

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78497; File No. SR-NYSEARCA-2016-110)

August 8, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 3 of NYSE Arca Equities Rule 8 to Extend the Effectiveness of the Exchange Traded Product Incentive Program

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 28, 2016, 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, II, and III 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 amend Section 3 of NYSE Arca Equities Rule 8 (Trading of Certain Equity Derivatives) to extend the effectiveness of the Exchange Traded Product (“ETP”) Incentive Program until July 31, 2017. 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

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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.

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 Section 3 of NYSE Arca Equities Rule 8 (Trading of Certain Equity Derivatives) to extend the effectiveness of the ETP Incentive Program<sup>4</sup> until July 31, 2017.<sup>5</sup>

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<sup>4</sup> The Commission approved the ETP Incentive Program on a pilot basis in Securities Exchange Act Release No. 69706 (June 6, 2013), 78 FR 35340 (June 12, 2013) (SR-NYSEArca-2013-34) ("ETP Incentive Program Release"). The Exchange subsequently filed to extend the original pilot program for the ETP Incentive Program until September 4, 2015. See Securities Exchange Act Release No. 72963 (September 3, 2014), 79 FR 53492 (September 9, 2014) (SR-NYSEArca-2014-99) (notice of filing and immediate effectiveness of proposed rule change extending effectiveness of the ETP Incentive Program until September 4, 2015). Most recently, the Exchange filed to extend the pilot program for the ETP Incentive Program until September 4, 2016 (See Securities Exchange Act Release No. 75846 (September 4, 2015), 80 FR 54646 (September 10, 2015) (SR-NYSEArca-2015-78) (notice of filing and immediate effectiveness of proposed rule change extending effectiveness of the ETP Incentive Program until September 4, 2016) ("2015 Extension Notice"). In addition, the Exchange filed a proposed rule change to amend Rules 7.25(c) and 8.800(b) to provide that exchange-traded products ("ETPs") already listed on the Exchange can be admitted to the ETP Incentive Program on a monthly basis rather than at the beginning of each quarter. See Securities Exchange Act Release No. 75282 (June 24, 2015), 80 FR 37340 (June 30, 2015) (SR-NYSEArca-2015-52) (notice of filing and immediate effectiveness of proposed rule change amending NYSE Arca Equities Rules 7.25 and 8.800 to allow an issuer to elect for its ETP to participate in the Crowd Participant Program or the ETP Incentive Program monthly rather than quarterly and to extend the effectiveness of the Crowd Participant Program until June 23, 2016). In SR-NYSEArca-2015-52, the Exchange stated that the Exchange anticipates that expanding the opportunity for issuers to enter the ETP Incentive Program will facilitate the provision of extra liquidity to lower-volume ETPs by incentivizing more Market Makers to take Lead Market Maker ("LMM") assignments in certain lower-volume ETPs.

<sup>5</sup> The ETP Incentive Program is scheduled to end on September 4, 2016. For purposes of the ETP Incentive Program, ETPs include securities listed on the Exchange under the

The ETP Incentive Program is a pilot program designed to incentivize quoting and trading in ETPs and to add competition among existing qualified Market Makers.<sup>6</sup> In addition, the ETP Incentive Program is designed to enhance the market quality for ETPs by incentivizing Market Makers to take LMM<sup>7</sup> assignments in certain lower-volume ETPs by offering an alternative fee structure for such LMMs that would be funded from the Exchange's general revenues. The ETP Incentive Program is designed to improve the quality of market for lower-volume ETPs, thereby incentivizing issuers to list them on the Exchange. Moreover, as described in the ETP Incentive Program Release, the Exchange believes that the ETP Incentive Program, which is entirely voluntary, encourages competition among markets for issuers' listings and among Market Makers for LMM assignments.

The Exchange proposes to extend the current operation of the ETP Incentive Program until July 31, 2017 to allow the Commission, the Exchange, LMMs, and issuers to further assess

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following rules: NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(5) (Equity Gold Shares), 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), 8.600 (Managed Fund Shares), and 8.700 (Managed Trust Securities).

<sup>6</sup> A Market Maker is an Equity Trading Permit Holder that acts as a Market Maker pursuant to NYSE Arca Equities Rule 7. See NYSE Arca Equities Rule 1.1(v). An Equity Trading Permit 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).

<sup>7</sup> The LMM program is designed to incentivize firms to take on the LMM designation and foster liquidity provision and stability in the market. In order to accomplish this, the Exchange currently provides LMMs with an opportunity to receive incrementally higher transaction credits and incur incrementally lower transaction fees ("LMM Rates") compared to standard liquidity maker-taker rates ("Standard Rates"). The Exchange generally employs a maker-taker transactional fee structure, whereby an Equity Trading Permit Holder that removes liquidity is charged a fee ("Take Rate"), and an Equity Trading Permit Holder that provides liquidity receives a credit ("Make Rate"). See Trading Fee Schedule, available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf).

the impact of such program before proposing to make it available to other securities and implementing the program on a permanent basis.<sup>8</sup> Issuers began participating in the ETP Incentive Program following the extension of the first pilot period. The Exchange believes that extending the ETP Incentive Program pilot period for an additional approximately eleven months will provide additional time to assess the impact of the program for these issuers and to provide time for additional issuers to participate in the ETP Incentive Program so that the Commission, the Exchange, LMMs, and issuers may assess the impact of the program before making it available to other securities or implementing it on a permanent basis.<sup>9</sup>

In accordance with the 2015 Extension Notice, the Exchange, on April 4, 2016, posted on its website an “Assessment Report” regarding the ETP Incentive Program.<sup>10</sup> The Assessment Report examined the performance of the ETPs in the Incentive Program during the entire period in which they were in the program, and provided statistical analyses with respect to the following factors: volume (consolidated average daily volume (“CADV”) and NYSE Arca average daily volume); national best bid and offer (“NBBO”) bid/ask spread differential; LMM participation rates; NYSE Arca market share; LMM time spent at the inside; LMM time spent within \$0.03 of the inside; percentage of time NYSE Arca had the best price with the best size; LMM quoted spread; and LMM quoted depth. The Assessment Report assessed whether the ETP Incentive

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<sup>8</sup> The Exchange notes that any proposed further continuance of the ETP Incentive Program, a proposal to make the ETP Incentive Program permanent, or a proposal to make such program available to other securities would require a rule filing with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder.

<sup>9</sup> The Exchange has provided to the Commission monthly market quality reports relating to the ETP Incentive Program for the period October 2014 through June 2016, which are posted to the Exchange’s website at <https://www.nyse.com/products/etp-incentive-program>.

<sup>10</sup> The Assessment Report is available at [https://www.nyse.com/publicdocs/nyse/products/etp-funds/ETP\\_Incentive\\_Program\\_Assessment\\_Report.pdf](https://www.nyse.com/publicdocs/nyse/products/etp-funds/ETP_Incentive_Program_Assessment_Report.pdf).

Program has met its proposed goals to incentivize market makers to take LMM assignments in certain lower-volume ETPs. The Assessment Report concluded that, while the results in certain cases show strong evidence of higher market quality in some ETPs based on participation in the ETP Incentive Program, the data is less conclusive for other ETPs due, in large part to the limited data available. In addition, a number of variables impact the ability to assess the limited data described in the Assessment Report, including market conditions, product variability, and product inception date. Therefore, the Assessment Report concluded that it is difficult to state conclusively whether the Incentive Program has met its objectives. Consistent with the conclusions of the Assessment Report, the Exchange believes that the Incentive Program should continue as a pilot program for an additional approximately eleven months in order to provide more time for participation so that the Exchange, the Commission, and market participants can meaningfully assess whether the Incentive Program will meet its proposed goals.

Prior to the end of the pilot period ending July 31, 2017, the Exchange will post a report relating to the ETP Incentive Program (the “Assessment Report”) on its website three months before the end of the pilot period or at the time it files to terminate the pilot, whichever comes first. The proposed Assessment Report would list the program objectives that are the focus of the pilot and, for each, provide (a) a statistical analysis that includes evidence that is sufficient to inform a reader about whether the program has met those objectives during the pilot period, along with (b) a narrative explanation of whether and how the evidence indicates the pilot has met the objective, including both strengths and weaknesses of the evidence in this regard. The Assessment Report also would include a discussion of (a) the procedures used in selecting any samples that are used in constructing tables or statistics for inclusion in the Assessment Report, (b) the definitions of any variables and statistics reported in the tables, including test statistics,

(c) the statistical significance levels of any test statistics and (d) other statistical or qualitative information that may enhance the usefulness of the Assessment Report as a basis for evaluating the performance of the program. The Assessment Report would present statistics on product performance relative to the performance of comparable or other suitable benchmark products (including test statistics that permit the reader to evaluate the statistical significance of any differences reported or discussed in the report), along with information on the procedures that were used to identify those comparable or benchmark products, the characteristics of each comparable or benchmark products, the characteristics of each product that is the focus of the pilot, the procedures used in selecting the time horizon of the sample and the sensitivity of reported statistics to changes in the time horizon of the sample.

This filing is not otherwise intended to address any other issues and the Exchange is not aware of any problems that Equity Trading Permit Holders or issuers would have in complying with the monthly selection provision or the proposed extension of the pilot program.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is 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 a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the ETP Incentive Program is designed to enhance the market quality for ETPs by incentivizing Market Makers to take LMM assignments in certain lower volume ETPs by offering an alternative fee structure for such LMMs that would be funded from

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

the Exchange's general revenues. The ETP Incentive Program is designed to improve the quality of market for lower-volume ETPs, thereby incentivizing them to list on the Exchange.

Moreover, as described in the ETP Incentive Program Release, the Exchange believes that the ETP Incentive Program, which is entirely voluntary, encourages competition among markets for issuers' listings and among Market Makers for LMM assignments.

The Exchange believes that, by providing additional time for issuers to participate in the ETP Incentive Program, through an extension of the pilot period until July 31, 2017, the ETP Incentive Program would continue to provide an opportunity for rewarding competitive liquidity-providing LMMs, with associated requirements for quoting by LMMs at the National Best Bid or National Best Offer. The ETP Incentive Program, therefore, has the potential to enhance competition among liquidity providers and thereby improve execution quality on the Exchange. An extension of such pilot period will permit additional time to collect data on the ETP Incentive Program so that the Commission, the Exchange, LMMs, and issuers may assess the impact of the ETP Incentive Program before making it available to other securities. The Exchange will continue to monitor the efficacy of the ETP Incentive Program during the extended pilot period. Prior to the end of the pilot period ending July 31, 2017, the Exchange proposes to post an Assessment Report on its website three months before the end of the pilot period or at the time it files to terminate the pilot, whichever comes first. The proposed Assessment Report would list the program objectives that are the focus of the pilot as well as additional information described above.

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 proposed extension to the pilot period for the ETP Incentive Program is not designed to address any competitive issues but rather to program additional time for the Commission, the Exchange, LMMs and issuers to assess the impact of such program.

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 Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> Because the 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 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.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

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)<sup>17</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2016-110 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, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2016-110. 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

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<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

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-2016-110 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>

Robert W. Errett  
Deputy Secretary

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