 of 73 of the 19b-4 (page 45 of 73 of the Exhibit 1), as follows:<sup>2</sup>

Proposed NYSE Arca Equities Rule 7.25(i) would describe the withdrawal of an ETP.<sup>29</sup> Specifically, if an ETP liquidated or suspended the redemption of shares it would be automatically withdrawn from the CP Program as of the ETP liquidation or suspension date.<sup>30</sup> Also, the Exchange would withdraw an ETP

<sup>2</sup> The text of footnotes 29, 30 and 31 in this paragraph (footnotes 30, 31 and 32 of the Exhibit 1) would not change pursuant to this Partial Amendment No. 2.

from the CP Program upon request from the issuer. Additionally, if the issuer was not current in all payments due to the Exchange after two consecutive quarters, such ETP would be automatically removed from the CP Program.<sup>31</sup> Finally, if an ETP maintained a CADV of [two] one million shares or more for three consecutive months, it would be automatically withdrawn from the CP Program within one month thereafter.<sup>32</sup> If after such automatic withdrawal the ETP failed to maintain a CADV of [two] one million shares or more for three consecutive months, the issuer of the ETP could reapply for the CP Program one month thereafter. The Exchange believes that setting a [two] one-million-share threshold would provide an objective measurement for evaluating the effectiveness of the CP Program, such that the Exchange and the Commission could compare the quality of the market for ETPs, both during their participation in the CP Program and after their “graduation” from the CP Program.

- c. To delete certain language in footnote 32 on page 15 of 73 of the 19b-4 (footnote 33 on page 45 of 73 of the Exhibit 1) referencing the threshold as being different from the Exchange’s “ETP Incentive Program,” as follows:

<sup>32</sup> [Except for the difference in thresholds, t]This would be identical to the process under Rule 8.800(e)(4) of the ETP Incentive Program.

- d. To change the reference to the threshold from two million shares to one million shares in the first paragraph that begins on page 16 of 73 of the 19b-4 (page 47 of 73 of the Exhibit 1), as follows:<sup>3</sup>

During the CP Program, the Exchange would provide the Commission with certain market quality reports each month, which would also be posted on the Exchange’s website. Such reports would include the Exchange’s analysis regarding the CP Program and whether it is achieving its goals,<sup>35</sup> as well as market quality data such as, for all ETPs listed as of the date of implementation of the CP Program and listed during the pilot period (for comparative purposes, including comparable ETPs that are listed on the Exchange but not participating in the CP Program), volume (CADV and NYSE Arca ADV), NBBO bid/ask spread differentials, CP participation rates, NYSE Arca market share, CP time spent at the Inside, CP time spent within \$0.03 of the Inside, percentage of time NYSE Arca had the best price with the best

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<sup>3</sup> The text of footnotes 35 and 36 in this paragraph (footnotes 36 and 37 of the Exhibit 1) would not change pursuant to this Partial Amendment No. 2.

size, CP quoted spread, CP quoted depth, and Rule 605 statistics (one-month delay) as agreed upon by the Exchange and the Commission staff. These reports would also compare, to the extent practicable, ETPs before and after they are in the CP Program, and would further provide data and analysis about the market quality of ETPs that exceed the [two] one-million-share CADV threshold and “graduate,” or are otherwise withdrawn or terminated from, the CP Program. These reports would also compare, to the extent practicable, the CP Program against the ETP Incentive Program, including with respect to the potential impact that one program may have on the other and how the analysis described above with respect to the CP Program compares to the Exchange’s similar analysis with respect to the ETP Incentive Program. In connection with this proposal, the Exchange would provide other data and information related to the CP Program as may be periodically requested by the Commission. In addition, and as described further below, issuers could utilize ArcaVision to analyze and replicate data on their own.<sup>36</sup> The Exchange believes that this information will help the Commission, the Exchange, and other interested persons to evaluate whether the CP Program has resulted in the intended benefits it is designed to achieve, any unintended consequences resulting from the CP Program, and the extent to which the CP Program alleviates or aggravates any potential concerns related to the CP Program, including relating to issuer payments to market makers.

- e. To change the reference to the threshold from two million shares to one million shares in the second paragraph that begins on page 24 of 73 of the 19b-4 (page 59 of 73 of the Exhibit 1), as follows:

The Exchange believes that the proposed rule change is consistent with the Act, including with respect to the proposed [two] one-million-share CADV threshold. The Exchange does not believe that this would unfairly discriminate between issuers of ETPs with a CADV of [two] one million shares or more, as compared to issuers of ETPs with a CADV of less than [two] one million shares, because the process for ETPs to “graduate” from the CP Program would provide an objective measurement for evaluating the effectiveness of the CP Program, such that the Exchange and the Commission could compare the quality of the market for ETPs, both during their participation in the CP Program and after their “graduation” from the CP Program. The Exchange believes that this is consistent with its proposal to operate the CP Program as a one-year pilot program, which would allow for the assessment of whether the CP Program is achieving its intended goal. Additionally, the [two] one-million-share CADV “graduation,”

combined with the operation of the CP Program on a pilot basis, would allow for the assessment, prior to any proposal or determination to make the CP Program permanent, of whether the CP Program has any unintended impact on the participating ETPs, securities not participating in the program, or the market or market participants generally.

5. The Exchange proposes to amend the proposed CP Program text in the Exchange's Schedule of Fees and Charges for Exchange Listing Services ("Listing Fee Schedule") on page 71 of 73 of the Exhibit 5 to change the CP Program Fee from a fixed amount of \$50,000 to a range of \$50,000 to \$100,000, as determined by the issuer, as follows:

**CP Program Fee  
Under NYSE Arca Equities**

**Rule 7.25:** \$50,000-\$100,000 per year

The CP Program Fee for each ETP shall be paid by the issuer to the Exchange in quarterly installments at the beginning of each quarter and prorated if the issuer commences participation for an ETP in the CP Program after the beginning of a quarter. The CP Program Fee paid by an issuer shall be credited to the Exchange's general revenues. The issuer shall not receive a credit from the Exchange following the end of the quarter if a CP is assigned to the ETP during such quarter, even if the assigned CPs did not satisfy their daily or monthly quoting requirements in any given month in such quarter for the ETP. The precise amount of the CP Program Fee to be paid for an ETP in the CP Program will be determined by the issuer.

If the ETP has a sponsor, the sponsor may pay the CP Program Fee to the Exchange. The term "sponsor" means the registered investment adviser that provides investment management services to an ETP or any of such investment adviser's parents or subsidiaries.

6. The Exchange proposes several corresponding changes to the 19b-4 (and Exhibit 1), as follows:
  - a. To amend footnote 9 on page 7 of 73 of the 19b-4 (footnote 10 on page 35 of 73 of the Exhibit 1), as follows:

<sup>9</sup> The issuer application process under proposed Rule 7.25(c) would be substantially similar to the process under Rule 8.800(b) for issuers whose ETPs participate in the ETP Incentive Program, except that (i) proposed Rule 7.25(c)(2) would not include a restriction with respect to the number of ETPs that an issuer could designate to participate in the

CP Program that were listed on the Exchange prior to the pilot period, [(ii) as described below, an issuer whose ETP is participating in the CP Program would not be able to determine the amount of the CP Program Fee,] and [(i)iii) the process described under Rule 8.800(b)(4)-(5) for the ETP Incentive Program related to issuer-LMM contact, LMM meetings/presentations to/with the Exchange, and issuer indications of preference regarding the specific LMM assigned to an ETP would not be applicable.

- b. To amend footnote 11 on page 8 of 73 of the 19b-4 (footnote 12 on page 36 of 73 of the Exhibit 1), as follows:

<sup>11</sup> The Exchange notes that, whereas the Optional Incentive Fee for the ETP Incentive Program is determined by the issuer within a range of \$10,000 to \$40,000, the CP Program Fee would be [fixed at] determined by the issuer within a range of \$50,000 to 100,000 [for any issuers whose ETPs are participating]. Similarly, an “MQP Company” participating in NASDAQ’s MQP also incurs an “MQP Fee” that is within a range of \$50,000 to \$100,000, as determined by the MQP Company. See NASDAQ Rule 5950(b)(2).

- c. To amend the first paragraph that begins on page 11 of 73 of the 19b-4 (page 39 of 73 of the Exhibit 1), as follows:<sup>4</sup>

Proposed NYSE Arca Equities Rule 7.25(e) would describe an issuer’s payment of the CP Program Fee. An issuer of an ETP that is participating in the CP Program would be required to pay the Exchange a CP Program Fee in accordance with the Exchange’s Listing Fee Schedule, which would be credited to the Exchange’s general revenues. In this regard, the Exchange proposes to amend its Listing Fee Schedule to provide that the CP Program Fee under Rule 7.25 would be determined by the issuer within a range of \$50,000 to \$100,000.<sup>19</sup> Specifically, the Listing Fee Schedule would specify that the CP Program Fee for each ETP would be paid by the issuer to the Exchange in quarterly installments at the beginning of each quarter and prorated if the issuer commenced participation for an ETP in the CP Program after the beginning of a quarter.<sup>20</sup> The CP Program Fee paid by an issuer would be credited to the Exchange’s general revenues. The issuer would not receive a credit from the Exchange following the end of the quarter

<sup>4</sup> The text of footnotes 20 through 22 in this paragraph (footnotes 21 through 23 of the Exhibit 1) would not change pursuant to this Partial Amendment No. 2.

if a CP were assigned to the ETP during such quarter, even if the assigned CPs did not satisfy their daily or monthly quoting requirements in any given month in such quarter for the ETP.<sup>21</sup> If the ETP had a sponsor, the sponsor could pay the CP Program Fee to the Exchange.<sup>22</sup>

- d. To amend footnote 19 on page 11 of 73 of the 19b-4 (footnote 20 on page 40 of 73 of the Exhibit 1), as follows:

<sup>19</sup> As noted above, whereas the Optional Incentive Fee for the ETP Incentive Program is determined by the issuer within a range of \$10,000 to \$40,000 per ETP, the CP Program Fee would be [fixed at] determined by the issuer within a range of \$50,000 to \$100,000 per ETP for any issuers whose ETPs are participating. Like the ETP Incentive Program, the issuer would still be required to pay applicable Listing Fees and Annual Fees. Under the current Listing Fee Schedule, an issuer of an ETP is required to pay a Listing Fee that ranges from \$5,000 to \$45,000. An ETP issuer also pays a graduated Annual Fee based on the number of shares of the ETP that are outstanding. The Annual Fee ranges from \$5,000 to \$55,000.

- e. To amend the first paragraph that begins on page 25 of 73 of the 19b-4 (the second paragraph that begins on page 60 of 73 of the Exhibit 1), as follows:

The Exchange believes that the CP Program Fee is reasonable, equitably allocated, and not unreasonably discriminatory because it is entirely voluntary on an issuer's part to join the CP Program. The fee of between \$50,000 and \$100,000 would be within the same range as that applicable under NASDAQ's MQP and would also be the same for all issuers participating in the CP Program and credited to the Exchange's general revenues. Only issuers that voluntarily join the CP Program would be required to pay the fees. The Exchange believes that this is fairer than requiring all issuers to pay higher fees to fund the CP Program. Additionally, it is reasonable for an issuer to receive a credit from the Exchange following the end of a quarter if no CPs were assigned to the ETP during the entire such quarter because the ETP would not have had any CP quoting and trading activity during such quarter.

7. The Exchange proposes to amend the proposed CP Program text in the Exchange's Listing Fee Schedule on page 71 of 73 of the Exhibit 5 to eliminate any potential confusion regarding whether the CP Program Fee could be refunded to an issuer. For the avoidance of doubt, the CP Program Fee could not be

refunded to an issuer. The Exchange would not permit an issuer's ETP to begin participation in the CP Program unless there were eligible CPs assigned to such ETP. The Exchange would not invoice an issuer for the CP Program Fee until the issuer's ETP has begun participating in the CP Program. Once participation has begun, and therefore CP(s) have been assigned, no refund of the CP Program fee would occur, even if the assigned CPs did not satisfy their quoting requirements. The proposed change is as follows:

**CP Program Fee**

**Under NYSE Arca Equities**

**Rule 7.25:** \$50,000 per year

The CP Program Fee for each ETP shall be paid by the issuer to the Exchange in quarterly installments at the beginning of each quarter and prorated if the issuer commences participation for an ETP in the CP Program after the beginning of a quarter. The CP Program Fee paid by an issuer shall be credited to the Exchange's general revenues. The issuer shall not receive a credit from the Exchange [following the end of the quarter if a CP is assigned to the ETP during such quarter], even if the assigned CPs did not satisfy their daily or monthly quoting requirements in any given month in such quarter for the ETP.

If the ETP has a sponsor, the sponsor may pay the CP Program Fee to the Exchange. The term "sponsor" means the registered investment adviser that provides investment management services to an ETP or any of such investment adviser's parents or subsidiaries.

8. The Exchange proposes several corresponding changes to the 19b-4 (and Exhibit 1) and Exhibit 5, as follows:
  - a. To amend proposed Rule 7.25(e)(1) on page 68 of 73 of the Exhibit 5 to add a reference to the CP Program Fee being non-refundable, as follows:
    - (1) An issuer (or sponsor on behalf of the issuer) of an ETP that is participating in the CP Program shall pay the Exchange a non-refundable "CP Program Fee" in accordance with the Exchange's Listing Fee Schedule, which shall be credited to the Exchange's general revenues. An ETP shall not be permitted to begin participation in the CP Program unless there are eligible CPs assigned to such ETP.
  - b. To (i) delete the corresponding language removed in 7 above from the first paragraph that begins on page 11 of 73 of the 19b-4 (page 39 of 73 of the

Exhibit 1), and (ii) add the reference to non-refundable that was added in 6(a) above, as follows:<sup>5</sup>

Proposed NYSE Arca Equities Rule 7.25(e) would describe an issuer's payment of the non-refundable CP Program Fee. An issuer of an ETP that is participating in the CP Program would be required to pay the Exchange a CP Program Fee in accordance with the Exchange's Listing Fee Schedule, which would be credited to the Exchange's general revenues. In this regard, the Exchange proposes to amend its Listing Fee Schedule to provide that the CP Program Fee under Rule 7.25 would be \$50,000.<sup>19</sup> Specifically, the Listing Fee Schedule would specify that the CP Program Fee for each ETP would be paid by the issuer to the Exchange in quarterly installments at the beginning of each quarter and prorated if the issuer commenced participation for an ETP in the CP Program after the beginning of a quarter.<sup>20</sup> The CP Program Fee paid by an issuer would be credited to the Exchange's general revenues. The issuer would not receive a credit from the Exchange [following the end of the quarter if a CP were assigned to the ETP during such quarter], even if the assigned CPs did not satisfy their daily or monthly quoting requirements in any given month in such quarter for the ETP.<sup>21</sup> If the ETP had a sponsor, the sponsor could pay the CP Program Fee to the Exchange.<sup>22</sup>

- c. To delete certain language in footnote 20 on page 11 of 73 of the 19b-4 (footnote 21 on page 40 of 73 of the Exhibit 1), as follows:

<sup>20</sup> The description of payment of the CP Program Fee by issuers would be substantially similar to that of the Optional Incentive Fee under the ETP Incentive Program[, including by describing the circumstance under which the issuer would not receive a credit from the Exchange].

- d. To add certain language in footnote 21 on page 11 of 73 of the 19b-4 (footnote 22 on page 40 of 73 of the Exhibit 1), as follows:

<sup>21</sup> As described in proposed NYSE Arca Equities Rule 7.25(e)(1), an ETP would not be permitted to begin participation in the CP Program, and would therefore not be charged the CP Program Fee, unless there were eligible CPs assigned to such ETP.

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<sup>5</sup> The text of footnotes 19 and 22 in this paragraph (footnotes 20 and 23 of the Exhibit 1) would not change pursuant to this Partial Amendment No. 2.

- e. To amend proposed Rule 7.25(c)(2) on page 67 of 73 of the Exhibit 5 to add a reference to the CP Program Fee being non-refundable, as follows:

(2) An issuer that wishes to have an ETP participate in the CP Program and pay the Exchange a non-refundable CP Program Fee shall submit a written application in a form prescribed by the Exchange for each ETP. An issuer may elect for its ETP to participate at the time of listing or thereafter at the beginning of each quarter. The Exchange may, on a CP Program-wide basis, limit the number of ETPs that any one issuer may have in the CP Program.

- f. To make a corresponding change to amend the first paragraph beginning on page 8 of 73 of the 19b-4 (the second paragraph beginning on page 35 of 73 of the Exhibit 1), as follows:<sup>6</sup>

Proposed NYSE Arca Equities Rule 7.25(c)(2) would describe that an issuer that wished to have an ETP participate in the CP Program and pay the Exchange a non-refundable CP Program Fee would be required to submit a written application in a form prescribed by the Exchange for each ETP. An issuer could elect for its ETP to participate at the time of listing or thereafter at the beginning of each quarter. The Exchange notes that it may, on a CP Program-wide basis, limit the number of ETPs that any one issuer may have in the CP Program, and any such limitation would be uniformly applied to all issuers.<sup>10</sup>

- g. To amend the first paragraph under the heading “Relief from Regulation M” on page 18 of 73 of the 19b-4 (page 50 of 73 of the Exhibit 1) to add a reference to the CP Program Fee being non-refundable, as follows:<sup>7</sup>

Rule 102 of Regulation M prohibits an issuer from directly or indirectly attempting “to induce any person to bid for or purchase, a covered security during the applicable restricted period” unless an exemption is available.<sup>39</sup> The payment of the optional, non-refundable CP Program Fee by the issuer (or sponsor on behalf of the issuer) for the purpose of incentivizing Market Makers to become CPs in an issuer’s security could constitute an attempt by the issuer to induce a bid for a purchase of a “covered security” during a restricted period.<sup>40</sup> As a result, absent exemptive relief, participation in the CP Program by an issuer (or sponsor on behalf

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<sup>6</sup> The text of footnote 10 in this paragraph (footnote 11 of the Exhibit 1) would not change pursuant to this Partial Amendment No. 2.

<sup>7</sup> The text of footnotes 39 and 40 in this paragraph (footnotes 40 and 41 of the Exhibit 1) would not change pursuant to this Partial Amendment No. 2.

of the issuer) could violate Rule 102 of Regulation M. For the reasons discussed below, the Exchange believes that exemptive relief from Rule 102 should be granted for the CP Program.

- h. To delete certain text from the first paragraph that begins on page 25 of 73 of the 19b-4 (second paragraph that begins on page 60 of 73 of the Exhibit 1), as follows:

The Exchange believes that the CP Program Fee is reasonable, equitably allocated, and not unreasonably discriminatory because it is entirely voluntary on an issuer's part to join the CP Program. The fee of \$50,000 would be the same for all issuers participating in the CP Program and credited to the Exchange's general revenues. Only issuers that voluntarily join the CP Program would be required to pay the fees. The Exchange believes that this is fairer than requiring all issuers to pay higher fees to fund the CP Program. [Additionally, it is reasonable for an issuer to receive a credit from the Exchange following the end of a quarter if no CPs were assigned to the ETP during the entire such quarter because the ETP would not have had any CP quoting and trading activity during such quarter.]