

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79506; File No. SR-NYSEArca-2016-158)

December 8, 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 Relating to the Listing and Annual Fees Applicable to Certain Structured 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 November 29, 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 the Exchange's Schedule of Fees and Charges ("Fee Schedule") relating to the Listing and Annual Fees applicable to certain Structured Products. This amendment to the Fee Schedule is effective November 29, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Exchange’s Schedule of Fees and Charges (“Fee Schedule”) relating to the Listing Fee and the Annual Fee applicable to certain “Structured Products”, as described below.⁴ This amendment to the Fee Schedule is effective November 29, 2016.

Currently, the Exchange’s Fee Schedule provides for a “Listing Fee” for issues of “Structured Products” which ranges from \$5,000 to \$45,000 based on the number of shares outstanding.

The Exchange proposes to amend the Fee Schedule to eliminate the Listing Fee in connection with Exchange listing of certain Structured Products effective November 29, 2016, as described below. Exchange rules applicable to listing of Structured Products under NYSE Arca Equities Rules 5.2(j)(2), 5.2(j)(4) and 5.2(j)(6) 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 such rule. If an issue of such Structured Products does not satisfy all applicable generic criteria, the Commission must approve or issue a notice of effectiveness with respect to a proposed rule

⁴ “Structured Products” are defined in Note 4 to the Fee Schedule as securities listed under Rule 5.2(j)(1) (Other Securities), 5.2(j)(2) (Equity Linked Notes); Rule 5.2(j)(4) (Index-Linked Exchangeable Notes); Rule 5.2(j)(6) (Equity Index-Linked Securities, Commodity- Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Indexed-Linked Securities (collectively, “Index-Linked Securities”)); Rule 5.2(j)(7) (Trust Certificates); Rule 8.3 (Currency and Index Warrants); and Rule 8.400 (Paired Trust Shares).

change filed by the Exchange pursuant to Section 19(b) of the Act prior to Exchange listing of such issue.

The Exchange proposes to eliminate the Listing Fee for the following Structured Products 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 Commission: (i) Equity Linked Notes (listed under Rule 5.2(j)(2)); (ii) Index-Linked Exchangeable Notes (listed under Rule 5.2(j)(4)); and (iii) Index-Linked Securities (listed under Rule 5.2(j)(6)) (collectively, “Generically-Listed Structured Products”). The Exchange believes that eliminating the Listing Fee for Generically-Listed Structured Products would help correlate the Listing Fee applicable to an issue of Generically-Listed Structured Products to the resources required to list such securities on the Exchange. The Exchange believes it is appropriate to eliminate the Listing Fee for Generically-Listed Structured Products because such products do not require a commitment of time and resources by Exchange staff to prepare and review Rule 19b-4 filings for Structured Products other than Generically-Listed Structured Products, and to communicate with issuers and the Commission staff regarding such filings. Application of a Listing Fee for Structured Products other than Generically-Listed Structured Products is appropriate because the Exchange generally incurs increased costs in connection with the listing administration process, issuer services, and consultative legal services when a proposed rule change pursuant to Section 19(b) of the Act is required to be filed with the Commission.⁵

⁵ The Exchange has eliminated the Exchange Listing Fee applicable to certain Exchange Traded Products for which a proposed rule change pursuant to Section 19(b) of the Act is not required to be filed with the Commission. See Securities Exchange Act Release No. 78633 (August 22, 2016), 81 FR 59025 (August 26, 2016) (SR-NYSEArca-2016-114) (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).

The Exchange also proposes to amend the Exchange's Fee Schedule relating to the Annual Fee payable in connection with Exchange listing of Index-Linked Securities.⁶ The issuer of a series of Index-Linked Securities, which are referred to as exchange-traded notes (or "ETNs"), may issue a subsequent series of ETNs based on the identical reference asset (for example, stock index) as the initially-listed securities. The Exchange proposes to amend the Fee Schedule to provide that multiple series of securities listed under Rule 5.2(j)(6) that are issued by the same issuer and are based on an identical reference asset and leverage factor (i.e., 1X, -1X, 2X, -2X, 3X or -3X) will receive a 30% discount off the aggregate calculated Annual Fee for such multiple series. Thus, for such series, the Exchange would aggregate the Annual Fee that would apply to the initial and subsequently issued series, and apply a 30% discount to the aggregated Annual Fee amount.

Example: An issuer issues ETN Series A based on the S&P 500 Index with a leverage factor of 2X and subsequently issues Series B based on the S&P 500 Index with a leverage factor of 2X. Series A has 20 million shares outstanding and Series B has 7 million shares outstanding. The Annual Fee, calculated separately, for Series A is \$25,000 and, for Series B, \$12,000. The aggregate Annual Fee for both series is \$37,000. The aggregate Annual Fee would be reduced by 30%, and the Annual Fee for both series combined would be \$25,900.

The Exchange believes it is appropriate to provide a reduction in the Annual Fee for related ETNs, as described above, because such reduction will facilitate the issuance of additional ETNs series, which may provide enhanced competition among ETN issuers, while providing a reduction in fees to certain issuers listing additional ETN series. The proposed reduction would apply equally to all issuers issuing additional ETN series based on the same

⁶ The Fee Schedule provides that Annual Fees for Structured Products range from \$10,000 to \$55,000, based on the total number of securities outstanding per listed issue.

reference asset and leverage factor. The Exchange believes that a discount, as described above, is appropriate in such cases because the Exchange would incur cost savings relating to listing review, ongoing regulatory compliance, issuer services and legal services in connection with listing of such additional related ETNs that are commensurate with the proposed reduction in Annual Fees.

Notwithstanding the proposed amendments to the Listing Fee and Annual Fee, 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)⁷ of the Act, in general, and Section 6(b)(4)⁸ 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)⁹ 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 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 certain Generically-Listed Structured Products, as described above, is equitable and does not unfairly discriminate between issuers

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

because it would apply uniformly to issues of Structured Products that are listed generically under Exchange rules. The Exchange believes eliminating the Listing Fee for such Structured Products, as described above, 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 Commission, would help correlate the Listing Fee applicable to an issue of Structured Products to the resources required to list such securities on the Exchange. The Exchange believes it is appropriate to continue to charge a Listing Fee for Structured Products other than Generically-Listed Structured Products 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 and 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.

The Exchange believes it is appropriate to provide a reduction in the Annual Fee for ETNs, as described above, because such reduction will facilitate the issuance of additional ETN series, which may provide enhanced competition among ETN issuers, while providing a reduction in fees to certain issuers listing additional ETN series. The proposed reduction would apply equally to all issuers issuing additional ETNs series based on the same reference asset and leverage factor. The Exchange believes that a discount, as described above, is appropriate in such cases because the Exchange would incur cost savings relating to listing review, ongoing regulatory compliance, issuer services and legal services in connection with listing of such additional related ETNs that are commensurate with the proposed reduction in Annual Fees.

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 certain Structured Products and reduce the Annual Fee for certain ETNs and will therefore encourage issuers to develop and list additional Structured Products 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)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ 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)¹² 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:

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 15 U.S.C. 78s(b)(2)(B).

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-2016-158 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-2016-158. 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-2016-158 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.¹³

Eduardo A. Aleman
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).