SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76431; File No. SR-NYSEArca-2015-104)

November 12, 2015

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

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 October 28, 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 the Substance of the Proposed Rule Change

The Exchange proposes a new policy relating to its treatment of trade reports for Exchange Traded Products that it determines to be inconsistent with the prevailing market. 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 received on the proposed rule change. The text of those statements may be examined at the places

1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Trades in Exchange Traded Products ("ETP")[4] occasionally occur at prices that deviate significantly from prevailing market prices and/or an investment fund's underlying value. These trades may be due to brief price dislocations caused, for example, by unusually large orders, momentary reductions in liquidity, or brief trading or pricing errors by individual market participants. The resulting trades may occasionally establish a high, a low or last sale price for a security that does not reflect price discovery in the fund holdings in a manner that is representative of ongoing trading in an ETP tracking the real-time value of the fund's underlying securities, and could impact statistics for the investment fund as computed by third parties in a way that is inappropriately reflective of very short-term market impact rather than ongoing fund

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[4] For purposes of this filing, ETPs include Exchange Traded Funds (ETFs), Exchange Traded Notes (ETNs) and Exchange Traded Vehicles (ETVs). An ETF is an open-ended registered investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the SEC to allow secondary market trading in the ETF shares. ETFs are generally index-based products, in that each ETF holds a portfolio of securities that is intended to provide investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index. An ETV tracks the underlying performance of an asset or index, allowing investors exposure to underlying assets such as futures contracts, commodities and currencies without actually trading futures or taking physical delivery of the underlying asset. An ETV is traded intraday like an ETF. An ETV is an open-ended trust or partnership unit that is registered under the Securities Act of 1933. An ETN is a senior unsecured debt obligation designed to track the total return of an underlying index, benchmark or strategy, minus investor fees. ETNs are registered under the Securities Act of 1933 and are redeemable to the issuer. In 2014, NYSE Arca's listed ETPs had over $1.89 trillion in assets under management (AUM), representing over 90% of all U.S. listed Exchange Traded Products (ETPs). Additional information on ETPs is available on the Exchange's website at https://www.nyse.com/products/etp-funds-etf.

performance, leading to investor confusion. For example, trading and quoting in a particular ETF holding a basket of stocks reflecting the S&P 500 index might track that index with de minimis tracking error every minute throughout all trading days for five years, then suddenly trade 1% higher than the S&P 500 index on the close one day due to a large order that was erroneously entered by a single broker-dealer as a "Market" order rather than a "Market on Close" order, hence trading through multiple price levels in the book instantaneously rather than creating a disseminated imbalance that would attract normally-priced contra-sided interest in a closing auction. 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. While such events may occur randomly and on both sides of the market, because tracking error, for example, is measured as a mean squared deviation from NAV, both positive and negative divergence increase tracking error and therefore upside and downside deviations compound, rather than offset, over time.

The Exchange currently has a policy to address such instances of "aberrant" trades for equity securities generally.[5] The purpose of this proposed rule change is to adopt an additional policy to address instances of "aberrant" trades specific to ETPs traded on the Exchange.

With certain exceptions that are specific to the trading of ETPs, the proposed rule change

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5 See Securities Exchange Act Release No. 59937 (May 18, 2009), 74 FR 25291 (May 27, 2009) (SR-NYSEArca-2009-24). The NYSE Arca policy is substantially similar to policies adopted by other markets. See Securities Exchange Act Release Nos. 59064 (December 5, 2008), 73 FR 76082 (December 15, 2008) (SR-NYSE-2008-91); and 59151 (December 23, 2008), 74 FR 158 (January 2, 2009) (SR-NASDAQ-2008-100).

is identical to the policy previously adopted by the Exchange.[6] The Exchange believes that the derivatively-priced nature of ETPs necessitates the use of a different, and generally broader, set of circumstances to determine that trades are “aberrant.” Unlike common stocks, the “fair value” and arbitrage pricing bands for an ETP are often known with a reasonably high degree of accuracy, since creation/redemption baskets reflecting actual fund holdings are disclosed daily and are available to be exchanged for new ETP shares, or to be received for redeeming ETP shares, on a daily basis, along with the dissemination of constituent information and intraday pricing information such as Intraday Optimized Portfolio Values (“IOPVs”). As a result, it is often the case that smaller dislocations in ETP trade prices than in stock prices are manifestly not reflective of the trading pattern in the security.

The Consolidated Tape Association (“CTA”) offers each Participant in the CTA Plan the discretion to append an indicator to a trade report to indicate that the market believes that the price of a trade executed on that market does not accurately reflect the prevailing market for the security (an “Aberrant Report Indicator”).[7] During the course of monitoring by the Exchange or as a result of notification by another market, listed ETP issuer or market participant, the Exchange may become aware of ETP trade prices that do not accurately reflect the prevailing market for an ETP or an investment fund’s underlying value. In such a case, the Exchange proposes to apply a new policy pursuant to which it:

(i) May determine to append an Aberrant Report Indicator to any trade report with respect to any ETP trade executed on the Exchange that the Exchange determines to be inconsistent with the prevailing market; and

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6 Id.

7 The CTA recommends that data recipients should exclude the price of any trade to which the Aberrant Report Indicator has been appended from any calculation of the high, low or last sale prices for the security.

(ii) Would encourage vendors and other data recipients not to use prices of trades to which the Exchange has appended the Aberrant Trade Indicator in any calculation of the high, low or last sale price of an ETP.

The Exchange would provide to data users an explanation of the parameters used in its aberrant trade policy and urge vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades a vendor chooses to exclude from high, low or last sale price information it disseminates. Upon initial adoption of the Aberrant Report Indicator, the Exchange would also contact all of its listed ETP issuers to explain the aberrant trade policy and inform users of the information that trades appended with an Aberrant Report Indicator are still valid trades and not unwound as in the case of a clearly erroneous trade.[8] In addition, the Exchange would inform an NYSE Arca listed ETP issuer each time the Exchange appends an Aberrant Report Indicator to a trade in such issuer's listed ETP.

While the CTA disseminates its own calculations of high, low and last sale prices, vendors and other data recipients—and not the Exchange—frequently determine their own, different methodology by which they wish to calculate high, low and last sale prices. Therefore, the Exchange would provide to vendors and data recipients an explanation of the parameters used in its aberrant trade policy and the potential deleterious effects that can result from including in the calculations a trade to which the Aberrant Report Indicator has been appended.

In determining whether to append an Aberrant Report Indicator, the proposed Exchange

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8 This proposed rule change would not impact a listed ETP issuer's ability to seek cancellation of a transaction on the basis that it was "clearly erroneous" under Rule 7.10 (Clearly Erroneous Executions). In the event that a listed ETP issuer files for a transaction to be "clearly erroneous," and the transaction is not cancelled, the Exchange reserves discretion to append an Aberrant Trade Indicator to the trade report to indicate that the market believes that the trade price in a trade executed on that market does not accurately reflect the prevailing market and/or value for an ETP.

policy would be as follows:

1. Absent exceptional circumstances, the Exchange will determine whether a trade price does not reflect the prevailing market for an ETP if the trade occurs at the greater of a minimum of 50 cents[9] or 50 basis points[10] away from a previous trade or valid "Reference Price". The Exchange believes that these are conservative values that are much larger than typical ETF arbitrage bounds, as evidenced for example by bid-ask spreads, and therefore should only be exceeded in cases where it may be appropriate to mark a given trade as aberrant, subject to the further conditions in (2) below. For example, the typical bid-ask spread in the iShares MSCI Emerging Markets ETF ("EEM") and the Vanguard FTSE Emerging Markets ETF ("VWO"), which each hold many emerging-market stocks that may be lightly traded individually, are both only 3 basis points over the 45 trading days ending September 23, 2015, which included a particularly volatile period of trading.[11] As a result, and based on feedback from ETF issuers, beyond this level the Exchange believes that issuer performance measurements may be adversely impacted in a manner not reflective of long-term fund performance.

   The "Reference Price" refers to (a) if the primary market for an ETP is open at the time of the trade, the national best bid or offer for the ETP, or (b) if the primary

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9 As proposed, the 50 cent threshold would be applicable when the trade price or Reference Price is $100 or below.

10 As proposed, the 50 basis point threshold would be applicable when the trade price or Reference Price is more than $100.

11 http://www.etf.com/EEM and http://www.etf.com/VWO, each accessed September 24, 2015.

market for an ETP is not open at the time of the trade, the first executable quote or print for the ETP on the primary market after execution of the trade in question. However, if the circumstances suggest that a different Reference Price would be more appropriate, the Exchange will use the different Reference Price. For instance, if the national best bid and offer for an ETP are so wide apart as to fail to reflect the market for an ETP, the Exchange might use as the Reference Price a trade price or best bid or offer that was available prior to the trade in question.

2. If the conditions in (1) above are met, the Exchange will determine whether to append an Aberrant Report Indicator upon consideration of all factors related to a trade, including the following:[12]

- Index changes, reconstitutions and rebalances;
- News released in the market where the ETP's assets are primarily invested;
- Changes in availability of ETP creations and/or redemptions;
- Executions in other derivative instruments tracking the same underlying indices;
- ETP issuer credit risk changes;
- Whether the trade price represents a 52-week high or low for the ETP;
- Whether the trade price reflects a share-split, reorganization or other corporate action;
- System malfunctions or disruptions;

12 A majority of the factors listed are identical to factors the Exchange considers in determining whether or not to append an Aberrant Report Indicator to trades in equity securities under the current policy. The Exchange has listed additional factors that it will consider in determining whether or not to append an Aberrant Report Indicator because these factors are specific to trading in ETPs, such as Index change, reconstitutions and rebalances, changes in availability of ETP creations and/or redemptions.

- Validity of consolidated tape trades and quotes;
- General market volatility of market conditions;
- Historical volume and volatility for the ETP;
- Material news released pertaining to the ETP;
- Whether trading in the ETP was recently halted/resumed;
- Trading bands, collars or circuit breakers;
- A request from the ETP issuer, provided with documentation of a factual basis for believing that an execution is representative of market impact or trading issues outside of the issuer's control, rather than true price discovery; and
- Executions otherwise inconsistent with the trading pattern in the ETP.

The Exchange would consider each of these factors with a view towards maintaining a fair and orderly market and the integrity of reported trade data. If the Exchange determines to append the Aberrant Report Indicator to a trade which represented the last sale of that ETP on the Exchange during a trading session, the Exchange may also determine to remove that trade's designation as the last sale. The Exchange may do so either on the day of the trade or at a later date, so as to provide reasonable time for the Exchange to conduct due diligence regarding the trade, including the consideration of input from markets and other market participants.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[13] in general, and furthers the objectives of Section 6(b)(5),[14] in particular,

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[13] 15 U.S.C. 78f(b).

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 facilitating transactions in securities, 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.

In particular, the Aberrant Report Indicator is consistent with the protection of investors and the public interest in that the Exchange will seek to ensure a proper understanding of the Aberrant Report Indicator among securities market participants by: (i) urging vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy; (ii) informing the affected listed ETP issuer each time the Exchange appends the Aberrant Report Indicator to a trade in an NYSE Arca listed ETP; and (iii) reminding the users of the information that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

The Exchange believes its proposal to append an Aberrant Report Indicator to certain trades is a reasonable means to alert investors and other market participants that the Exchange believes that the trade price of an ETP executed on its market does not accurately reflect the prevailing market for the ETP.

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

[14] 15 U.S.C. 78f(b)(5).

proposed change is not designed to address any competitive issue but rather to adopt a new policy that is similar to an existing policy to alert investors and other market participants that the Exchange believes that the trade price of an ETP executed on its market does not accurately reflect the prevailing market for the ETP.

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 such longer time period 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 such 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 E-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2015-104 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, D.C. 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2015-104. 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, D.C. 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-NYSEArca-2015-104 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.[15]

Robert W. Errett
Deputy Secretary

[15] 17 CFR 200.30-3(a)(12).