

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

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## POSTAL REGULATORY COMMISSION

[Docket Nos. PI2014-1; Order No. 2163]

### Statutory Public Service or Public Activity Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is establishing a proceeding on the scope of public service or activity cost reporting pursuant to 39 U.S.C. 3651(b)(1)(C). The Commission seeks public comment on this topic. It is also filing a related Postal Service memorandum as a library reference. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* September 17, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

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#### I. Introduction

The Commission invites public comment concerning the scope of public service or activity cost reporting in its Annual Report to the President and Congress (Annual Report). Specifically, the Commission seeks public comment on the universe of other public services or activities that the Commission should review under 39 U.S.C. 3651(b)(1)(C).

#### II. Background

Each year, to fulfill its responsibilities under 39 U.S.C. 3651, the Commission issues an Annual Report concerning its operations under title 39. 39 U.S.C. 3651(a). The Annual Report must contain, among other things, an estimate of the costs incurred by the Postal

Service in providing other public services or activities which, in the judgment of the Postal Regulatory Commission, would not otherwise have been provided by the Postal Service but for the requirements of law. *Id.* 3651(b)(1)(C).

In its most recent Annual Report, the Commission stated that in 2014 it would review the scope of other public services or activities under section 3651(b)(1)(C).<sup>1</sup> For FY 2013, that estimate included only the costs of delivering mail six days a week instead of five days, and revenue lost from unzoned First-Class Mail and Library/Media rates *Id.* at 30. The Commission noted, however, that this approach may be too narrow, and that a more comprehensive interpretation of section 3651(b)(1)(C) could also include the estimated net cost of activities such as the Inspection Service or the Postal Service Office of Inspector General, as well as services such as the addressing system or emergency response. *Id.* at 31.

The legislative history of 39 U.S.C. 3651 provides some insight into determining what Postal Service actions to include as other public services or activities. A 2005 House Committee Report stated that as part of the Annual Report, the Commission is directed to prepare an estimate of public service costs borne by the Postal Service including universal service costs, revenue-forgone costs, and other costs (e.g., law enforcement activities).<sup>2</sup> Aside from law enforcement activities, other public services or activities may include provisions in the U.S. Code that require the Postal Service to provide services or activities that may fall under the rubric of the public interest.

In early 2014, the Commission requested that the Postal Service provide its views on the universe of other public service or activities that it believes the Commission should review under section 3651(b)(1)(C), including an estimate of these costs. The Postal Service submitted an analysis of activities that could qualify for reporting under section 3651(b)(1)(C), which is included in this docket as Library Reference 1. In its analysis, the Postal Service identified the following activities for potential future reporting:

- Employee and retiree health benefits;
- Federal retirement benefits;
- Binding arbitration of labor issues;
- Postal Inspection Service;
- Office of Inspector General;

<sup>1</sup> Annual Report to the President and Congress Fiscal Year 2013 at 31.

<sup>2</sup> H.R. Rep. No. 109-66, part 1, at 50 (2005).

• Merit Systems Protection Board and Equal Employment Opportunity Commission appeals;

• Federal workers' compensation program; and

• Other regulatory requirements, including Postal Regulatory Commission funding and aspects of service performance measurement, emergency detection and response, and federal purchasing requirements. See Library Reference 1 at 4-16.

The Postal Service also states that other unfunded mandates, such as compliance with the Freedom of Information Act and Privacy Act, impose costs that may not be substantial enough to warrant reporting in the Annual Report. *Id.* at 16. It emphasizes that it is not suggesting that the activities listed in the analysis are unimportant or that the Postal Service necessarily should not be required to perform them. *Id.* at 4. Rather, it asserts that the purpose of section 3651(b)(1)(C)'s reporting requirement is to inform Congress and the President of Postal Service mandates so that policymakers may make better informed decisions in these areas. *Id.*

#### III. Public Inquiry

The Commission establishes Docket No. PI2013-2 to invite public comment on the meaning of other public services or activities in 39 U.S.C. 3651(b)(1)(C). Specifically, it seeks comments on the Postal Service's analysis of activities that could qualify for reporting under section 3651(b)(1)(C), which is included as Library Reference 1. The Commission also requests comments that identify additional public services or activities that should be included in this calculation and an estimate of these costs. For each public service or activity identified, comments should provide the estimated FY 2013 cost or an explanation of how such costs could be estimated, as well as the basis used to develop any estimated costs.

Comments are due no later than September 17, 2014. Reply comments are due no later than October 1, 2014. Comments are to be submitted via the Commission's online filing system at <http://www.prc.gov> unless a waiver is obtained. Information on how to obtain a waiver may be found by contacting the Commission's dockets section at 202-789-6846.

Section 505 of title 39 requires designation of an officer of the Commission (Public Representative) in all public proceedings to represent the interests of the general public. The Commission hereby designates James Waclawski as Public Representative in this proceeding.

#### IV. Ordering Paragraphs

*It is ordered:*

1. The Commission hereby establishes Docket No. PI2014–1 to invite public comment on the universe of other public services or activities that the Commission should review under 39 U.S.C. 3651(b)(1)(C).

2. Comments are due no later than September 17, 2014.

3. Reply comments are due no later than October 1, 2014.

4. Pursuant to 39 U.S.C. 505, the Commission appoints James Waclawski to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**  
Secretary.

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**BILLING CODE 7710–FW–P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72901; File No. SR–NYSEArca–2014–10]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt NYSE Arca Equities Rule 8.900, Which Permits the Listing and Trading of Managed Portfolio Shares, and To List and Trade Shares of the ActiveShares<sup>SM</sup> Large-Cap Fund, ActiveShares<sup>SM</sup> Mid-Cap Fund, and ActiveShares<sup>SM</sup> Multi-Cap Fund Pursuant to That Rule

August 22, 2014.

On February 7, 2014, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to adopt new NYSE Arca Equities Rule 8.900, which would govern the listing and trading of Managed Portfolio Shares, and to list and trade shares of the ActiveShares<sup>SM</sup> Large-Cap Fund, ActiveShares<sup>SM</sup> Mid-Cap Fund, and ActiveShares<sup>SM</sup> Multi-Cap Fund (collectively, “Funds”) under proposed NYSE Arca Equities Rule 8.900. The proposed rule change was published for

comment in the **Federal Register** on February 26, 2014.<sup>3</sup> The Commission received one comment letter on the proposed rule change.<sup>4</sup> On April 7, 2014, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> The Commission received two additional comment letters on the proposed rule change, including a letter from the Exchange in support of its proposal.<sup>7</sup> On May 27, 2014, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act <sup>8</sup> to determine whether to approve or disapprove the proposed rule change.<sup>9</sup> In the Order Instituting Proceedings, the Commission solicited responses to specified matters related to the proposal.<sup>10</sup> The Commission subsequently received a second letter from one of the commenters.<sup>11</sup>

<sup>3</sup> See Securities Exchange Act Release No. 71588 (Feb. 20, 2014), 79 FR 10848 (“Notice”), available at <http://www.sec.gov/rules/sro/nysearca.shtml>.

<sup>4</sup> See Letter from Gary L. Gastineau, President, ETF Consultants.com, Inc., to Elizabeth M. Murphy, Secretary, Commission (Mar. 18, 2014) (“Gastineau Letter”).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 71895, 79 FR 20285 (Apr. 11, 2014). The Commission designated a longer period within which to take action on the proposed rule change and designated May 27, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>7</sup> See Letter from Dennis J. DeCore, Former Co-Head U.S. Index Arbitrage (1997–2007), Nomura Securities, to Elizabeth M. Murphy, Secretary, Commission (Apr. 8, 2014); and Letter from Martha Redding, Chief Counsel and Assistant Corporate Secretary, NYSE Euronext, to Secretary, Commission (May 14, 2014).

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>9</sup> See Securities Exchange Act Release No. 72255, 79 FR 31362 (Jun. 2, 2014) (“Order Instituting Proceedings”). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.” See *id.*, 79 FR at 31368.

<sup>10</sup> See Notice, *supra* note 3, 79 FR at 31368 (specifically soliciting comment on the statements of the Exchange contained in the Notice, the issues raised by the opposing commenter, the Exchange’s responses to those issues, and any other issues raised by the listing and trading of an actively managed exchange-traded fund that does not make daily public disclosure of its investment portfolio).

<sup>11</sup> See Letter from Gary L. Gastineau, President, ETF Consultants.com, Inc., to Elizabeth M. Murphy, Secretary, Commission (Jun. 23, 2014). All comments on this proposal are available at <http://www.sec.gov/comments/sr-nysearca-2014-10/nysearca201410.shtml>.

Section 19(b)(2) of the Act <sup>12</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on February 26, 2014.<sup>13</sup> The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is August 25, 2014.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, the issues raised in the comment letters that have been submitted in response to the proposed rule change (including the Exchange’s responses to other comment letters), and the comment letter submitted in response to the Order Instituting Proceedings.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> designates October 24, 2014, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2014–10).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O’Neill,**

*Deputy Secretary.*

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<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> See *supra* note 3 and accompanying text.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30–3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.