



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75282; File No. SR-NYSEArca-2015-52]

June 24, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rules 7.25 and 8.800 in Order to Allow An Issuer to Elect for its Exchange Traded Product 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

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 June 18, 2015, 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 and II 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.25 (“Rule 7.25”) and NYSE Arca Equities Rule 8.800 (“Rule 8.800”) in order to (1) allow an issuer to elect for its Exchange Traded Product (“ETP”) listed on the Exchange to participate in the Crowd Participant (“CP”) program (the “CP Program”) or the ETP Incentive Program (the “ETP Incentive Program”), respectively, at the time of listing or thereafter at the beginning of each month, rather than just at the beginning of each quarter; and (2) extend the effectiveness of the CP Program for

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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.

an additional one-year pilot period, ending June 23, 2016. The text of 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 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 NYSE Arca Equities Rules 7.25 and 8.800 in order to (1) allow an issuer to elect for its ETP<sup>4</sup> listed on the Exchange to participate in the CP Program or the ETP Incentive Program, respectively, at the time of listing or thereafter at the beginning of each month, rather than just at the beginning of each quarter;<sup>5</sup> and (2) extend the effectiveness of the CP Program for an additional one-year pilot period, ending June 23, 2016.<sup>6</sup>

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<sup>4</sup> For purposes of the CP Program and the ETP Incentive Program, ETPs include securities listed on the Exchange under the 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>5</sup> The Commission approved the CP Program on a pilot basis in Securities Exchange Act Release No. 71804 (March 16, 2014), 79 FR 18357 (April 1, 2014) (SR-NYSEArca-2013-141) (CP Program Release). The Commission approved the ETP Incentive Program

Both the CP Program and the ETP Incentive Program are pilot programs that were designed to incentivize quoting and trading in ETPs and to add competition among existing qualified Market Makers.<sup>7</sup> The CP Program seeks to encourage Market Makers on the Exchange to quote and trade in certain low-volume ETPs by offering issuers an alternative fee program funded by participating issuers and credited to CPs from the Exchange's general revenues. By requiring CPs to quote at the "National Best Bid" or "National Best Offer," for a percentage of the regular trading day, the CP Program rewards competitive liquidity-providing Market Makers. The ETP Incentive Program is also designed to enhance the market quality for ETPs by incentivizing Market Makers to take Lead Market Maker ("LMM")<sup>8</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

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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).

<sup>6</sup> The CP Program is scheduled to end on June 23, 2015.

<sup>7</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>8</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).

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

Currently, an issuer can elect for an ETP to participate in either the CP Program or the ETP Incentive Program either at the time of listing or thereafter at the beginning of each quarter.<sup>9</sup> The Exchange proposes to amend Rules 7.25(c) and 8.800(b) to provide that ETPs already listed on the Exchange can be added to the CP Program or ETP Incentive Program, respectively, on a monthly basis rather than at the beginning of each quarter. The Exchange believes that increasing the frequency for when an ETP may be added to either the CP Program or the ETP Incentive Program will permit each of the programs to be utilized by an issuer on a more timely basis and without the need to wait as long as a calendar quarter before electing for its ETP to participate in the CP Program or applying to have its ETP participate in the ETP Incentive Program. By allowing issuers to enter listed ETPs into the CP Program and the ETP Incentive Program on a monthly rather than a quarterly basis, issuers would be provided with more frequent opportunities to add ETPs to each program. With respect to the CP Program, such an increase would provide the opportunity for increased competition among qualified Market Makers and thereby provide additional liquidity-providing opportunities for Market Makers. With respect to the ETP Incentive Program, the Exchange also 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 LMM assignments in certain lower-volume ETPs.

The Exchange also proposes to extend the current operation of the CP Program for an additional year to allow the Commission, the Exchange, LMMs, and issuers to further assess the

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<sup>9</sup> See Rules 7.25(c)(2) and 8.800(b)(1).

impact of each program before making it available to other securities and implementing the programs on a permanent basis.<sup>10</sup> During the initial one-year pilot period, no ETP issuers have utilized the CP Program and the Exchange does not have any data to assess the impact of the CP Program on ETP market quality or whether any provisions of the CP Program should be modified. The Exchange believes that extending the CP Program pilot period for an additional year will provide additional time for issuers to participate in the CP Program so that the Exchange may assess the impact of the CP Program before making it available to other securities or implementing it on a permanent basis.

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 provisions or the proposed extension of the CP 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 proposal would remove impediments to and perfect the mechanics of a free and open market and national market system because increasing the frequency with which

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<sup>10</sup> The Exchange notes that any proposed further continuance of the CP Program or a proposal to make the CP Program permanent would require a rule filing with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder.

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

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

listed ETPs can join the respective programs will provide additional ETP issuers the opportunity to participate in the CP Program or ETP Incentive Program, which would result potentially in more competitive quoting and trading by additional Market Makers assigned to those ETPs. Accordingly, the proposed rule change would contribute to the protection of investors and the public interest because it may provide a better trading environment for investors in ETPs included in the programs and, generally, encourage greater competition among markets.

The Exchange believes that increasing the flexibility for issuers with regards to when they can enter an incentive program has the potential to expand the pool of ETP liquidity providers, encourage competitive trading and enhance the quality of the markets in ETPs by tightening quote spreads, increasing depth of liquidity and reducing execution costs for investors. As stated in the CP Program Release,<sup>13</sup> the Exchange believes that the CP Program would enhance quote competition, improve liquidity, support the quality of price discovery, promote market transparency, and increase competition for listings and trade executions while reducing spreads and transaction costs. The Exchange further believes that enhancing liquidity in CP Program ETPs would help raise investors' confidence in the fairness of the market generally and their transactions in particular. As such, the CP Program would foster cooperation and coordination with persons engaged in facilitating securities transactions, enhance the mechanism of a free and open market, and promote fair and orderly markets in ETPs on the Exchange. Increasing the frequency by which issuers can enter listed ETPs into the CP Program would provide additional opportunities for ETPs to reap the benefits of the CP Program on a more timely basis.

The Exchange further believes that the ETP Incentive Program is designed to enhance the

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<sup>13</sup> See note 5, supra.

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 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. Increasing the frequency by which issuers can enter listed ETPs into the ETP Incentive Program would allow ETPs to reap the benefits of the ETP Incentive Program on a more timely basis. The Exchange believes that the proposed amendments to Rules 7.25 and 8.800 to provide that ETPs listed on the Exchange can be added to the CP Program or ETP Incentive Program, respectively, on a monthly basis, by providing more frequent opportunities for issuers to add ETPs to the respective programs, would facilitate enhancements to liquidity and market quality as described in the CP Program Release and the ETP Incentive Program Release.

The Exchange believes that, by providing additional time for issuers to participate in the CP Program, through an extension of the pilot period until June 23, 2016, the CP Program would continue to provide an opportunity for rewarding competitive liquidity-providing Market Makers, with associated requirements for quoting by CPs at the National Best Bid or National Best Offer. The CP 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 for the Commission, the Exchange, LMMs, and issuers to assess the impact of the CP Program before making it available to other securities. The

Exchange will continue to monitor the efficacy of the CP Program during the extended pilot period.

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 rule change is not designed to address any competitive issues, but rather increase the frequency with which issuers of listed ETPs can elect to join either the existing CP Program or ETP Incentive Program and there are no other substantive changes being proposed to the respective programs. Rather, the Exchange believes that permitting issuers to utilize each program on a monthly rather than a quarterly basis, and extending the operation of the CP Program, will enhance competition among liquidity providers and thereby improve execution quality on the Exchange.

The proposed extension to the pilot period for the CP Program is not designed to address any competitive issues but rather to provide additional time for the Commission, the Exchange, LMMs and issuers to assess the impact of the CP 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>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

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>16</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>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change can be both effective and implemented upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it ensures that the CP Program pilot will be extended for another year without interruption. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

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

<sup>18</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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-NYSE-Arca-2015-52 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-2015-52. 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 such filing also will be available for inspection and copying at the principal offices 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-2015-52, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Robert W. Errett,  
Deputy Secretary.

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<sup>19</sup> 17 CFR 200.30-3(a)(12).