and Market Data Revenue Rebates will continue to incentivize order senders to submit orders to the Exchange, which will, in turn, enhance competition amongst competing trading centers and contribute to the production of investors and the public interest.

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)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b–4 thereunder [11] because it establishes or changes a due, fee, or other charge imposed by the Exchange.

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 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 to determine whether the proposed rule should be approved or disapproved.

As fully discussed above, the Exchange believes that the proposed Fee Schedule will create equable credit and fee amounts to incent activity among all Participants within the Exchange's trading facilities.

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 email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2013–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2013–22. This file number should be included on the subject line if email 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 Web site (*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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, 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 CHX. 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–CHX–2013–22, and should be submitted on or before January 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–30758 Filed 12–24–13; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71146; File No. SR–NYSEArca–2013–141]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Adopt New NYSE Arca Equities Rule 7.25 in Order To Create a Crowd Participant Program To Incent Competitive Quoting and Trading Volume in Exchange-Traded Products by Market Makers Qualified With the Exchange as CPs

December 19, 2013.

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 December 6, 2013, 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 Substance of the Proposed Rule Change

The Exchange proposes to proposes to [sic] adopt new NYSE Arca Equities Rule 7.25 (''Rule 7.25'') in order to create a Crowd Participant (''CP'') program (the ''CP Program'') to incent competitive quoting and trading volume in exchange-traded products (''ETPs'') by Market Makers qualified with the Exchange as CPs. The text of the proposed rule change is available on the Exchange's Web site 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 specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 adopt new Rule 7.25 in order to create the CP Program to incent competitive quoting and trading volume in ETPs by Market Makers [4] qualified with the Exchange as CPs.

Background

By establishing this new class of market participant, the Exchange is seeking to incentivize 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. At the same time, the Exchange is seeking to add competition among existing qualified Market Makers on the Exchange. By requiring CPs to quote at the National Best Bid (''NBB'') or the National Best Offer (''NBO,'' and together with NBB, ''NBBO'') for a percentage of the regular trading day, the Exchange proposes to reward competitive liquidity-providing Market Makers. The Exchange believes that this rebate program will encourage the additional utilization of, and interaction with, the Exchange and further enhance the Exchange's standing as a premier venue for price discovery, liquidity, competitive quotes and price improvement, which will benefit investors.

The Exchange also believes that the voluntary CP Program will offer an alternative to the existing Lead Market Maker (''LMM'') program on the Exchange, as well as an alternative to the ETP Incentive Program under NYSE Arca Equities Rule 8.800,[5] for issuers to consider when determining where to list their securities. While the LMM program, the ETP Incentive Program and the proposed CP Program would share certain similarities (e.g., each is designed to incentivize quoting and trading), they are each fundamentally different. For example, 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'').[6] LMM Rates are intended to balance the increased risks and requirements assumed by LMMs. The ETP Incentive Program, however, is designed to enhance the market quality of, and incentivize Market Makers to take LMM assignments in, certain lower-volume ETPs by offering an alternative fee structure for such LMMs, which is funded from the Exchange's general revenues. ETP Incentive Program costs are offset by charging participating issuers non-refundable Optional Incentive Fees, which are credited to the Exchange's general revenues. LMMs under the ETP Incentive Program have additional, more stringent performance standards as compared to the LMM program.

Both the CP Program, if approved, and the ETP Incentive Program would be subject to one-year pilot periods. During these pilot periods, the Exchange would provide the Securities and Exchange Commission (''Commission'') with certain market quality reports each month, which would also be posted on the Exchange's Web site. The analysis and market quality data provided in the CP Program reports would be identical to that of the ETP Incentive Program reports. The CP Program pilot reports would also compare, to the extent practicable, the CP Program against the ETP Incentive Program, including with respect to the potential impact that one program may have on the other and how the analysis included in the reports with respect to the CP Program, as described further below, compares to the Exchange's similar analysis with respect to the ETP Incentive Program. Other aspects of the CP Program that would be the same as, or substantially similar to, the ETP Incentive Program are (1) payment of an optional fee by a participating issuer, which would be credited to the Exchange's general revenues (although the fee amounts would differ between the CP Program and the ETP Incentive Program); (2) issuer eligibility (although the CP Program would permit an issuer's ETP to participate therein even if the issuer had suspended the issuance of new shares of such ETP, whereas the ETP Incentive Program does not); (3) the notifications provided by the Exchange on its Web site related to the CP Program; (4) the press releases, and the contents thereof, required of issuers whose ETPs are participating in the CP Program; and (5) the consolidated average daily volume (''CADV'') threshold related to an ETP's ''graduation'' from the CP Program (although the threshold under the CP Program would be two million shares, whereas the threshold under the ETP Incentive Program is one million shares).

The CP Program differs from the LMM program and the ETP Incentive Program primarily by providing for competition among market participants to earn incentive rebates (referred to as ''CP Payments'') based on CP performance in an assigned ETP. In this regard, under the LMM program and the ETP Incentive Program, only one Market Maker—the LMM—is incentivized to be active with respect to the market for the particular ETP. However, as proposed under the CP Program, multiple CPs would compete for the daily CP Payments, which, like the ETP Incentive Program, would be funded from the Exchange's general revenues and offset by charging issuers an optional, non-refundable ''CP Program Fee,'' which would be credited to the Exchange's general revenues. As proposed, CPs would be subject to a daily quoting requirement in order to be eligible to receive CP Payments. CPs would also be subject to a monthly quoting requirement in order to remain qualified as CPs. The Exchange believes that offering three programs with different structures and incentives would allow issuers and Market Makers to choose an alternative that makes the most sense for their business models and allow the Exchange and the Commission to compare the features of, participation in, and performance of the programs over time before determining whether to convert the CP Program, the ETP Incentive Program, or both to permanent status.

The Exchange does not anticipate that offering the CP Program would have any adverse impact on the ETP Incentive Program or the existing LMM program. Rather, the Exchange believes that it is in the interest of issuers, LMMs, Market Makers, and the investing public to have the benefit of alternatives with respect

[4] 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).

[5] *See* Securities Exchange Act Release No. 69706 (June 6, 2013), 78 FR 35340 (June 12, 2013) (SR–NYSEArca–2013–34).

[6] 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://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees_for_12-3-13.pdf.*

to the particular program that an issuer's ETP participates in on the Exchange. The Exchange believes that an issuer would select the program that it believes is best suited for its ETP. In this regard, to the extent an issuer's ETP is participating in, for example, the ETP Incentive Program, but decides that the CP Program may actually be better tailored for the ETP, the issuer could withdraw the ETP from the ETP Incentive Program at the end of a calendar quarter and apply for the ETP to participate in the CP Program. This would also be true for issuers that choose to withdraw their ETPs from the CP Program and instead have their ETPs participate in the ETP Incentive Program. After participating in either the CP Program or the ETP Incentive Program, an issuer could also decide that the traditional LMM program is the best program for its ETP.

Proposed Rule

Proposed NYSE Arca Equities Rule 7.25(a) would describe a CP, which would be an Equity Trading Permit Holder that (1) would be qualified as a Market Maker, and in good standing, on the Exchange; (2) would electronically enter quotes and orders into the systems and facilities of the Exchange; and (3) would be obligated to maintain a displayed bid or offer at the NBB or the NBO, respectively, in each assigned ETP consistent with paragraph (g) of proposed Rule 7.25.[7]

Proposed NYSE Arca Equities Rule 7.25(b) would describe the products eligible for the CP Program.[8] Specifically, an ETP would be eligible to participate in the CP Program if:

(1) it is listed on the Exchange as of the commencement of the pilot period or becomes listed during the pilot period;

(2) the listing is under 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), or 8.700 (Managed Trust Securities);

(3) it is neither participating in the ETP Incentive Program under NYSE Arca Equities Rule 8.800 nor has an LMM assigned to it;[9]

(4) with respect to an ETP that was listed on the Exchange before the commencement of the CP Program, the ETP has a CADV of two million shares or less for at least the preceding three months; and

(5) it is compliant with continuing listing standards, if the ETP is added to the CP Program after listing on the Exchange.

Proposed NYSE Arca Equities Rule 7.25(c) would describe the issuer application process.[10] Specifically, under proposed NYSE Arca Equities Rule 7.25(c)(1), to be eligible for an ETP to participate in the CP Program, the issuer must be current in all payments due to the Exchange.

Proposed NYSE Arca Equities Rule 7.25(c)(2) would describe that an issuer that wished to have an ETP participate in the CP Program and pay the Exchange a CP Program Fee would be required to submit a written application in a form prescribed by the Exchange for each ETP. An issuer could elect for its ETP to participate at the time of listing or thereafter at the beginning of each quarter. The Exchange notes that it may, on a CP Program-wide basis, limit the number of ETPs that any one issuer may have in the CP Program, and any such limitation would be uniformly applied to all issuers.[11]

Proposed NYSE Arca Equities Rule 7.25(c)(3) would describe that the Exchange would communicate the ETP(s) proposed for inclusion in the CP Program on a written solicitation that would be sent to all qualified CPs along with the CP Program Fee the issuer will pay the Exchange for each ETP, which would be set forth in the Exchange's Listing Fee Schedule.[12]

Proposed NYSE Arca Equities Rules 7.25(c)(4) and (5) would describe required public notices relating to the CP Program. Under proposed NYSE Arca Equities Rule 7.25(c)(4), the Exchange would provide notification on a dedicated page on its Web site regarding (i) the ETPs participating in the CP Program, (ii) the date a particular ETP began participating in the CP Program, (iii) the date the Exchange received written notice of an issuer's intent to withdraw its ETP from the CP Program, and the intended withdrawal date, if provided, (iv) the date a particular ETP ceased participating in the CP Program, (v) the CPs assigned to each ETP participating in the CP Program, (vi) the date the Exchange received written notice of a CP's intent to withdraw from its ETP assignment(s) in the CP Program, and the intended withdrawal date, if provided, and (vii) the amount of the CP Program Fee for each ETP. This page would also include a fair and balanced description of the CP Program, including (a) a description of the CP Program's operation as a pilot, including the effective date thereof, (b) the potential benefits that may be realized by an ETP's participation in the CP Program, (c) the potential risks that may be attendant with an ETP's participation in the CP Program, (d) the potential impact resulting from an ETP's entry into and exit from the CP Program, and (e) how interested parties can request additional information regarding the CP Program and/or the ETPs participating therein.

Under proposed NYSE Arca Equities Rule 7.25(c)(5), an issuer of an ETP that is approved to participate in the CP Program would be required to issue a press release to the public when an ETP commences or ceases participation in the CP Program. The press release would be in a form and manner prescribed by the Exchange, and if practicable, would be issued at least two

[7] The Exchange's proposed description of a CP would be substantially the same as a ''Competitive Liquidity Provider'' or ''CLP'' under Interpretation and Policy .02(a) of BATS Exchange, Inc. (''BATS'') Rule 11.8 (the ''Competitive Liquidity Provider Program'' or ''CLP Program'').

[8] The products that would be eligible to join the CP Program would be substantially the same as the products eligible for the ETP Incentive Program under Rule 8.800(a), except that proposed Rule 7.25(b)(3) would be added to describe that, to participate in the CP Program, an ETP could neither participate in the ETP Incentive Program under NYSE Arca Equities Rule 8.800 nor have an LMM assigned to it.

[9] If an issuer of an ETP with an LMM assigned to it chose to have the ETP participate in the CP Program, the LMM would be relieved of its status as such. The LMM would be permitted to apply for CP status for the particular ETP. In this regard, the Exchange believes that existing Market Maker identifiers could be utilized to identify CP activity for purposes of the CP Program, since the same Market Maker could not also act in the capacity as an LMM, either pursuant to the LMM Program or the ETP Incentive Program.

[10] The issuer application process under proposed Rule 7.25(c) would be substantially similar to the process under Rule 8.800(b) for issuers whose ETPs participate in the ETP Incentive Program, except that (i) proposed Rule 7.25(c)(2) would not include a restriction with respect to the number of ETPs that an issuer could designate to participate in the CP Program that were listed on the Exchange prior to the pilot period, (ii) as described below, an issuer whose ETP is participating in the CP Program would not be able to determine the amount of the CP Program Fee, and (iii) the process described under Rule 8.800(b)(4)-(5) for the ETP Incentive Program related to issuer-LMM contact, LMM meetings/presentations to/with the Exchange, and issuer indications of preference regarding the specific LMM assigned to an ETP would not be applicable.

[11] This would be similar to the manner in which the Nasdaq Stock Market LLC (''NASDAQ'') may, in relation to its Market Quality Program (''MQP''), on an MQP-wide basis limit the number of MQP securities that any one ''MQP Company'' may have in the MQP. *See* NASDAQ Rule 5950(a)(1)(A). *See also* note 50, *infra* [sic].

[12] The Exchange notes that, whereas the Optional Incentive Fee for the ETP Incentive Program is determined by the issuer within a range of $10,000 to $40,000, the CP Program Fee would be fixed at $50,000 for any issuers whose ETPs are participating.

days before the ETP commences or ceases participation in the CP Program.[13] For example, there could be instances in which it would not be known two days in advance that an ETP would be ceasing participation in the CP Program, in which case the Exchange would request that the issuer distribute the press release as soon as possible under the particular circumstances. The issuer would also be required to dedicate space on its Web site, or, if it does not have a Web site, on the Web site of the adviser or sponsor of the ETP, that (i) includes any such press releases and (ii) provides a hyperlink to the dedicated page on the Exchange's Web site that describes the CP Program.[14]

Proposed NYSE Arca Equities Rule 7.25(d) would describe the CP application process.[15] To qualify as a CP, as described in proposed NYSE Arca Equities Rule 7.25(d)(1), an Equity Trading Permit Holder must: [16]

(A) be qualified as a Market Maker, and in good standing, on the Exchange; and

(B) have adequate information barriers between the business unit of the Equity Trading Permit Holder acting as a CP in a proprietary capacity and the Equity Trading Permit Holder's customer, research and investment banking business, if any.

To become a CP, an Equity Trading Permit Holder must submit a CP application form with all supporting documentation to the Exchange. Exchange staff would determine whether an applicant was qualified to become a CP based on the qualifications described in proposed Rule 7.25(d)(1). After an applicant submits a CP application to the Exchange, with supporting documentation, the Exchange would notify the applicant of its decision. If an applicant were approved by the Exchange to receive CP status, such applicant would be required to have connectivity with relevant Exchange systems before such applicant would be permitted to quote and trade as a CP on the Exchange.[17] In the event that an applicant were disapproved by the Exchange, such applicant could seek review under existing NYSE Arca Equities Rule 10.13 and/or reapply for CP status at least three calendar months following the month in which the applicant received the disapproval notice from the Exchange.[18] The Exchange does not anticipate placing a limit on the number of CPs assigned to a particular ETP or on the number of ETPs that a particular CP would be assigned to. This is consistent with the goal of the CP Program, which is to promote quoting and trading and to add competition on the Exchange.[19]

Proposed NYSE Arca Equities Rule 7.25(e) would describe an issuer's payment of the CP Program Fee. An issuer of an ETP that is participating in the CP Program would be required to pay the Exchange a CP Program Fee in accordance with the Exchange's Listing Fee Schedule, which would be credited to the Exchange's general revenues. In this regard, the Exchange proposes to amend its Listing Fee Schedule to provide that the CP Program Fee under Rule 7.25 would be $50,000.[20] Specifically, the Listing Fee Schedule would specify that the CP Program Fee for each ETP would be paid by the issuer to the Exchange in quarterly installments at the beginning of each quarter and prorated if the issuer commenced participation for an ETP in the CP Program after the beginning of a quarter.[21] The CP Program Fee paid by an issuer would be credited to the Exchange's general revenues. The issuer would not receive a credit from the Exchange following the end of the quarter if a CP were assigned to the ETP during such quarter, even if the assigned CPs did not satisfy their daily or monthly quoting requirements in any given month in such quarter for the ETP.[22] If the ETP had a sponsor, the sponsor could pay the CP Program Fee to the Exchange.[23]

Proposed NYSE Arca Equities Rule 7.25(f) would describe Size Event Tests (''SETs'').[24] The Exchange would measure the performance of a CP in an assigned ETP by calculating SETs during Core Trading Hours on every day on which the Exchange is open for business. The Exchange would measure the quoted displayed size at the NBB (NBO) of each CP at least once per second to determine bid (offer) SETs (a ''Bid (Offer) SET''). A CP would be considered to have a winning Bid (Offer) SET (a ''Winning Bid (Offer) SET'') for a particular ETP if, at the time of the SET, the CP:

(A) was quoting at least 500 shares of the ETP at the NBB (NBO);

(B) had the greatest aggregate displayed size at the NBB (NBO); and

(C) was quoting an offer (bid) of at least 100 shares at a price at or within 1.2% of the CP's best bid (offer).

Proposed NYSE Arca Equities Rule 7.25(g) would describe the CP quoting requirements.[25] Under the general

[13] The issuer's press release would be required to include language describing, for example, that while the impact of participation in or exit from the CP Program, which is optional, cannot be fully understood until objective observations can be made in the context of the CP Program, potential impacts on the market quality of the issuer's ETP may result, including with respect to the average spread and average quoted size for the ETP.

[14] These disclosure requirements would be in addition to, and would not supersede, the prospectus disclosure requirements under the Securities Act of 1933 or the Investment Company Act of 1940.

[15] The proposed CP application process would be substantially similar to the BATS CLP Program application process under Interpretation and Policy .02(e) of BATS Rule 11.8.

[16] The proposed qualifications would be, in the Exchange's opinion, more straightforward as compared to the BATS CLP Program qualifications under Interpretation and Policy .02(c) of BATS Rule 11.8. For example, proposed Rule 7.25(d)(1) would not require unique identifiers, since an ETP could participate only in one of either the LMM program, the ETP Incentive Program or the proposed CP Program, such that unique identifiers to distinguish Market Maker activity on the Exchange would not be necessary. Several other BATS CLP requirements (e.g., regarding trading infrastructure) are overarching for Market Makers on the Exchange, generally, and therefore are not specifically included in Rule 7.25.

[17] If approved to receive CP status, a CP would be assigned to participating ETPs in the same manner that Market Makers are currently assigned to securities listed on the Exchange.

[18] NYSE Arca Equities Rule 10.13 provides the procedure for persons aggrieved by certain actions taken by the Exchange to apply for an opportunity to be heard and to have the action reviewed.

[19] This would be unlike securities traded on the Exchange for which a single LMM is assigned as well as for securities participating in the ETP Incentive Program.

[20] As noted above, whereas the Optional Incentive Fee for the ETP Incentive Program is determined by the issuer within a range of $10,000 to $40,000 per ETP, the CP Program Fee would be fixed at $50,000 per ETP for any issuers whose ETPs are participating. Like the ETP Incentive Program, the issuer would still be required to pay applicable Listing Fees and Annual Fees. Under the current Listing Fee Schedule, an issuer of an ETP is required to pay a Listing Fee that ranges from $5,000 to $45,000. An ETP issuer also pays a graduated Annual Fee based on the number of shares of the ETP that are outstanding. The Annual Fee ranges from $5,000 to $55,000.

[21] The description of payment of the CP Program Fee by issuers would be substantially similar to that of the Optional Incentive Fee under the ETP Incentive Program, including by describing the circumstance under which the issuer would not receive a credit from the Exchange.

[22] As described in proposed NYSE Arca Equities Rule 7.25(e)(1), an ETP would not be permitted to begin participation in the CP Program unless there were eligible CPs assigned to such ETP.

[23] This is identical to the ETP Incentive Program, including that the term ''sponsor'' means the registered investment adviser that provides investment management services to an ETP or any of such investment adviser's parents or subsidiaries.

[24] The Exchange notes that the ETP Incentive Program only contemplates one LMM for each participating ETP. The concept of SETs is substantially similar to that of the BATS CLP Program under Interpretation and Policy .02(g)(1) and (4) (5) of BATS Rule 11.8.

[25] The proposed CP quoting requirements would be substantially similar to the quoting requirements of the BATS CLP Program under Interpretation and Policy .02(g)(1)(A) and (B) and (g)(2)–(4) of BATS Rule 11.8, except that, as described in proposed Rule 7.25(g)(4), for purposes of meeting the daily and monthly quoting requirements, CP quotes may be for the account of the CP in either a proprietary

Continued

quoting requirement of proposed Rule 7.25(g)(1), each CP assigned to one or more ETPs in the CP Program would be required to maintain continuous, two-sided displayed quotes or orders in accordance with existing NYSE Arca Equities Rule 7.23(a)(1) for each such ETP. Under the daily quoting requirement of proposed Rule 7.25(g)(2), a CP would be required to have Winning Bid (Offer) SETs equal to at least 10% of the total Bid (Offer) SETs on any trading day in order to meet its daily quoting requirement and to be eligible for the daily CP Payments for an ETP, as described in the Exchange's Trading Fee Schedule. Furthermore, under the monthly quoting requirement of proposed Rule 7.25(g)(3), a CP must have displayed quotes or orders of at least 100 shares at the NBB (NBO) at least 10% of the time that the Exchange calculates Bid (Offer) SETs to meet its monthly quoting requirement. Finally, proposed Rule 7.25(g)(4) would provide that, for purposes of meeting the daily and monthly quoting requirements, CP quotes may be for the account of the CP in either a proprietary capacity or a principal capacity on behalf of an affiliated or unaffiliated person.[26] For purposes of measuring CP quoting, the Exchange would include all Market Maker quotes and orders in assigned ETPs of an Equity Trading Permit Holder that is a CP.

By way of comparison, although CPs and LMMs share certain quoting requirements, the additional CP requirements to receive a payment under the CP Program differ from those of LMMs. All CPs, LMMs in the LMM program, and LMMs in the ETP Incentive Program must meet the general Market Maker quoting requirements under Rule 7.23. Under this rule, they must maintain continuous, two-sided trading interest where the price of the bid (offer) interest is not more than a designated percentage away from the then current NBBO. LMMs in the LMM program are also subject to the heightened performance standards of Rule 7.24, which relate to (i) percentage of time at the NBBO; (ii) percentage of executions better than the NBBO; (iii) average displayed size; and (iv) average quoted spread. Rule 7.24 does not apply, however, to LMMs in the ETP Incentive Program or CPs. Instead, ETP Incentive Program LMMs are subject to the specific performance standards under Rule 8.800(c), which relate only to quoting.[27]

Proposed NYSE Arca Equities Rule 7.25(h) would describe the CP Payment by the Exchange. Specifically, the Exchange would credit a CP for a CP Payment from its general revenues in accordance with the Exchange's Trading Fee Schedule. In this regard, the Exchange proposes to amend its Trading Fee Schedule to provide for the CP Payment. Specifically, the Trading Fee Schedule would specify the amount of the total daily rebate, which would not exceed an amount equal to the CP Program Fee paid to the Exchange by an issuer, less a 5% Exchange administration fee, divided by the number of trading days in the calendar year.[28] Half of this amount would be for bid SETs and half would be for offer SETs. Additionally, 70% of the bid (offer) SET amount would be credited to the CP with the highest number of Winning Bid (Offer) SETs and 30% of the bid (offer) SET amount would be credited to the CP with the second-highest number of Winning Bid (Offer) SETs.[29] If only one CP were eligible for the bid (offer) SET amount, 100% of such rebate would be provided to such CP. If more than two CPs had an equal number of Winning Bid (Offer) SETs, the CP with the higher executed volume in the ETP on the Exchange on the particular trading day would be awarded the applicable daily rebate. A rebate would not be provided if no eligible CPs existed (e.g., if CPs were assigned to the ETP but did not satisfy the requirements to have a Winning Bid or Winning Offer).

The Exchange would credit a CP for the CP Payment at the end of each month. If the ETP were withdrawn from the CP Program pursuant to proposed paragraph (i) of Rule 7.25 during the month, then the CP would not be eligible for a CP Payment after the date of such withdrawal. Additionally, if an issuer did not pay its quarterly installments to the Exchange on time and the ETP continued to be included in the CP Program, the Exchange would continue to credit CPs in accordance with the Exchange's Fee Schedule.

Proposed NYSE Arca Equities Rule 7.25(i) would describe the withdrawal of an ETP.[30] Specifically, if an ETP liquidated or suspended the redemption of shares it would be automatically withdrawn from the CP Program as of the ETP liquidation or suspension date.[31] Also, the Exchange would withdraw an ETP from the CP Program upon request from the issuer. Additionally, if the issuer was not current in all payments due to the Exchange after two consecutive quarters, such ETP would be automatically removed from the CP Program.[32] Finally, if an ETP maintained a CADV of two million shares or more for three consecutive months, it would be automatically withdrawn from the CP Program within

capacity or a principal capacity on behalf of an affiliated or unaffiliated person. The Exchange notes that the proposed quoting requirements under the CP Program would differ significantly from the LMM Performance Standards under the ETP Incentive Program because only one LMM is assigned to each ETP participating in the ETP Incentive Program, whereas several CPs may be assigned to each ETP participating in the CP Program.

[26] A CP's quotes in a principal capacity could include quotes submitted to the Exchange on behalf of customers or other unaffiliated or affiliated persons.

[27] ETP Incentive Program LMMs must meet a ''Market Wide Requirement,'' under which an LMM must maintain quotes or orders at the NBBO or better (the ''Inside'') during the month during Core Trading Hours in accordance with certain maximum width and minimum depth thresholds based on daily share volume and share price, as set forth in Commentary .01 to Rule 8.800, unless the thresholds are otherwise met by quotes or orders of all market participants across all markets trading the security. ETP Incentive Program LMMs must also meet an ''NYSE Arca-Specific Requirement'' under which the LMM must maintain quotes or orders on NYSE Arca at the NBBO that meet either a time-at-the-Inside requirement or a size-setting NBBO requirement. Finally, for at least 90% of the time when quotes may be entered during Core Trading Hours each trading day, as averaged over the course of a month, an LMM must maintain (A) at least 2,500 shares of attributable, displayed posted buy liquidity on the Exchange that is priced no more than 2% away from the NBB for the particular ETP; and (B) at least 2,500 shares of attributable, displayed posted offer liquidity on the Exchange that is priced no more than 2% away from the NBO for the particular ETP.

[28] BATS similarly provides a daily payment pursuant to its CLP Program, which is also based on size event tests. For example, for ''Tier I'' securities, BATS pays $500 per day to CLPs, which is split between bid and offer size event tests. BATS allocates the payment to CLPs on a pro rata basis based on the combined sum of their winning bid/offer size event tests. *See* Interpretation and Policy .02(k)(1) of BATS Rule 11.8.

[29] The Trading Fee Schedule would include a cross-reference to the definition of Winning Bid (Offer) SET, as described above and as proposed within paragraph (f) of Rule 7.25.

[30] Inherent in the withdrawal of an ETP is that any CPs assigned to such ETP would be relieved of such assignment.

[31] The Exchange notes that under Rule 8.800(e)(1) of the ETP Incentive Program, an ETP would also be automatically withdrawn if it suspended the creation of shares. The Exchange believes that an ETP would benefit from having CPs assigned during a period when the issuer has suspended the issuance of new shares, in that the added liquidity that CPs would provide would contribute to the quality of the market for such an ETP, especially during such a time when liquidity in the ETP might otherwise be limited. The Exchange further notes that the BATS CLP Program does not require withdrawal in relation to suspension of creation of shares for participating securities.

[32] This would be identical to the process under Rule 8.800(e)(5) of the ETP Incentive Program. Only the ETP for which an issuer is not current in payments would be subject to withdrawal. For example, if an issuer listed two ETPs on the Exchange that participated in the CP Program, and was current in payments for one but not for the other, only the latter ETP would be subject to withdrawal from the CP Program.

one month thereafter.[33] If after such automatic withdrawal the ETP failed to maintain a CADV of two million shares or more for three consecutive months, the issuer of the ETP could reapply for the CP Program one month thereafter. The Exchange believes that setting a two-million-share threshold would provide an objective measurement for evaluating the effectiveness of the CP Program, such that the Exchange and the Commission could compare the quality of the market for ETPs, both during their participation in the CP Program and after their ''graduation'' from the CP Program.

Finally, proposed NYSE Arca Equities Rule 7.25(j) would describe the withdrawal of CP status. Specifically, a CP that did not satisfy the monthly quoting requirement of proposed paragraph (g)(3) of Rule 7.25 for three consecutive months would be subject to the potential withdrawal of its CP status.[34] Any such withdrawal determinations would be for a specific ETP.[35] A CP could also initiate withdrawal from an ETP assignment in the CP Program by giving notice to the Exchange. The Exchange would effect such withdrawal as soon as practicable, but no later than 30 days after the date the notice is received by the Exchange. Such withdrawal could be for a specific ETP or for all ETPs to which the CP is assigned.

Implementation of CP Program

The CP Program would be offered to issuers from the date of implementation, which would occur no later than 90 days after Commission approval of this filing, until one calendar year after implementation. During the pilot period, the Exchange would assess the CP Program and could expand the criteria for ETPs that are eligible to participate, which would be accomplished pursuant to a proposed rule change with the Commission. At the end of the pilot period, the Exchange would determine whether to continue or discontinue the CP Program or make it permanent and submit a rule filing as necessary. If the Exchange determined to change the terms of the CP Program while it was ongoing, it would submit a proposed rule change with the Commission.

During the CP Program, the Exchange would provide the Commission with certain market quality reports each month, which would also be posted on the Exchange's Web site. Such reports would include the Exchange's analysis regarding the CP Program and whether it is achieving its goals,[36] as well as market quality data such as, for all ETPs listed as of the date of implementation of the CP Program and listed during the pilot period (for comparative purposes, including comparable ETPs that are listed on the Exchange but not participating in the CP Program), volume (CADV and NYSE Arca ADV), NBBO bid/ask spread differentials, CP participation rates, NYSE Arca market share, CP time spent at the Inside, CP time spent within $0.03 of the Inside, percentage of time NYSE Arca had the best price with the best size, CP quoted spread, CP quoted depth, and Rule 605 statistics (one-month delay) as agreed upon by the Exchange and the Commission staff. These reports would also compare, to the extent practicable, ETPs before and after they are in the CP Program, and would further provide data and analysis about the market quality of ETPs that exceed the two-million-share CADV threshold and ''graduate,'' or are otherwise withdrawn or terminated from, the CP Program. These reports would also compare, to the extent practicable, the CP Program against the ETP Incentive Program, including with respect to the potential impact that one program may have on the other and how the analysis described above with respect to the CP Program compares to the Exchange's similar analysis with respect to the ETP Incentive Program. In connection with this proposal, the Exchange would provide other data and information related to the CP Program as may be periodically requested by the Commission. In addition, and as described further below, issuers could utilize ArcaVision to analyze and replicate data on their own.[37] The Exchange believes that this information will help the Commission, the Exchange, and other interested persons to evaluate whether the CP Program has resulted in the intended benefits it is designed to achieve, any unintended consequences resulting from the CP Program, and the extent to which the CP Program alleviates or aggravates any potential concerns related to the CP Program, including relating to issuer payments to market makers.

Benefits and Risks of the CP Program

The proposed CP Payment is designed to encourage Market Makers to pursue assignments as CPs and thereby support the provision of consistent liquidity in ETPs listed on the Exchange. The Exchange believes that providing a CP Payment would create an equitable system of incentives for Market Makers. The Exchange would administer all aspects of the CP Payments, which, as noted above, would be paid by the Exchange to CPs out of the Exchange's general revenues. The Exchange believes that the CP Program would increase the supply of Market Makers seeking to take on ETP assignments, ultimately leading to improved market quality for long-term investors in ETPs, which would lead to multiple benefits.

Despite such anticipated benefits that the CP Program may bring to the market for ETPs, there are also potential risks that may be attendant with an ETP's participation in the CP Program, including with respect to the potential impact on price and liquidity of an ETP resulting from an ETP's entry into and exit from the CP Program. For example, while the impact of participation in or exit from the CP Program, which is optional, could not be fully understood until objective observations could be made in the context of the CP Program, potential impacts on the market quality of the issuer's ETP may result, including with respect to the average spread and average quoted size for the ETP.

Relief From FINRA Rule 5250

FINRA has filed an immediately effective rule change with the Commission indicating FINRA's view that, where a market maker payment is provided for under the rules of an exchange that are effective after being filed with, or filed with and approved by, the Commission pursuant to the requirements of the Act, comity should be afforded to such exchange rulemaking and the payment should not

[33] Except for the difference in thresholds, this would be identical to the process under Rule 8.800(e)(4) of the ETP Incentive Program.

[34] This would be substantially similar to the potential loss of CLP status under the BATS CLP Program under Interpretation and Policy .02(j)(1)(B) and (j)(2) of BATS Rule 11.8.

[35] For example, if a CP satisfied its monthly quoting requirement for one ETP but not for another ETP that it was assigned to, the CP would be subject to withdrawal for the latter ETP, but not the former.

[36] The Exchange believes that an initial indicator of the success of the CP Program will be the extent to which issuers elect to have their ETPs participate therein, as well as the number of Market Makers that choose to act as CPs.

[37] NYSE Arca provides ArcaVision free of charge to the public via the Web site *www.ArcaVision.com*. ArcaVision offers a significant amount of trading data and market quality statistics for every Regulation NMS equity security traded in the United States, including all ETPs. Publicly available reports within ArcaVision, which include relevant comparative data, are the Symbol Summary, Symbol Analytics, Volume Comparison and Quotation Comparison reports, among others. In addition, users can create the reports on a per-symbol basis over a flexible time frame. They can also take advantage of predefined, accurate and up-to-date symbol sets based on type of ETP or issuer. Users can also create their own symbol lists. ArcaVision will allow an ETP issuer to see additional information specific to its CPs and other Market Makers in each ETP via the ''ArcaVision Market Maker Summary'' reporting mechanism.

be prohibited under FINRA Rule 5250.[38] Accordingly, the Exchange believes that the CP Program would be within the scope of the carveout from the prohibitions of Rule 5250 that is provided therein.[39]

Relief From Regulation M

Rule 102 of Regulation M prohibits an issuer from directly or indirectly attempting ''to induce any person to bid for or purchase, a covered security during the applicable restricted period'' unless an exemption is available.[40] The payment of the optional CP Program Fee by the issuer (or sponsor on behalf of the issuer) for the purpose of incentivizing Market Makers to become CPs in an issuer's security could constitute an attempt by the issuer to induce a bid for a purchase of a ''covered security'' during a restricted period.[41] As a result, absent exemptive relief, participation in the CP Program by an issuer (or sponsor on behalf of the issuer) could violate Rule 102 of Regulation M. For the reasons discussed below, the Exchange believes that exemptive relief from Rule 102 should be granted for the CP Program.

First, the Exchange notes that the Commission and its staff have previously granted relief from Rule 102 to a number of ETPs (''Existing Relief'') in order to permit the ordinary operation of such ETPs.[42] In granting the Existing Relief, the Commission has relied in part on the exclusion from the provisions of Rule 102 provided by paragraph (d)(4) of Rule 102 for securities issued by an open-end management investment company or unit investment trust. In granting the Existing Relief from Rule 102 to other types of ETPs, for which the (d)(4) exception is not available, the staff has relied on (i) representations that the fund in question would continuously redeem ETP shares in basket-size aggregations at their net asset value (''NAV'') and that there should be little disparity between the market price of an ETP share and the NAV per share and (ii) a finding that ''[t]he creation, redemption, and secondary market transactions in [shares] do not appear to result in the abuses that . . . Rules 101 and 102 of Regulation M . . . were designed to prevent.'' [43] The crux of the Commission's findings in granting the Existing Relief rests on the premise that the prices of ETP shares closely track their per-share NAVs. Given that the CP Program neither alters the derivative pricing nature of ETPs nor impacts the arbitrage opportunities inherent therein, the conclusion on which the Existing Relief is based remains unaffected by the CP Program. In this regard, most ETPs that would be eligible to participate in the CP Program would have previously been granted relief from Rule 102. Moreover, and as noted above, an ETP that liquidated or suspended the redemption of shares would be automatically withdrawn from the CP Program as of the ETP liquidation or suspension date.

Second, the CP Program requires, among other things, that a CP make two-sided quotes and not just bids. It is not intended to raise ETP prices but rather to improve market quality. In light of the derivative nature of ETPs described above, the Exchange does not expect that CPs would quote outside of the normal quoting ranges for these products as a result of the CP Payment, but rather would quote within their normal ranges as determined by market factors. Indeed, the CP Program would not create any incentive for a CP to quote outside such ranges. In this regard, the Exchange believes that the secondary market price for shares of the ETPs participating in the CP Program would not vary substantially from the NAV of such ETP shares during the duration of the ETP's participation in the CP Program because participating ETPs would likely have a pricing mechanism that would be expected to keep the price of the ETP shares tracking the NAV of the ETP shares, which should make the shares less susceptible to price manipulation.[44] The Exchange anticipates monitoring the secondary market price for shares of an ETP during its participation in the CP Program compared to the NAV of such ETP. If the Exchange were to identify any unusual movements in share prices or variances between secondary market prices and NAVs, and it was determined that such unusual movements or variances resulted from the ETP's participation in the CP Program, the Exchange would consider amending the CP Program in a manner designed to contribute to preventing such unusual movements or variances from occurring in the future.

Third, the CP Program includes significant disclosure provisions, which the Exchange believes will help to alert and educate potential and existing investors in the ETPs participating in the CP Program, as well as other market participants, about the CP Program, including regarding which ETPs are participating in the CP Program, which CPs are assigned to each ETP, the amount of CP Program Fee an issuer will incur as a result of participating in the CP Program, the maximum amount of CP Payments a CP could potentially receive from the Exchange under the CP Program, and the potential benefits and risks of the CP Program. The Exchange believes that the disclosures that are built into the CP Program would contribute to minimizing concerns regarding a particular ETP's participation in the CP Program.

Finally, the staff of the Exchange, which is a self-regulatory organization, would be interposed between the issuer

[38] *See* Securities Exchange Act Release No. 69398 (April 18, 2013), 78 FR 24261 (April 24, 2013) (SR–FINRA–2013–020).

[39] The Exchange also notes that FINRA surveils trading on the Exchange, including ETP trading, pursuant to a Regulatory Services Agreement (''RSA''). The Exchange is responsible for FINRA's performance under this RSA.

[40] Rule 102 provides that ''[i]n connection with a distribution of securities effected by or on behalf of an issuer or selling security holder, it shall be unlawful for such person, or any affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period'' unless an exception is available. *See* 17 CFR 242.102.

[41] The Commission previously granted a limited exemption from Rule 102 of Regulation M solely to permit the payment of the ETP Incentive Program Optional Incentive Fee during its pilot period, subject to certain conditions. *See* Securities Exchange Act Release No. 69707 (June 6, 2013), 78 FR 35330 (June 12, 2013) (Order Granting a Limited Exemption from Rule 102 of Regulation M Concerning the NYSE Arca, Inc.'s Exchange Traded Product Incentive Program Pilot Pursuant to Regulation M Rule 102(e)). The Commission previously stated its belief that the payment of the ETP Incentive Program Optional Incentive Fee by an issuer (or a sponsor on behalf of the issuer) for the purpose of incentivizing market makers to become LMMs in the issuer's securities would constitute an indirect attempt by the issuer to induce a bid for or a purchase of a covered security during a restricted period, which would violate Rule 102. *See id.* at 35331.

[42] *See, e.g.,* Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (Oct. 24, 2006) (regarding class relief for exchange traded index funds).

[43] *See* Rydex Specialized Products LLC, SEC No-Action Letter (June 21, 2006).

[44] The transparent nature of an ETP's portfolio composition, as well as its accessibility and the elasticity of shares outstanding, contributes to an arbitrage process that will lead to executions of orders priced at or near NAVs. The typical unit size is 50,000 shares to 100,000 shares and each share represents fractional ownership of the portfolio, allowing low minimum investments to access the exposure of a large notional portfolio. ETP supply (i.e., shares outstanding) can be increased or decreased through the creation and redemption process. Clearing firms that are authorized participants will have the opportunity to deliver, or take delivery of, unit-sized amounts of the underlying securities. Proprietary traders engaging in arbitrage are able to calculate an estimated intraday NAV. Such traders understand what the intrinsic per-share price is, hedge themselves using the underlying securities or correlated equivalents, and manage their positions by either creating or redeeming units. If and when the quote is priced beyond the intrinsic value of an ETP, an arbitrage opportunity can arise, and market participants will arbitrage such spread until price equilibrium is restored.

and the CPs, administering a rules-based program with numerous structural safeguards described in the previous section. Specifically, both CPs and issuers would be required to apply to participate in the program and to meet certain standards. The Exchange would collect the CP Program Fees from issuers and credit them to the Exchange's general revenues. A CP would be eligible to receive a CP Payment, again from the Exchange's general revenues, only after it met the proposed CP quoting requirements set and monitored by the Exchange. Application to, continuation in, and withdrawal from the CP Program would be governed by published Exchange rules and policies, and there would be extensive public notice regarding the CP Program and payments thereunder on both the Exchange's and the issuers' Web sites. Given these structural safeguards, the Exchange believes that payments under the CP Program are appropriate for exemptive relief from Rule 102.

In summary, the Exchange believes that exemptive relief from Rule 102 should be granted for the CP Program because, for example, (1) the CP Program would not create any incentive for a CP to quote outside of the normal quoting ranges for the ETPs included therein and the secondary market price for shares of the ETPs participating in the CP Program would not vary substantially from the NAV of such ETP shares during the duration of the ETP's participation in the CP Program; (2) the CP Program has numerous structural safeguards, such as the application process for issuers and CPs, the interpositioning of the Exchange between issuers and CPs, and significant public disclosure surrounding the CP Program, which in general is designed to help inform investors about the potential impact of the CP Program; (3) the CP Program includes significant disclosure provisions, which the Exchange believes will help to alert and educate potential and existing investors in the ETPs participating in the CP Program; and (4) the CP Program does not alter the basis on which Existing Relief is based and, furthermore, most ETPs that would be eligible to participate in the CP Program would have previously been granted relief from Rule 102.[45]

Surveillance

The Exchange believes that its surveillance procedures would be adequate to properly monitor the trading of CP Program ETPs on the Exchange during all trading sessions and to detect and deter violations of Exchange rules and applicable federal securities laws. Trading of the ETPs through the Exchange would be subject to FINRA's surveillance procedures for derivative products including ETFs.[46] The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members or affiliates of the ISG,[47] and from issuers and public and non-public data sources such as, for example, Bloomberg.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and that the Exchange is not aware of any problems that Equity Trading Permit Holders or issuers would have in complying with the proposed change.

The Exchange believes that it is subject to significant competitive forces in setting the proposed fees, as described below in the Exchange's statement regarding the burden on competition.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[48] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[49] in particular. The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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. The Exchange also believes that the CP Program would offer an alternative to the existing LMM program on the Exchange, as well as an alternative to the ETP Incentive Program, for issuers to consider when determining where to list their securities, which would contribute to removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange believes that these three programs can exist concurrently. The Exchange believes that an initial indicator of the success of the CP Program will be the extent to which issuers elect to have their ETPs participate therein, as well as the number of Market Makers that choose to act as CPs. The Exchange believes that offering three programs with different structures and incentives will allow issuers and Market Makers to choose an alternative that makes the most sense for their business models and allow the Exchange and Commission to compare the features of, participation in, and performance of the programs over time before determining whether to convert either of the pilot programs to permanent status. Additionally, and as described above, to the extent an issuer's ETP is participating in, for example, the ETP Incentive Program, but decides that the CP Program may actually be better tailored for the ETP, the issuer would be able to withdraw the ETP from the ETP Incentive Program at the end of a calendar quarter and apply for the ETP to participate in the CP Program. This would also be true for issuers that choose to withdraw their ETPs from the CP Program and instead have their ETPs participate in the ETP Incentive Program. After participating in either the CP Program or the ETP Incentive Program, an issuer could also decide that the traditional LMM program is the best program under which to list its ETP.

[45] The Exchange notes that the Commission granted a limited exemption from Rule 102 of Regulation M to the Exchange related to the ETP Incentive Program as well as to NASDAQ related to its MQP, which is similar to the Exchange's ETP Incentive Program. *See* Securities Exchange Act Release No. 69707 (June 6, 2013) (Order Granting a Limited Exemption from Rule 102 of Regulation M Concerning the NYSE Arca, Inc.'s Exchange-Traded Product Incentive Program Pilot Pursuant to Regulation M Rule 102(e)). *See also* Securities Exchange Act Release No. 69196 (March 20, 2013), 78 FR 18410 (March 26, 2013) (Order Granting a Limited Exemption From Rule 102 of Regulation M Concerning the NASDAQ Market Quality Program Pilot Pursuant to Regulation M Rule 102(e)). These exemptions include certain conditions related to, among other things, notices to the public. The Exchange notes that if the Commission were to provide exemptive relief from Rule 102 of Regulation M for the CP Program it may include similar conditions.

[46] *See supra* note 38 [sic].

[47] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[48] 15 U.S.C. 78f(b).

[49] 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because it imposes objective criteria that CPs must satisfy in order to qualify for the proposed CP Payment and to remain qualified as CPs. The Exchange further believes that the proposal will promote just and equitable principles of trade because it will impose the same requirements on all CPs. Additionally, the Exchange believes that the proposal will remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because it will incentivize competitive quoting and trading by Market Makers qualified with the Exchange as CPs. Accordingly, this will 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 CP Program and, generally, encourage greater competition between markets. The Exchange believes that the proposal is not unfairly discriminatory due to the fact that qualification as an Exchange Market Maker, and, in turn, as a CP, is equally available to all Equity Trading Permit Holders that satisfy the requirements of proposed Rule 7.25. The Exchange further believes that the proposal is not unfairly discriminatory because of the quoting requirements applicable to CPs in order to become eligible for the CP Payment.

The Exchange believes that designating ETPs as the products eligible for inclusion in the CP Program is reasonable because it would incentivize Market Makers to undertake CP assignments in ETPs. The Exchange also believes that it is reasonable for an ETP that is participating in the ETP Incentive Program under NYSE Arca Equities Rule 8.800 or has an LMM assigned, to not be eligible to participate in the CP Program. This is because there are existing incentives provided by these other programs (i.e., the ''LMM Payment'' under Rule 8.800 and, under the LMM program, the incrementally higher transaction credits and incrementally lower transaction fees for LMMs as compared to standard liquidity maker-taker rates for non-LMMs) to incent competitive quoting and trading volume in ETPs listed on the Exchange. This is also equitable and not unfairly discriminatory because it would apply to each ETP that is participating in the CP Program.

The Exchange believes that the proposed rule change will not significantly affect the protection of investors or the public interest because the CP Program will incentivize competitive quoting by Market Makers qualified with the Exchange, provide a better trading environment for investors and, generally, encourage greater competition between markets. Additionally, the Exchange believes that the proposed change will not impose any significant burden on competition because the CP Program is designed to encourage the additional utilization of, and interaction with, the Exchange and provide customers with a premier venue for price discovery, liquidity, competitive quotes and price improvement. Additionally, permitting CP orders and quotes to be for the account of the CP in either a proprietary capacity or a principal capacity on behalf of an affiliated or unaffiliated person is identical to the manner in which Supplemental Liquidity Providers (''SLPs'') on the New York Stock Exchange (''NYSE'') that are also qualified as Market Makers are able to enter orders for their own accounts, in either a proprietary capacity or a principal capacity on behalf of an affiliated or unaffiliated person.

The Exchange believes that the proposed rule change is consistent with the Act, including with respect to the proposed two-million-share CADV threshold. The Exchange does not believe that this would unfairly discriminate between issuers of ETPs with a CADV of two million shares or more, as compared to issuers of ETPs with a CADV of less than two million shares, because the process for ETPs to ''graduate'' from the CP Program would provide an objective measurement for evaluating the effectiveness of the CP Program, such that the Exchange and the Commission could compare the quality of the market for ETPs, both during their participation in the CP Program and after their ''graduation'' from the CP Program. The Exchange believes that this is consistent with its proposal to operate the CP Program as a one-year pilot program, which would allow for the assessment of whether the CP Program is achieving its intended goal. Additionally, the two-million-share CADV ''graduation,'' combined with the operation of the CP Program on a pilot basis, would allow for the assessment, prior to any proposal or determination to make the CP Program permanent, of whether the CP Program has any unintended impact on the participating ETPs, securities not participating in the program, or the market or market participants generally.

With respect to the proposed fees, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Act, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and that it is not unfairly discriminatory. The Exchange believes that the proposed CP Program Fee for ETPs is reasonable, given the additional costs to the Exchange of providing the CP Payments, which are paid by the Exchange out of the Exchange's general revenues. The Exchange also believes that the proposed fees are reasonable because they would be used by the Exchange to offset the cost that the Exchange would incur related to the CP Program. These costs would include, but not be limited to, administration of the proposed CP Payments, including new technology processes and infrastructure surrounding such payments and the monitoring related thereto. As such, the Exchange believes that it is reasonable for it to retain an administration fee to recover the costs of administering the CP Program.

The Exchange believes that the CP Program Fee is reasonable, equitably allocated, and not unreasonably discriminatory because it is entirely voluntary on an issuer's part to join the CP Program. The fee of $50,000 would be the same for all issuers participating in the CP Program and credited to the Exchange's general revenues. Only issuers that voluntarily join the CP Program would be required to pay the fees. The Exchange believes that this is fairer than requiring all issuers to pay higher fees to fund the CP Program. Additionally, it is reasonable for an issuer to receive a credit from the Exchange following the end of a quarter if no CPs were assigned to the ETP during the entire such quarter because the ETP would not have had any CP quoting and trading activity during such quarter.

The Exchange believes that the CP Payment is equitable and not unfairly discriminatory in that any Market Maker could seek to participate in the CP Program as a CP. The Exchange further believes that the CP Payment, which would be paid from the Exchange's general revenues, is fair and equitable in light of the CP's quoting requirements, which would be higher than the standards for Market Makers not participating in the CP Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[50] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in

[50] 15 U.S.C. 78f(b)(8).

furtherance of the purposes of the Act. To the contrary, the Exchange believes that the CP Program, which is entirely voluntary, would encourage competition among markets for issuers' listings and among Market Makers for CP assignments.

The CP Program is designed to improve the quality of market for ETPs, thereby incentivizing them to list on the Exchange. The competition for listings among the exchanges is fierce. The Exchange notes that, in addition to the similarities described above between the proposed CP Program and the Exchange's ETP Incentive Program, BATS and NASDAQ have already implemented and received approval for, respectively, programs similar to the Exchange's proposed CP Program.[51] Additionally, the aspect of the proposed CP Program related to the capacity in which CPs may enter orders and quotes (i.e., permitting CP orders and quotes to be for the account of the CP in either a proprietary capacity or a principal capacity on behalf of an affiliated or unaffiliated person) is also substantially similar to the NYSE SLP program.[52]

In addition, the Exchange believes that the CP Program will properly promote competition among Market Makers to seek assignment as CPs for eligible ETPs. The Exchange believes that market quality would be significantly enhanced for ETPs with CPs assigned as compared to ETPs without a CP or LMM. The Exchange believes that market quality would be even further enhanced as a result of the quoting requirements that the Exchange would impose on CPs in the CP Program. The Exchange anticipates that the increased activity of these CPs would attract other market participants to the Exchange, and could thereby lead to increased liquidity on the Exchange in such ETPs. For these reasons, the Exchange does not believe that the proposed rule change would impose any unnecessary or inappropriate burden on competition.

[51] *See* Interpretation and Policy .02 of BATS Rule 11.8 and Securities Exchange Act Release Nos. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BATS–2011–051) and 66427 (February 21, 2012), 77 FR 11608 (February 27, 2012) (SR–BATS–2012–011). *See also* NASDAQ Rule 5950 and Securities Exchange Act Release No. 69195 (March 20, 2013), 78 FR 18393 (March 26, 2013) (SR–NASDAQ–2012–137).

[52] *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108). *See also* Securities Exchange Act Release No. 67154 (June 7, 2012), 77 FR 35455 (June 13, 2012) (SR–NYSE–2012–10).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days after publication (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–141 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–141. This file number should be included on the subject line if email 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 Web site (*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 Web site 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–2013–141 and should be submitted on or before January 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–30767 Filed 12–24–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71139; File No. SR–ISE–2013–73]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Penny Pilot Program

December 19, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''[1]) and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II 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 ISE proposes to amend its rules relating to a pilot program to quote and to trade certain options in pennies

[53] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.