discriminate between customers, issuers, brokers or dealers.

The Exchange notes that the U.S. options markets are highly competitive, and the Marketing Charge is intended to provide an incentive for order flow providers (''OFPs'') to route Customer orders to the Exchange. To the extent the proposed fees permit the Exchange to continue to attract greater volume and liquidity, the proposed change would also strengthen the Exchange's market quality for all market participants.

The Exchange also believes that its proposed increase to the Marketing Charge for Non-Penny Pilot Issues is reasonable and not unfairly discriminatory since it is the same as the amount charged by competing options exchanges for Non-Penny Pilot Issues.[10]

The Exchange believes the correction of certain typographical errors in Note 3 to section I.A. of the Fee Schedule are reasonable because the corrections would add clarity and transparency to the Fee Schedule.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with section 6(b)(8) of the Act,[11] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed increase in certain Marketing Charges are pro-competitive as the proposed increased allows the Exchange to fund a program that competes on an equal basis with programs on other exchanges,[12] and may encourage OFPs to direct Customer order flow to the Exchange and any resulting increase in volume and liquidity to the Exchange would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)[13] of the Act and subparagraph (f)(2) of Rule 19b–4[14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–74 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–NYSEMKT–2016–74. 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–NYSEMKT–2016–74 and should be submitted on or before September 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19579 Filed 8–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78553; File No. SR–FINRA–2016–030]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Amending Rule 12504 of the Code of Arbitration Procedure for Customer Disputes and Rule 13504 of the Code of Arbitration Procedure for Industry Disputes Relating to Motions To Dismiss in Arbitration

August 11, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission

[10] *See supra* note 7.

[11] 15 U.S.C. 78f(b)(8).

[12] *See supra* note 7.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b-4.

(''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 12504 of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and FINRA Rule 13504 of the Code of Arbitration Procedure for Industry Disputes (''Industry Code,'' and together with the Customer Code, the ''Codes''), to provide that arbitrators may act upon a motion to dismiss a party or claim prior to the conclusion of a party's case in chief if the arbitrators determine that the non-moving party previously brought a claim regarding the same dispute against the same party, and the dispute was fully and finally adjudicated on the merits and memorialized in an order, judgment, award, or decision.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

In 2009, FINRA amended the Codes to adopt new FINRA Rules 12504 and 13504 (Motions to Dismiss), and to amend FINRA Rules 12206 and 13206 (Time Limits), to establish procedures limiting motions to dismiss in arbitration.[3] A motion to dismiss is a request made to the arbitrators to remove a party or some or all claims raised by a party filing a claim. If the arbitrators grant a motion to dismiss before a hearing is held (a prehearing motion), the party bringing the claim loses the opportunity to have his or her arbitration case heard in whole or in part by the arbitrators. FINRA limited motions to dismiss because FINRA believed that respondents were filing prehearing motions routinely and repetitively in an effort to delay scheduled hearing sessions on the merits, increase investors' costs, and intimidate less sophisticated investors.

The procedures set forth in the Codes significantly limit the use of motions to dismiss. Among other requirements, FINRA requires parties to file prehearing motions to dismiss in writing, separately from the answer, and only after they file the answer. The full panel of arbitrators must decide a motion to dismiss, and the panel must hold a hearing on the motion unless the parties waive the hearing. If a panel grants a motion to dismiss, the decision must be unanimous, and must be accompanied by a written explanation.

Under the Codes, arbitrators cannot act upon a motion prior to the conclusion of the non-moving party's case in chief unless the arbitrators determine that: (1) The non-moving party previously released the claim in dispute by a signed settlement or written release, (2) the moving party was not associated with the account, security, or conduct at issue,[4] or (3) a claim is not eligible for arbitration because it does not meet the six-year time limit for submitting a claim.[5]

Furthermore, the procedures set forth in the Codes impose stringent sanctions against parties for engaging in abusive practices. For instance, under the motions to dismiss rules, if the arbitrators deny a motion to dismiss prior to the conclusion of the non-moving party's case in chief, the arbitrators must assess forum fees associated with hearing the motion against the moving party, and if they find the motion to be frivolous, they must award reasonable costs and attorneys' fees to a party that opposed the motion. Moreover, the arbitrators may issue other sanctions under the Codes if they determine that a party filed a motion under the rule in bad faith.[6]

FINRA Dispute Resolution Task Force

In 2014, FINRA formed the FINRA Dispute Resolution Task Force (''Task Force'') to suggest strategies to enhance the transparency, impartiality, and efficiency of FINRA's securities dispute resolution forum for all participants. The Task Force reviewed the topic of motions to dismiss and determined that the rule appears to be working as intended to prevent frivolous motions to dismiss. However, the Task Force reached a consensus that in instances where arbitrations involve claims previously adjudicated by a court or arbitrated by an arbitration panel, respondents should be able to seek early dismissal. The Task Force recommended that FINRA amend the motions to dismiss rule in customer cases to include one additional category for which motions to dismiss may be made before the conclusion of the case in chief: situations where the dispute was previously concluded through adjudication or arbitration and memorialized in an order, judgment, award, or decision.

Proposed Rule Change

FINRA agrees with the Task Force recommendation, and believes that it would be appropriate to add the additional ground for arbitrators to act on motions to dismiss prior to the conclusion of the claimant's case in chief in both customer and industry cases. Currently under the Codes, the Director of Arbitration can deny use of the forum for customer and industry claims if it is clear that a party is bringing exactly the same claims against the same parties that were already heard at the forum.[7] However, if there are questions about whether the matter concerns a different claim, the Director is likely to deny the motion and allow the arbitration to proceed so that the arbitrators can decide the merits of the parties' assertions. FINRA believes that adding the additional ground for arbitrators to act on motions to dismiss is appropriate because parties should not be subject to the legal fees associated with arbitrating claims that have been fully adjudicated in a prior proceeding. The proposed rule change

[3] *See Regulatory Notice* 09–07 announcing Commission approval of new FINRA Rules 12504 and 13504 (Motions to Dismiss) and amendments to FINRA Rules 12206 and 13206 (Time Limits).

[4] *See* FINRA Rules 12504 and 13504 (Motions to Dismiss).

[5] *See* FINRA Rules 12206 and 13206 (Time Limits), which provide that no claim shall be eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the claim.

[6] *See* FINRA Rules 12212 and 13212 (Sanctions) relating to available sanctions.

[7] *See* FINRA Rules 12203 and 13303 (Denial of the Forum), which provide that the Director may decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the Code, the subject matter of the dispute is inappropriate. The Director rarely invokes this authority.

would also act as a deterrent to using repeated filings as a means of leverage during settlement negotiations.

FINRA is proposing to amend FINRA Rules 12504(a)(6) and 13504(a)(6) to add new paragraph (c) which would specify that arbitrators can also act upon a motion to dismiss a party or claim if they determine that the non-moving party previously brought a claim regarding the same dispute [8] against the same party that was fully and finally adjudicated on the merits and memorialized in an order, judgment, award, or decision. The proposed rule change would allow the arbitrators to grant a motion to dismiss relating to a particular controversy if they believe the matter was adjudicated fully even in instances where a claimant adds a new cause of action, or adds additional facts. For example, consider a case where a claimant initiated a claim against a firm for $150,000 for suitability based on a broker's investment in XYZ stock. The arbitrators dismiss the claim after a full hearing. The proposed rule change would allow the arbitrators to hear a motion to dismiss if the claimant subsequently files an arbitration against the same firm relating to the investment in XYZ but in the new case the claimant alleges fraud in inducing the claimant to make the purchase.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would enhance efficiency for forum participants because arbitrators would be permitted to dismiss previously adjudicated cases at an earlier point in an arbitration proceeding.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Currently, the Codes impose significant restrictions on motions to dismiss an arbitration. With limited exceptions, in cases where the dispute has been permitted to go forward by the Director of Arbitration and a party puts forward a motion to dismiss, arbitrators cannot act upon the motion prior to the conclusion of the non-moving party's case in chief. Both sides incur additional costs related to making and defending the motion. However, a successful motion to dismiss could end part or all of the case resulting in reduced costs for parties.

The Task Force reviewed arbitration case data from 2013 and 2014. During that time period, the Office of Dispute Resolution (ODR) had an average pending caseload of approximately 5,000 cases. ODR recorded 725 cases (both customer and industry disputes) in which a prehearing motion to dismiss was filed by respondents. Of the 725 cases, 249 were still pending at the time of the Task Force review, 310 settled or closed for other reasons prior to any decision on the motion (*i.e.,* bankruptcy, etc.), and 166 closed by award. FINRA reviewed the 166 cases closed by award to determine the arbitrators' decisions regarding a motion to dismiss. The arbitrators granted a prehearing motion to dismiss (in whole or part) in 64 of the 166 cases closed by award. In addition, arbitrators granted a respondent's motion to dismiss *after* the conclusion of claimant's case in chief in 12 of the 166 cases closed by award. These figures suggest that motions to dismiss occur in a small but significant number of cases.

Where arbitrators have sufficient information to determine the finding with respect to the motion to dismiss prior to hearing the non-moving party's case, the proposed rule change will reduce both parties' costs where the motion is granted. Where the motion is denied, the proposed rule change may impose some costs on the non-moving party due to the potential delay and the need to argue the dispute associated with the motion prehearing. FINRA expects the costs to be limited because hearings on narrow issues such as a single motion are generally completed quickly. The rule would continue to permit the non-moving party to present evidence and testimony to the arbitrators concerning the merits of the motion prior to the decision on the motion, and thus would limit the risk that the arbitrators might act on incomplete or insufficient information.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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 (i) as the Commission may designate up to 90 days of such date 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 such 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–FINRA–2016–030 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–FINRA–2016–030. 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 a.m. and 3 p.m. Copies of such filing

[8] FINRA Rules 12100 and 13100 provide that ''dispute'' means a dispute, claim or controversy, and that it may consist of one or more claims.

[9] 15 U.S.C. 78o–3(b)(6).

also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2016–030 and should be submitted on or before September 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19583 Filed 8–16–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78545; File No. SR–NYSEArca–2016–111]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services Related to Tier 1 and Cross Asset Tier 2 Fees and Credits for Orders Executed on the Exchange, and Eliminate the Routable Retail Order Tier

August 11, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 29, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the ''Fee Schedule'') related to Tier 1 and Cross Asset Tier 2 fees and credits for orders executed on the Exchange, and eliminate the Routable Retail Order Tier. 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, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule related to Tier 1 and Cross Asset Tier 2 fees and credits for orders executed on the Exchange.[4] The Exchange also proposes to eliminate the Routable Retail Order Tier. The Exchange proposes to implement the fee change effective August 1, 2016.

Tier 1

Currently, ETP Holders and Market Makers qualify for Tier 1 fees and credits by providing liquidity an average daily share volume per month of 0.70% or more of the United States consolidated average daily volume (''US CADV'').[5] In Tape C Securities, ETP Holders and Market Makers currently receive a credit of $0.0033 per share for orders that provide liquidity to the Book and pay a fee of $0.0029 per share for orders that take liquidity from the Book. The Exchange proposes to amend the fees and credits applicable to ETP Holders and Market Makers for orders executed in Tape C Securities. As proposed, ETP Holders and Market Makers would receive a credit of $0.0032 per share for orders that provide liquidity to the Book in Tape C Securities and would pay a fee of $0.0030 per share for orders that take liquidity from the Book in Tape C Securities. The Exchange is not proposing any other pricing change in Tier 1.

Cross Asset Tier 2

Additionally, Cross Asset Tier 2 fees and credits currently apply to ETP Holders and Market Makers that either (1) provide liquidity an average daily volume share per month of 0.30% or more of the US CADV and are affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted executions for the account of a market maker in Penny Pilot issues on NYSE Arca Options (excluding mini options) of at least 0.75% of total Customer equity and ETF option ADV as reported by The Options Clearing Corporation (''OCC''), or (2) provide liquidity an average daily volume share per month of 0.40% or more of the US CADV and are affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted executions for the account of a market maker in Penny Pilot issues on NYSE Arca Options (excluding mini options) of at least 0.65% of total Customer equity and ETF option ADV as reported by OCC. Such ETP Holders and Market Makers receive a credit of $0.0033 per share for orders that provide liquidity to the Book in Tape C Securities and pay a fee of $0.0029 per share for orders that take liquidity from the Book in Tape C Securities. The Exchange proposes to amend the fees and credits applicable to ETP Holders and Market Makers for orders executed in Tape C Securities. As proposed, ETP Holders and Market Makers would receive a credit of $0.0032 per share for orders that provide liquidity to the Book in Tape C Securities and pay a fee of $0.0030 per share for orders that take liquidity from the Book in Tape C Securities.

Elimination of Obsolete Pricing

The Fee Schedule currently includes a pricing tier, Routable Retail Order Tier, that has not encouraged ETP Holders and Market Makers to increase their activity to qualify for this pricing tier as significantly as the Exchange had anticipated it would. As a result, the Exchange proposes to remove this pricing tier from the Fee Schedule.

The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants would have

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[10] 17 CFR 200.30–3(a)(12).

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

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

[3] 17 CFR 240.19b–4.

[4] The Tier 2 [sic] fees and credits are available for round lots and odd lots with a per share price $1.00 or above.

[5] US CADV would mean the United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV. *See* Fee Schedule, footnote 3.