

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76969; File No. SR-NYSEArca-2016-13)

January 22, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Schedule of Fees and Charges to Define the Term "Exchange Traded Products" and to Provide for the Proration of Annual Fees Applicable to Exchange Traded Products That Have Liquidated

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 14, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.³ 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 amend the Exchange's Schedule of Fees and Charges to define the term "Exchange Traded Products" and to provide for the proration of Annual Fees applicable to Exchange Traded Products that have liquidated. 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 17 CFR 240.19b-4.

³ The Exchange originally filed this proposed rule change on December 23, 2015 under File No. SR-NYSEArca-2015-126, and the Exchange subsequently withdrew that filing on January 5, 2016. The Exchange refiled this proposed rule change on January 5, 2016 under File No. SR-NYSEArca-2016-07. The Exchange subsequently withdrew that filing on January 14, 2016 and filed this filing.

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 amend its Schedule of Fees and Charges for NYSE Arca Equities listing fees ("Schedule") to define the term "Exchange Traded Products," to revise the Annual Fees paid by issuers of Exchange Traded Products, and to make technical, non-substantive changes to the Schedule.

The term "Derivative Securities Products" is currently defined in Footnote 3 of the Schedule to mean the securities described in NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units); 8.100 (Portfolio Depositary Receipts); 8.200 (Trust Issued Receipts); 8.201 (Commodity-Based Trust Shares); 8.202 (Currency Trust Shares); 8.203 (Commodity Index Trust Shares); 8.204 (Commodity Futures Trust Shares); 8.300 (Partnership Units); 8.500 (Trust Units); 8.600 (Managed Fund Shares), and 8.700 (Managed Trust Securities). The Exchange proposes to replace the term "Derivative Securities Products" with the term "Exchange Traded Products" as a term that is more commonly used by investors and the public with respect to the equity securities that list and trade on the Exchange and distinguishes them from derivatives, such as futures or swaps. To effect this change, the Exchange proposes to amend footnote 3 of

the Schedule and to replace the term “Derivative Securities Products” with the term “Exchange Traded Products” throughout the Schedule.

The Schedule includes “Annual Fees” payable by issuers of Exchange Traded Products listed on the Exchange. Pursuant to Footnote 8 of the Schedule, issuers are subject to Annual Fees in the year of listing, pro-rated based on days listed that calendar year. The Annual Fees for Exchange Traded Products are billed in January for the forthcoming year. Currently, when an Exchange Traded Product liquidates, and as a result, is delisted from the Exchange, the issuer is responsible for the full year’s Annual Fee as billed in January. The issuer receives no refund for amounts paid or reduction of amounts payable even though the Exchange Traded Product has liquidated.

The Exchange proposes to amend Footnote 8 of the Schedule to provide that the Annual Fees applicable to Exchange Traded Products that have liquidated and as a result are delisted from the Exchange will be prorated for the portion of the calendar year that such issue was listed on the Exchange, based on days listed that calendar year. Thus, for example, if the issuer of an Exchange Traded Product has paid an Annual Fee of \$20,000 as billed in January and such issue is liquidated and then delisted from the Exchange on June 30, the issuer would receive a refund of \$10,000, which represents a pro rata credit of Annual Fees owed for the year.

Notwithstanding the proposed proration of the Annual Fees for Exchange Traded Products, the Exchange will continue to be able to fund its regulatory obligations.

The Exchange also proposes non-substantive amendments to the Schedule. First, the Exchange proposes to add the operative date to the Schedule, which, for this filing, would be January 14, 2016. Second, the Exchange proposes to delete the last two sentences of

Commentary .4 to the Schedule, which refer to the transfer of securities from NYSE Alternext US to NYSE Arca, which occurred in 2008, and therefore is outdated text.

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)⁴ of the Act, in general, and Section 6(b)(4)⁵ of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities. In addition, the Exchange believes the proposal is consistent with the requirement under Section 6(b)(5)⁶ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that adding the operative date will clarify the Schedule by specifying the date as of which the most recent changes to the Schedule apply. Replacing the term “Derivative Securities Products” with the term “Exchange Traded Products” will remove impediments to and perfect the mechanism of a free and open market by using a term commonly used by the public and investors to refer to the products that are listed on the Exchange. The Exchange further believes that using the term “Exchange Traded Products” will promote transparency in Exchange rules by distinguishing the equity securities that list and trade on the Exchange from derivatives, such as futures or swaps. In addition, the deletion of the last two sentences of Commentary .4 to the Schedule will eliminate outdated text.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78f(b)(5).

The Exchange further believes that the proposed pro rata reduction of the Annual Fees as a result of liquidation and termination of an issue of Exchange Traded Products is equitable and does not unfairly discriminate between issuers because it would apply uniformly to all Exchange Traded Products and issuers of such products. The Exchange believes such reduction is reasonable in that it constitutes a potential reduction in Annual Fees for issues that are liquidated, and therefore are no longer collecting a management fee to pay for such expenses. Notwithstanding the proposed proration of the Annual Fees for Exchange Traded Products, the Exchange will continue to be able to fund its regulatory obligations.

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 purpose of the Act. The Exchange believes the proposed rule change would promote competition because it will permit the Exchange to better compete with other exchanges with respect to fees charged in connection with listing Exchange Traded Products.

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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁷ of the Act and subparagraph (f)(2) of Rule 19b-4⁸ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

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)⁹ 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-2016-13 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-2016-13. 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

⁹ 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; 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-2016-13, 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.¹⁰

Brent J. Fields
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).