SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81197; File No. SR-NYSEArca-2017-46)

July 24, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change to Amend NYSE Arca Equities Rule 13.2, Liability of Corporation

I. Introduction

On May 23, 2017, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 13.2, Liability of Corporation. The proposed rule change was published for comment in the Federal Register on June 12, 2017.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change[4]

NYSE Arca Equities Rule 13.2 ("Rule 13.2") currently provides a mechanism for ETP Holders to receive compensation for certain types of losses. The Exchange proposes to amend Rule 13.2 in several respects.

First, the Exchange proposes to amend Rule 13.2(a) to specify that the limitation of liability set forth in that paragraph would apply to ETP Holders' successors, representatives, and customers. Pursuant to proposed Rule 13.2(a), except as otherwise expressly provided in the Exchange's rules, neither the Corporation nor its Directors, officers, committee members, employees, or agents shall be liable to ETP Holders of the Corporation, or successors,

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 80866 (June 6, 2017), 82 FR 26967 ("Notice").

4 For a more detailed description of the proposed rule change, see Notice, supra note 3.

representatives, or customers thereof, or to persons associated therewith, for the specified types of losses, expenses, damages, or claims.

Second, the Exchange proposes to amend Rule 13.2(b), which describes certain prerequisites for qualifying for compensation. Specifically, Rule 13.2(b) currently requires, among other things, that "the Corporation has acknowledged receipt of" the order. As proposed, Rule 13.2(b) would require, among other things, that "the Corporation has received" the order.

Third, the Exchange proposes to amend Rule 13.2(b) to eliminate the daily liability caps. Rule 13.2(b)(1) currently provides that, as to any one or more claims made by a single ETP Holder growing out of the use or enjoyment of the facilities afforded by the Corporation on a single trading day, the Corporation will not be liable in excess of the larger of $100,000, or the amount of any recovery obtained by the Corporation under any applicable insurance maintained by the Corporation. Rule 13.2(b)(2) currently provides that, as to the aggregate of all claims made by all ETP Holders growing out of the use or enjoyment of the facilities afforded by the Corporation on a single trading day, the Corporation will not be liable in excess of the larger of $250,000, or the amount of the recovery obtained by the Corporation under any applicable insurance maintained by the Corporation. Rule 13.2(b)(3) currently provides that, as to the aggregate of all claims made by all ETP Holders growing out of the use or enjoyment of the facilities afforded by the Corporation during a single calendar month, the Corporation will not be liable in excess of the larger of $500,000, or the amount of the recovery obtained by the Corporation under any applicable insurance maintained by the Corporation.[5] The Exchange

[5] Rule 13.2(c) currently provides that, if all of the claims arising out of the use or enjoyment of the facilities afforded by the Corporation cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for in Rule 13.2(b), then the maximum amount shall be allocated among all such claims arising

proposes to eliminate the daily liability caps in Rules 13.2(b)(1) and (2), and retain the monthly liability cap in Rule 13.2(b)(3).[6] The Exchange also proposes to apply the elimination of the daily liability caps retroactively to March 1, 2017, so that ETP Holders may be fully compensated for losses incurred in connection with a system issue that occurred on March 20, 2017.[7]

Fourth, the Exchange proposes to amend the time frame and clarify the manner in which ETP Holders are required to submit notice of claims for compensation. Rule 13.2(c) currently requires ETP Holders to provide written notice of claims no later than the opening of trading on the next business day following the day on which the use or enjoyment of the Corporation's facilities giving rise to the claims occurred. The Exchange proposes to require ETP Holders to submit written notice of claims for compensation pursuant to Rule 13.2(b) no later than noon Eastern Time on the next business day following the day on which the use or enjoyment of the Corporation's facilities gave rise to such claims.[8]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is

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on a single trading day or during a single calendar month, as applicable, based on the proportion that each such claim bears to the sum of all such claims.

6 In connection with this change, the Exchange also proposes conforming changes in Rule 13.2(c) to eliminate the reference to allocation among claims arising "on a single trading day."

7 See Notice, supra note 3, at 26968.

8 See proposed Rule 13.2(d).

9 In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal to eliminate the daily liability caps in Rules 13.2(b)(1) and (2) could result in more ETP Holders receiving fuller compensations on their claims.[11] The proposal could also reduce the risk that losses suffered by an ETP Holder would be treated differently depending on whether other ETP Holders suffered losses on the same day.[12] In addition, the Commission notes that, under the proposal, the maximum amount of compensation would continue to be proportionally allocated if claims arising during a single calendar month exceed the monthly liability cap.[13]

With respect to the Exchange's proposal to retroactively apply the elimination of the daily liability caps, the Commission notes that approval of the proposal would make additional funds available to compensate ETP Holders affected by the system issue on March 20, 2017. Also, as the Exchange notes, the proposal would promote equal treatment between ETP Holders

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[10] 15 U.S.C. 78f(b)(5).

[11] The Commission notes that the rules of certain other national securities exchanges also only include monthly liability caps, and no daily liability caps. See, e.g., Nasdaq Stock Market LLC ("Nasdaq") Rule 4626.

[12] See Notice, supra note 3, at 26968.

[13] See proposed changes to Rule 13.2(c). As described above, the Exchange also proposes to make conforming changes in Rule 13.2(c) to eliminate the reference to allocation among claims arising "on a single trading day." See supra notes 5-6.

who suffered a loss on March 20, 2017 and ETP Holders who suffered a loss on a different day.[14] Specifically, according to the Exchange, the proposal would enable it to fully compensate ETP Holders for claims arising from the system issue on March 20, 2017.[15] Moreover, according to the Exchange, prior to March 20, 2017, it has never received a claim that exceeded the liability limits, and thus it was never prevented from fully compensating an ETP Holder.[16]

The Commission further believes that the other proposed changes are consistent with the Act. Specifically, the Commission believes that the addition of the text "successors, representatives or customers thereof" to Rule 13.2(a) would clarify the scope of the limitation of liability in that provision.[17] As the Exchange notes, Rule 13.2 currently does not authorize the compensation of successors, representatives, or customers of ETP Holders because the rule does not currently reference them.[18] The Commission also believes that the replacement of the words "acknowledged receipt of" with the word "received" in Rule 13.2(b) would provide transparency regarding the scope of the rule.[19] Finally, the Commission believes that the addition of paragraph (d) to Rule 13.2 would clarify that all claims for compensation must be submitted in writing, and would provide ETP Holders additional time to evaluate losses that may have occurred on the prior trading day, particularly if an issue occurred later in the day.[20]

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[14] See Notice, supra note 3, at 26968.

[15] See id. at 26969.

[16] See id.

[17] The Commission notes that this change is consistent with the rules of certain other national securities exchanges. See, e.g., Bats BZX Exchange, Inc. Rule 11.16(a).

[18] See Notice, supra note 3, at 26967.

[19] The Commission notes that this change is consistent with the rules of certain other national securities exchanges. See, e.g., New York Stock Exchange LLC Rule 18(b).

[20] The Commission notes that this change is consistent with the rules of certain other national securities exchanges. See, e.g., Nasdaq Rule 4626(b)(6).

Based on the foregoing, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR-NYSEArca-2017-46), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Eduardo A. Aleman
Assistant Secretary

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[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30-3(a)(12).