

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85697; File No. SR-NYSEArca-2019-27)

April 19, 2019

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delete NYSE Arca Rule 8.800-E Setting Forth the Requirements for the NYSE Arca ETP Incentive Program

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 April 10, 2019, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 Substance of the Proposed Rule Change

The Exchange proposes to delete NYSE Arca Rule 8.800-E setting forth the requirements for the NYSE Arca ETP Incentive Program (the “Incentive Program”), which expired on July 31, 2017, and a related outdated reference to the Incentive Program in the Exchange’s Schedule of Fee and Charges. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 delete NYSE Arca Rule 8.800-E setting forth the requirements for the Incentive Program, which expired on July 31, 2017, and a related outdated reference to the Incentive Program in the Exchange’s NYSE Arca Equities Schedule of Fee and Charges.

Proposed Rule Change

In June 2013, the Securities and Exchange Commission (the “Commission”) approved the Incentive Program as a one-year pilot program for issuers of certain exchange-traded products (“ETPs”) listed on the Exchange.⁴ The Incentive Program was designed to incentivize Market Makers⁵ to take Lead Market Maker (“LMM”)⁶ assignments in certain lower volume ETPs by offering an alternative fee structure for such LMMs that would be funded from the

⁴ See Securities Exchange Act Release No. 69706 (June 6, 2013), 78 FR 35340 (June 12, 2013) (SR-NYSEArca-2013-34) (the “Incentive Program Approval Order”).

⁵ A Market Maker is an ETP Holder that acts as a Market Maker pursuant to NYSE Arca Rule 7-E. See NYSE Arca Rule 1.1(z). An ETP Holder is a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an ETP. See NYSE Arca Rule 1.1(o).

⁶ A Lead Market Maker refers to registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary listing market. See NYSE Arca Rule 1.1(w).

Exchange's general revenues. The Exchange also made related amendments to its fee schedule to set forth the requirements for the Incentive Program.⁷ The pilot period was originally scheduled to expire on September 3, 2014. The Exchange subsequently filed to extend the program in 2014,⁸ in 2015,⁹ and again in 2016.¹⁰ However, the pilot was not thereafter extended or made permanent and expired on July 31, 2017.

The Exchange proposes to delete NYSE Arca Rule 8.800-E in its entirety as obsolete. As noted above, the Incentive Program expired at the end of July 2017. The Exchange proposes a related change to the NYSE Arca Equities Schedule of Fee and Charges to delete a reference to the Incentive Program in the portion of the fee schedule setting forth LMM transaction fees and credits.¹¹

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and with Section 6(b)(1) of the Act,¹³ in particular, in that in that [sic] it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its

⁷ See Incentive Program Approval Order, 78 FR at 35340.

⁸ See Securities Exchange Act Release No. 72963 (September 3, 2014), 79 FR 53492 (September 9, 2014) (SR-NYSEArca-2014-99).

⁹ See Securities Exchange Act Release No. 75846 (September 4, 2015), 80 FR 54646 (September 10, 2015) (SR-NYSEArca-2015-78).

¹⁰ See Securities Exchange Act Release No. 78497 (August 8, 2016), 81 FR 53524 (August 12, 2016) (SR-NYSEArca-2016-110).

¹¹ The Exchange filed to remove other obsolete language related to the Incentive Program from the Schedule of Fee and Charges in 2018. See Securities Exchange Act Release No. 83032 (April 11, 2018), 83 FR 16909 (April 17, 2018) (SR-NYSEArca-2018-20).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(1).

exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed rule change is a non-substantive change that eliminates obsolete material from the Exchange's rulebook. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Act by its members and persons associated with its members, because ensuring that the Exchange's rules and fee schedule are accurate and do not contain obsolete material would contribute to the orderly operation of the Exchange by adding clarity and transparency to such documents.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it is not designed to address any competitive issue or have any competitive impact, but rather serve to update the Exchange's rulebook to promote clarity and consistency, thereby alleviating possible market participant confusion.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the proposed rule change does not: (i)

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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 and Rule 19b-4(f)(6)(iii) thereunder.¹⁶

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to augment the accuracy of their rulebook by removing the expired Incentive Program and related references in its fee schedule. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁹

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change, the Commission 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁰ of the Act to determine whether the proposed rule change should be approved or 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-2019-27 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-2019-27. 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

²⁰ 15 U.S.C. 78s(b)(2)(B).

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 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2019-27 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.²¹

Eduardo A. Aleman
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).