

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78633; File No. SR-NYSEArca-2016-114)

August 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 Eliminate the Listing Fee in Connection with Exchange Listing of Certain 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 August 8, 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 [sic] the Exchange's Schedule of Fees and Charges ("Fee Schedule") to eliminate the Listing Fee in connection with Exchange listing of certain Exchange Traded Products, effective August 8, 2016. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 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 the Exchange’s Schedule of Fees and Charges (“Schedule”) to eliminate the Listing Fee applicable to certain issues of Managed Fund Shares listed pursuant to NYSE Arca Equities Rule 8.600, effective August 8, 2016, as described below.

Currently the Exchange’s Schedule of Fees and Charges (“Schedule”) does not impose a “Listing Fee” for the following Exchange-Traded Products (“ETPs”)⁴ listed on the Exchange pursuant to Rule 19b-4(e) under the Act, and for which a proposed rule change pursuant to Section 19(b) of the Act is not required to be filed with the Commission⁵: Investment Company Units; Portfolio Depositary Receipts; and Currency Trust Shares (collectively, “Generically-Listed Exchange Traded Products”).⁶

⁴ For the purposes of the Schedule, the term “Exchange Traded Products” includes 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).

⁵ Exchange rules applicable to listing of certain ETPs provide for listing such products pursuant to Rule 19b-4(e) under the Act if they satisfy all criteria—referred to as “generic” listing criteria—in the applicable Exchange ETP rule. If an ETP does not satisfy all applicable generic criteria, the Commission must approve or issue a notice of effectiveness with respect to a proposed rule change filed by the Exchange pursuant to Section 19(b) of the Act prior to Exchange listing of such ETP.

⁶ See Securities Exchange Act Release No. 77883 (May 23, 2016), 81 FR 33720 (May 27, 2016) (SR-NYSEArca-2016-69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange’s Schedule of Fees and Charges to Eliminate the Listing Fee in Connection with Exchange Listing of Certain Exchange

Other ETPs—specifically, Trust Issued Receipts⁷, Commodity-Based Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, and non-generically-listed Investment Company Units, Portfolio Depository Receipts and Currency Trust Shares—are subject to a Listing Fee of \$7,500.⁸ Under Item 5b of the Schedule, Managed Fund Shares and Managed Trust Securities are subject to a Listing Fee of \$10,000.

The Commission has recently approved an Exchange proposed rule change that permits generic listing of Managed Fund Shares pursuant to Rule 19b-4(e) under the Act.⁹ The Exchange proposes to amend Item 5a of the Schedule to include Managed Fund Shares under the term "Generically-Listed Exchange Traded Products". In addition, the Exchange proposes to delete Managed Fund Shares from Item 5b of the Schedule. Thus, an issue of Managed Fund Shares that is a "Generically-Listed Exchange Traded Product" would incur no charge to list on the Exchange, and an issue of Managed Fund Shares for which a proposed rule change under the Act is required would be subject to a Listing Fee of \$7,500. Issues of Managed Trust Securities would continue to be subject to a Listing Fee of \$10,000.

Traded Products).

⁷ Commentary .01 to NYSE Arca Equities Rule 8.200 provides generic standards for listing Trust Issued Receipts pursuant to Rule 19b-4(e) under the Act. However, the Exchange does not currently intend to list Trust Issued Receipts under Commentary .01, but instead lists Trust Issued Receipts under Commentary .02 to NYSE Arca Equities Rule 8.200, which does not provide generic standards for listing pursuant to Rule 19b-4(e) under the Act. Before listing any Trust Issued Receipts pursuant to Commentary .01 to NYSE Arca Equities Rule 8.200, the Exchange will first file a proposed rule change with respect to the Listing Fee applicable to any such generically-listed securities.

⁸ Exchange rules applicable to Trust Issued Receipts (Commentary .02 to NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (NYSE Arca Equities Rule 8.201), Commodity Index Trust Shares (NYSE Arca Equities Rule 8.203), Commodity Futures Trust Shares (NYSE Arca Equities Rule 8.204), Partnership Units (NYSE Arca Equities Rule 8.300), and Trust Units (NYSE Arca Equities Rule 8.500) do not provide for listing pursuant to Rule 19b-4(e) under the Act.

⁹ See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR-NYSEArca-2015-110).

The Exchange believes eliminating the Listing Fee for generically-listed Managed Fund Shares would help correlate the Listing Fee applicable to such issues to the resources required to list such issues on the Exchange. The Exchange believes it is appropriate to continue to charge a Listing Fee for ETPs for which a proposed rule change pursuant to Section 19(b) of the Act is required to be filed because of the additional time and resources required by Exchange staff to prepare and review such filings and to communicate with issuers and the Commission regarding such filings. Application of a Listing Fee for Managed Trust Securities is appropriate because the Exchange generally incurs increased costs in connection with the rule-making process, listing administration process, issuer services, and consultative legal services where a proposed rule change pursuant to Section 19(b) of the Act is required to be filed with the Commission.

Annual Fees set forth in the Schedule applicable to ETPs would remain unchanged.

Notwithstanding the elimination of the Listing Fee applicable to generically-listed Managed Fund Shares, as well as the decrease in the Listing Fee for non-generically-listed Managed Fund Shares, as described above, the Exchange will continue to be able to fund its regulatory obligations.

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)¹⁰ of the Act, in general, and Section 6(b)(4)¹¹ 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)¹² that an exchange have rules that are designed to prevent fraudulent and

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

manipulative acts and practices, 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, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed elimination of the Listing Fee for Managed Fund Shares that are Generically-Listed ETPs, as well as the decrease in the Listing Fee for non-generically-listed Managed Fund Shares, as described above, is equitable and does not unfairly discriminate between issuers because it would apply uniformly to all such issues listed generically under Exchange rules. The Exchange believes eliminating the Listing Fee for such Managed Fund Shares, decreasing the Listing Fee for non-generically-listed Managed Fund Shares, as described above, and continuing to impose Listing Fees for ETPs that are not generically listed is reasonable given the additional resources required by the Exchange in connection with ETPs requiring a proposed rule change pursuant to Section 19(b). The Exchange believes it is appropriate to continue to charge a Listing Fee for ETPs for which a proposed rule change pursuant to Section 19(b) of the Act is required to be filed because of the significant additional extensive time, legal and business resources required by Exchange staff to prepare and review such filings and to communicate with issuers and the Commission regarding such filings.

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

eliminate the Listing Fee for generically-listed issues of Managed Fund Shares and will therefore encourage issuers to develop and list additional such issues on the Exchange.

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)¹³ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁴ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)¹⁵ 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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2016-114 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-2016-114. 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, 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-2016-114 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.¹⁶

Robert W. Errett
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).