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Securities and Exchange Commission
100 F St. NW
Washington, DC 20549-9303
Rule-comments@sec.gov

Re: Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Adopt a New Policy Relating to Trade Reports for Exchange Traded Products

File SR-NYSEArca-2015-104

Dear Securities and Exchange Commission:

NYSE Arca has proposed to flag so-called "aberrant trades" in Exchange Traded Products (ETPs).[1] Under the proposal, the exchange will append an "aberrant trade" flag on any trade that deviates more than $.50 (for ETPs less than $100) or 50 basis points (for ETPs more than $100) from a vaguely-defined reference price. This flag may be appended long after the trade at the discretion of the exchange. This means that, even though the exchange recognizes that the trade price is so bad that it "deviate[s] significantly from prevailing market prices and/or an investment fund's underlying value," the trade will stand. However, the flag indicates that the aberrant trade would not be used to calculate the last sale, high, low, or perhaps close for the day.

Fortunately, this deals with extremely rare events as ETPs normally track their underlying values very closely. Except when they don't.

[1] http://www.sec.gov/rules/sro/nysearca/2015/34-76431.pdf

The Exchange should prevent aberrant trades rather than just flag them.

ETPs are important products that are widely held by retail investors like me. We depend on the arbitrage mechanism to keep the price of the ETP very close to the price of the underlying assets in the ETP. August 24 demonstrated that this does not always work. Thousands of trades occurred in ETPs that were many dollars (!) away from the contemporaneous values of their underlying portfolios. These trades were neither prevented nor busted, to the detriment of many investors. The trading on that morning was neither fair nor orderly.

Improvements need to be made in the market structure for ETPs to prevent such malfunctions in the future. Busting trades after the fact is a poor solution, as the practice creates uncertainty regarding the finality of a trade and deters market participants from stepping in and providing liquidity during times of market stress. Prevention of aberrant and erroneous trades is the best solution.

Using the IOPV for the LULD reference price will reduce the bad fill problem.

There is a fairly simple solution to the problem of ETPs trading far away from the contemporaneous values of their underlying assets. ETPs generally disseminate estimates of their contemporaneous values, known as IOPVs, every 15 seconds. These IOPVs should be used as the reference price for setting the upper and lower price bands for purposes of the Limit-Up Limit-Down (LULD) mechanism. This will prevent any trades from taking place far away from their IOPVs.

Some may argue that IOPVs are stale, as they can be up to 15 seconds old. LULD reference prices are updated at most every 30 seconds, so IOPVs are less stale that LULD reference prices. Others may argue that IOPV prices are not accurate enough, since they are often based on last trade and not contemporaneous bids and offers. For ETPs where the underlying market is open, this is not a major issue. The LULD reference price only needs to be good enough to provide a band in which trading can take place. It does not need to be perfect down to the last penny. Indeed, the LULD reference price is only updated if it has moved by 1% or more. (When the underlying market for the ETPs assets is closed, then it may make sense to use the current method for determining the LULD reference price.)

Keeping bad fills out of execution quality statistics is a bad idea.

The example given in the filing is a good reason to reject this proposal in its present form. The exchange gives an example of a single bad trade near the close that distorts that last sale and presumably the closing price. The exchange writes

> "If this trade results in a daily last sale for the ETF that materially differs from the fund's NAV, an investor using a third-party website that utilizes trade data to compute tracking error statistics for the ETF could be misled into thinking that the ETF does not provide desired

> tracking performance to investors over time, when in fact the apparent poor tracking was due only to a single aberrant trade."

Well, such deviations do happen, and investors need to be aware that such deviations do happen. Even though aberrant trades are fortunately extremely rare, they can and do occur and investors need to be aware of this possibility. If investors are aware that ETP prices can deviate from the values of their underlying assets in times of market stress, they will be more careful about their trading strategies. As long as there are a sufficient number of data points, the execution quality statistics will not be unduly influenced by a single bad trade, but instead become more accurate.

Rather than cover up such bad fills, the appropriate response is to prevent them in the first place. At the very least disclose them and include them in execution quality statistics. In the hypothetical example given, the ETP had near perfect tracking error for a long period of time with the exception of the single aberrant trade. In such a case, the average execution quality statistics would still look really good even if the aberrant trade were included.

The proposal is vague over the definition of the reference price.

This proposal is vague with respect to the term "reference price". The phrase "reference price" has become a term of art with respect to the limit-up limit-down (LULD) circuit breakers. With respect to LULD, the reference price is generally the average price over the last five minutes. In this proposed rule filing, the reference price is "if the primary market for an ETP is open at the time of the trade, the national best bid or offer for the ETP." Which is it, the bid or the offer? This is unclear.

Basing the aberrant trade reference price on the NBBO is problematic when the NBBO is aberrant.

During a time of market disruption, even the NBBO for ETPs can deviate far from their underlying values, as was seen on August 24. Thus, it is likely that this proposal will fail to accurately flag many aberrant trades during times of market stress.

Competitive exchanges should be innocent until proven guilty. SIPS are slightly different.

My usual belief is that, in our competitive world, exchanges should be given the benefit of the doubt and treated as innocent until proven guilty. Exchange rule filings dealing with exchange operations should usually be approved quickly and with a minimum of red tape. Or better yet, without red tape at all. The laborious public comment process is often a waste of the SEC's scarce resources which can be better deployed elsewhere at the SEC. As no exchange has the majority of market share even in its own listings, competition will judge whether an exchange is performing its function of adding value to the capital markets. Wasting taxpayer dollars on excessive micromanagement of exchange operations does not produce better capital markets.

However, this proposal does not deal with the usual details of exchange operation, but with the operation of the SIP and the quality of the data that are broadcast to the financial markets after the trades. As a SIP has a regulated legal monopoly on the dissemination of the "official" consolidated data and it lacks effective competition, closer oversight is warranted.

The proposal should be reworked to prevent whitewashing of execution quality statistics.

For these reasons, this proposed rule should be rejected in its present form. There is nothing inherently wrong with adding additional information and flagging aberrant trades, as long as the flag is not used for whitewashing execution quality statistics. The exchange should be encouraged to work on a revised proposal that would prevent the use of the flag for whitewashing execution quality statistics.

Respectfully submitted,

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