

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72963; File No. SR-NYSEArca-2014-99)

September 3, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Operation of the NYSE Arca ETP Incentive Program, Currently Scheduled to Expire on September 3, 2014, for an Additional Year

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 28, 2014, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 extend the operation of the NYSE Arca ETP Incentive Program, currently scheduled to expire on September 3, 2014, for an additional year. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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 places

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 extend the operation of the NYSE Arca ETP Incentive Program (“Incentive Program”),<sup>4</sup> a one-year pilot program for issuers of certain exchange-traded products (“ETPs”) listed on the Exchange, for an additional year. The Incentive Program is currently scheduled to expire on September 3, 2014. As proposed, the pilot program would be set to end on September 4, 2015.

NYSE Arca established the Incentive Program to enhance the market quality for ETPs by incentivizing Market Makers<sup>5</sup> to take Lead Market Maker (“LMM”) assignments in certain lower volume ETPs by offering an alternative fee structure for such LMMs. The Incentive Program is designed to improve the quality of market for lower-volume ETPs, thereby incentivizing them to list on the Exchange. Moreover, the Exchange believes that the Incentive Program, which is entirely voluntary, encourages competition among markets for issuers’ listings and among Market Makers for LMM assignments.

This filing seeks to extend the current operation of the Incentive Program for an additional year to allow the Commission, the Exchange, LMMs, and issuers to further assess the

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<sup>4</sup> See Rule 8.800 and Securities Exchange Act Release No. 34-69706 (June 6, 2013), 78 FR 35340 (June 12, 2013) (SR-NYSEArca-2013-34) (order establishing the Incentive Program).

<sup>5</sup> A Market Maker is an Equity Trading Permit Holder (“ETP Holder”) that acts as a Market Maker pursuant to NYSE Arca Equities Rule 7. See NYSE Arca Equities Rule 1.1(v). An ETP 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).

impact of the Incentive Program before making it available to other securities and implementing the program on a permanent basis.<sup>6</sup> During the initial one-year pilot period, because no ETP issuers signed up for the Incentive Program, the Exchange does not have any data to assess the impact of the Incentive Program on ETP market quality or whether any provisions of the Incentive Program should be modified.<sup>7</sup> The Exchange believes that extending the pilot period for an additional year will provide additional time for issuers to participate in the Incentive Program so that the Commission, the Exchange, LMMs, and issuers may assess the impact of the Incentive Program before making it available to other securities or implementing it on a permanent basis.<sup>8</sup>

This filing is not otherwise intended to address any other issues and does not propose any substantive changes to the Incentive Program. The Exchange is not aware of any problems that ETP Holders or issuers would have in complying with the proposed extension.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>10</sup> 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

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<sup>6</sup> The Exchange notes that any proposed further continuance of the Incentive Program or proposal to make the Incentive Program permanent would require a rule filing with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder.

<sup>7</sup> See Securities Exchange Act Release No. 34-69706 (June 6, 2013), 78 FR 35340 (June 12, 2013) (SR-NYSEArca-2013-34) (order approving Rule 8.800 and specifying the requirement for the Exchange to assess the impact of the Incentive Program).

<sup>8</sup> The Exchange notes that if the Incentive Program in its current form continues to go unused, the Exchange will not seek an additional extension of the pilot period.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system because it provides a venue to enhance quote competition, improve liquidity, support the quality of price discovery, promote market transparency, and increase competition for listings and trade executions while reducing spreads and transaction costs. Moreover, requesting an extension of the Incentive Plan will permit additional time for the Commission, the Exchange, LMMs, and issuers to assess the impact of the Incentive Program before making it available to other securities. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>11</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that extending the operation of the Incentive Program will enhance competition among liquidity providers and thereby improve execution quality on the Exchange. The Exchange will continue to monitor the efficacy of the program during the proposed extended pilot period.

Finally, the Exchange notes that it operates in a highly competitive market in which issuers and market participants can readily favor competing venues. In such an environment, the Exchange must continually review and consider adjusting the services it offers and the

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<sup>11</sup> 15 U.S.C. 78f(b)(8).

requirements it imposes in order to remain competitive with other U.S. equity exchanges. Moreover, the competition for listings among the exchanges is fierce. The Exchange notes that BATS Exchange, Inc. (“BATS”) has already implemented a program similar to the Exchange’s proposed Incentive Program,<sup>12</sup> and NASDAQ has received approval to do so as well.<sup>13</sup>

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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 foregoing 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 for 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<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative

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<sup>12</sup> See Interpretation and Policy .02 of BATS Rule 11.8. See also Securities Exchange Act Release Nos. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR-BATS-2011-051) and 66427 (February 21, 2012), 77 FR 11608 (February 27, 2012) (SR-BATS-2012-011).

<sup>13</sup> See Securities Exchange Act Release No. 69195 (March 20, 2013), 78 FR 18393 (March 26, 2013) (SR-NASDAQ-2012-137).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

for 30 days after the date of 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 Incentive Program to continue without interruption after September 3, 2014, and therefore be available should an issuer be interested in participating during September 2014. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>16</sup> As stated in the proposal, the Exchange seeks to extend the current operation of the Incentive Program for an additional year and does not propose any substantive changes to the Incentive Program. The Exchange states that during the initial one-year pilot period, no ETP issuers signed up for the Incentive Program, and therefore, the Exchange has no data to assess the impact of the Incentive Program on ETP market quality or whether any provisions of the Incentive Program should be modified.<sup>17</sup> The Exchange believes that extending the pilot period for an additional year will provide additional time for issuers to participate in the Incentive Program so that the Commission, the Exchange, LMMs, and issuers may assess the impact of the Incentive Program. The Commission notes that if the Incentive Program in its current form continues to go unused, the Exchange will not seek an additional extension of the pilot period. Because the proposed change does not alter the substantive terms of the 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

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<sup>16</sup> 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).

<sup>17</sup> See supra note 6. The Commission notes that any proposed modification of any provision of the Incentive Program would also require a rule filing with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2014-99 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-2014-99. 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, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such 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-2014-99 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.<sup>18</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).