

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81796; File No. SR-NYSEArca-2017-105)

October 2, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees and Charges Relating to the Listing Fees Applicable to Exchange Traded Products

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on September 19, 2017, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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” relating to the Listing Fee applicable to Exchange Traded Products, effective September 19, 2017. 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 received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 (“Schedule”) relating to the “Listing Fee” applicable to Exchange-Traded Products (“ETPs”), effective September 19, 2017, as described below.⁴

Currently the Schedule does not impose a Listing Fee for the following ETPs 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; Currency Trust Shares and Managed Fund 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 Rules 5.2-E(j)(3) (Investment Company Units); 8.100-E (Portfolio Depositary Receipts); 8.200-E (Trust Issued Receipts); 8.201-E (Commodity-Based Trust Shares); 8.202-E (Currency Trust Shares); 8.203-E (Commodity Index Trust Shares); 8.204-E (Commodity Futures Trust Shares); 8.300-E (Partnership Units); 8.500-E (Trust Units); 8.600-E (Managed Fund Shares), and 8.700-E (Managed Trust Securities).

⁵ Exchange rules applicable to Trust Issued Receipts (Commentary .02 to NYSE Arca Rule 8.200-E); Commodity-Based Trust Shares (NYSE Arca Rule 8.201-E), Commodity Index Trust Shares (NYSE Arca Rule 8.203-E), , [sic] Commodity Futures Trust Shares (NYSE Arca Rule 8.204-E), Partnership Units (NYSE Arca Rule 8.300-E), Trust Units (NYSE Arca Rule 8.500-E), and Managed Trust Securities (NYSE Arca Rule 8.700-E) do not provide for listing pursuant to Rule 19b-4(e) under the Act.

⁶ See Securities Exchange Act Release Nos. 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 Traded Products); 78633 (August 22, 2016), 81 FR 59025 (August 26, 2016) (SR-NYSEArca-2016-114) (Notice of Filing and Immediate Effectiveness of Proposed Rule

Certain 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 Depositary Receipts, Managed Fund Shares, and Currency Trust Shares—are subject to a Listing Fee of \$7,500.⁸ Under Item 5b of the Schedule, Managed Trust Securities are subject to a Listing Fee of \$10,000.

The Exchange proposes to amend the Listing Fee applicable to ETPs in two respects. First, the Exchange proposes to reduce the listing fee for Managed Trust Securities from \$10,000 to \$7,500. Thus, under the proposed change, the same Listing Fee of \$7,500 would apply to all non-generically listed ETPs.

Second, the Exchange proposes to amend the Schedule to provide that, if three or more issues of ETPs, other than Generically-Listed Exchange Traded Products, are issued by the

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).

⁷ Commentary .01 to NYSE Arca Rule 8.200-E 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 Rule 8.200-E, 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 Rule 8.200-E, 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 Rule 8.200-E); Commodity-Based Trust Shares (NYSE Arca Rule 8.201-E), Commodity Index Trust Shares (NYSE Arca Rule 8.203-E), , [sic] Commodity Futures Trust Shares (NYSE Arca Rule 8.204-E), Partnership Units (NYSE Arca Rule 8.300-E), Trust Units (NYSE Arca Rule 8.500-E), and Managed Trust Securities (NYSE Arca Rule 8.700-E) do not provide for listing pursuant to Rule 19b-4(e) under the Act.

same issuer and are listed on the Exchange in the same calendar year, such issues will be subject to an aggregate maximum Listing Fee of \$22,500 for all such listed issues combined.⁹

The Exchange believes reducing the Listing Fee for Managed Trust Securities would result in a uniform Listing Fee for all non-generically listed ETPs and would help correlate the Listing Fee 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.

With respect to the aggregate maximum Listing Fee of \$22,500 for three or more ETPs, as described above, the Exchange believes it is appropriate to provide a cap on the Listing Fee for multiple ETPs from the same issuer, as described above, because such a cap will facilitate the issuance of additional ETPs, which may provide enhanced competition among ETP issuers, while providing a reduction in fees to certain issuers listing multiple ETPs during a calendar year. The proposed cap would apply equally to all issuers listing multiple ETPs on the Exchange during a calendar year. The Exchange believes that a Listing Fee cap, as described above, is appropriate in such cases because the Exchange experiences efficiencies commensurate with the proposed Listing Fee cap in working with issuers on a repeated basis in connection with developing and listing multiple ETPs.

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

⁹ With respect to the aggregate maximum Listing Fee of \$22,500, the Exchange would not apply this provision retroactively, and the Exchange would not provide a refund of Listing Fees to an issuer that has listed four or more ETP issues in 2017 or prior calendar years.

Notwithstanding the reduction of the Listing Fee applicable to Managed Trust Securities, as well as the cap of \$22,500 for multiple listings of ETPs by the same issuer in a calendar year, 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 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 reduction of the Listing Fee for Managed Trust Securities, as described above, is equitable and does not unfairly discriminate among issuers because it would apply uniformly to all such issues listed under Exchange rules. In addition, all ETPs other than Generically-Listed Exchange Traded Products would be subject to the same Listing Fee following the proposed Listing Fee reduction.

With respect to the aggregate maximum Listing Fee of \$22,500 for three or more ETPs, as described above, the Exchange believes it is appropriate to provide a cap on the Listing Fee

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

for multiple ETPs from the same issuer because such a cap will facilitate the issuance of additional ETPs, which may provide enhanced competition among ETP issuers, while providing a reduction in fees to certain issuers listing multiple ETPs during a calendar year. The proposed cap would apply equally to all issuers listing multiple ETPs on the Exchange during a calendar year. The Exchange believes that a Listing Fee cap, as described above, is appropriate in such cases because the Exchange experiences efficiencies commensurate with the proposed Listing Fee cap in working with issuers on a repeated basis in connection with developing and listing multiple ETPs.

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 reduce the Listing Fee for Managed Trust Securities and cap the aggregate Listing Fee for multiple issues of ETPs in the same calendar year by the same issuer at \$22,500, thereby encouraging 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2017-105 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.

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).

All submissions should refer to File Number SR-NYSEArca-2017-105. 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-2017-105 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

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Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).