

For the Commission, by the Division of Investment Management, under delegated authority.

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79550; File No. SR–NYSEArca–2016–120]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the ForceShares Daily 4X US Market Futures Long Fund and ForceShares Daily 4X US Market Futures Short Fund Under Commentary .02 to NYSE Arca Equities Rule 8.200

December 14, 2016.

On October 17, 2016, NYSE Arca, Inc. 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 list and trade shares of the ForceShares Daily 4X US Market Futures Long Fund and ForceShares Daily 4X US Market Futures Short Fund under Commentary .02 to NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on November 4, 2016.<sup>3</sup> The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 19, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period

within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates February 2, 2017, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2016–120).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2016–30556 Filed 12–19–16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79547; File No. SR–NYSEArca–2016–161]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15

December 14, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on December 8, 2016, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“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 amend NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15 governing the release of disciplinary information based on rules of the Exchange’s affiliates New York Stock Exchange, LLC and NYSE MKT LLC. The proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange,

and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to amend NYSE Arca Rule 10.17 (Release of Disciplinary Information through the Public Disclosure Program) and NYSE Arca Equities Rule 10.15 (Release of Disciplinary Information through the Public Disclosure Program) based on Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information) of the Exchange’s affiliates New York Stock Exchange, LLC (“NYSE”) and NYSE MKT LLC (“NYSE MKT”).

###### Background

In 2013, the NYSE adopted disciplinary rules that are, with certain exceptions, substantially the same as the Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.<sup>4</sup> The NYSE disciplinary rules were implemented on July 1, 2013.<sup>5</sup> In 2016, NYSE MKT also adopted the Rule 8000 Series and Rule 9000 Series, which rules are, with certain exceptions, substantially the same as those of NYSE and FINRA.<sup>6</sup> The NYSE MKT

<sup>4</sup> See Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02) (“2013 Notice”), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02) (“2013 NYSE Approval Order”), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR–NYSE–2013–49).

<sup>5</sup> See NYSE Information Memorandum 13–8 (May 24, 2013).

<sup>6</sup> See Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR–NYSEMKT–2016–30) (“2016 MKT Notice”).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 79201 (October 31, 2016), 81 FR 76977.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.30–3(a)(31).

<sup>7</sup> 15 U.S.C. 78s(b)(1).

<sup>8</sup> 15 U.S.C. 78a.

<sup>9</sup> 17 CFR 240.19b–4.

disciplinary rules were implemented on April 15, 2016.<sup>7</sup>

In August 2016, the NYSE amended its Rule 8313 based on the text of FINRA Rule 8313, which provides that disciplinary complaints and decisions that meet certain criteria will be either published or made available upon request.<sup>8</sup> In September 2016, NYSE MKT also amended its version of Rule 8313 to adopt the text of FINRA Rule 8313.<sup>9</sup>

Current NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15 provide for the release to the public of certain disciplinary information concerning OTP Holders and ETP Holders and associated persons, respectively. Specifically, current NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15 provide for release of any identified disciplinary decision in response to a request. Rule 10.17(b)(1) provides for release of information to the public with respect to disciplinary decisions that: (i) Impose a suspension, cancellation or expulsion upon an OTP Holder or OTP Firm; (ii) impose the suspension or revocation of the registration of an associated person of an OTP Holder or OTP Firm; (iii) impose the suspension or barring of an OTP Holder, OTP Firm, or associated person from association with all OTP Holders or OTP Firms; (iv) impose monetary sanctions of \$10,000 or more upon an OTP Holder, OTP Firm, or associated person; or (v) contain an allegation of a violation of a Designated Rule, defined as (i) Commission Rule 10b-5 under the Act, (ii) NYSE Arca Rule 11.5 (Manipulation), or (iii) NYSE Arca Rule 11.2 (Prohibited Acts). *See* NYSE Arca Rule 10.17(b)(1).

Similarly, under NYSE Arca Equities Rule 10.15, NYSE Arca Equities releases information to the public with respect to disciplinary decisions that: (i) Impose a suspension, cancellation or expulsion upon an ETP Holder; (ii) impose the suspension or revocation of the registration of an associated person of an ETP Holder; (iii) impose the suspension or barring of an ETP Holder

or associated person from association with all ETP Holders; (iv) impose monetary sanctions of \$10,000 or more upon an ETP Holder or associated person; or (v) contain an allegation of a violation of a Designated Rule, defined as (i) Commission Rule 10b-5 under the Act, (ii) NYSE Arca Equities Rule 6.5 (Manipulation), or (iii) NYSE Arca Equities Rule 6.2 (Prohibited Acts). *See* NYSE Arca Equities Rule 10.15(b)(1).

Current NYSE Arca and NYSE Arca Equities Rules also permit release of information to the public concerning disciplinary decisions that involve significant policy or enforcement determinations where the release of such information is deemed by the President of the Exchange to be in the public interest.<sup>10</sup> Further, the current Rules permit waiving the requirement to release information with respect to a disciplinary decision under extraordinary circumstances where the release of the information would violate fundamental notions of fairness or work as an injustice. Finally, the current Rules permit release to the public of information concerning any disciplinary or other decision issued pursuant to NYSE Arca Rule 10 and NYSE Arca Equities Rule 10 that is not specifically enumerated in NYSE Arca Rule 10.17(b)(1) or NYSE Arca Equities Rule 10.15(b)(1), respectively, regardless of the sanctions imposed, so long as the names of the parties and other identifying information is redacted.<sup>11</sup>

NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15 seek to further the same goals of transparency and disclosure as NYSE and NYSE MKT Rule 8313 (“Rule 8313”).<sup>12</sup>

As described below, the Exchange proposes to adopt Rule 8313 in substantially the same form as approved by the Securities and Exchange Commission (“SEC” or “Commission”) for NYSE and as published for immediate effectiveness by NYSE MKT. By adopting the proposed amendments to NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15, the Exchange would have uniform options and equities rules that require public release of disciplinary complaints as well as disciplinary decisions, and that are otherwise consistent with the counterpart rules of its NYSE and NYSE MKT affiliates.

## Proposed Rule Change

### Amendments to NYSE Arca Rule 10.17 Governing Release of Disciplinary Complaints, Decisions and Other Information Based on Rule 8313

The Exchange proposes to delete subsections (a) through (h) of current NYSE Arca Rule 10.17 in order to adopt the requirements of Rule 8313 as proposed new subsections (a) through (e).

The Exchange proposes to amend the heading to delete the clause “Information Through the Public Disclosure Program” and replace it with “Complaints, Decisions and Other Information.” As proposed, NYSE Arca Rule 10.17 would have the same title as Rule 8313.

### General Standards

The Exchange proposes to add the title “General Standards” to subsection (a) of NYSE Arca Rule 10.17 and delete the current text of subsection (a). The text of subsections (a)(1)–(3) would also be deleted and replaced as follows.

First, proposed NYSE Arca Rule 10.17(a)(1) would provide that the Exchange shall release to the public a copy of and, at the Exchange’s discretion, information with respect to, any disciplinary complaint or disciplinary decision issued by the Exchange, as defined in subsection (e) of the proposed Rule, other than minor rule violations, on its Web site. Proposed NYSE Arca Rule 10.17(a)(1) would also provide that, in response to a request, the Exchange shall release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Exchange, as defined in proposed NYSE Arca Rule 10.17(e). These proposed amendments are modeled on Rule 8313(a)(1) and, except for an inapplicable reference to the Rule 9000 Series, would be the same as the NYSE and NYSE MKT Rule.

Second, proposed NYSE Arca Rule 10.17(a)(2) would provide that the Exchange shall release to the public a copy of, and at the Exchange’s discretion information with respect to, any statutory disqualification decision, notification, or notice issued by the Exchange pursuant to NYSE Arca Rules 10 or 13 that will be filed with the SEC. Proposed NYSE Arca Rule 10.17(a)(2) is modeled on Rule 8313(a)(2) but substitutes references to NYSE Arca Rules 10 and 13 for references to the NYSE and NYSE MKT Rule 9520 Series, and omits reference to the NYSE and NYSE MKT Rule 9800 Series. NYSE Arca does not have rules governing temporary cease and desist proceedings

<sup>7</sup> *See* NYSE MKT Information Memorandum 16-02 (March 14, 2016).

<sup>8</sup> *See* Securities Exchange Act Release Nos. 78664 (August 24, 2016), 81 FR 59678 (August 30, 2016) (SR-NYSE-2016-40). In adopting the FINRA disciplinary rules in 2013, the NYSE retained its long-standing practice of publishing all final disciplinary decisions, other than minor rule violations, on its Web site and did not adopt the text of FINRA Rule 8313. *See* 2013 NYSE Approval Order, 78 FR at 15395.

<sup>9</sup> *See* Securities Exchange Act Release Nos. 78959 (September 28, 2016), 81 FR 68481 (October 4, 2016) (SR-NYSEMKT-2016-71). In adopting its disciplinary rules in 2016, NYSE MKT also did not adopt the text of FINRA Rule 8313. *See* 2016 MKT Notice, 81 FR at 11321.

<sup>10</sup> *See* NYSE Arca Rule 10.17(b)(1); NYSE Arca Equities Rule 10.15(b)(1).

<sup>11</sup> *See id.*

<sup>12</sup> *See* Securities Exchange Act Release No. 53878 (May 26, 2006), 71 FR 32622, 32624 (June 6, 2006) (SR-NYSEArca-2006-02).

comparable to the Rule 9800 Series. The proposed Rule is otherwise the same as the NYSE and NYSE MKT Rule.

Third, proposed NYSE Arca Rule 10.17(a)(3) would provide that the Exchange shall release to the public information with respect to any suspension, cancellation, expulsion, or bar that constitutes final Exchange action imposed pursuant to NYSE Arca Rule 13, which governs cancellation, suspension and reinstatement and is the Exchange's analogue to the various provisions of the NYSE and NYSE MKT Rule 9550 Series referenced in Rule 8313(a)(3) governing suspensions, cancellations, expulsions and bars, with the exception of NYSE and NYSE MKT Rule 9556, which governs failure to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series. NYSE Arca does not have rules governing temporary cease and desist proceedings comparable to Rule 9200, 9300 or 9800 Series. Like Rule 8313(a)(3), proposed NYSE Arca Rule 10.17(a)(3) would also encompass proceedings for failure to pay fines, other monetary sanctions, or costs.<sup>13</sup> The proposed Rule is otherwise the same as Rule 8313(a)(3).

To further conform proposed NYSE Arca Rule 10.17 to Rule 8313, the Exchange proposes to add a new subsection (a)(4) modeled on Rule 8313(a)(4) that provides that the Exchange may release to the public a copy of, and information with respect to, any decision or notice appealable to the SEC under Exchange Act Section 19(d). The proposed Rule is the same as Rule 8313(a)(4) but omits reference to any decision or notice issued pursuant to the NYSE and NYSE MKT Rule 9600 Series, which NYSE Arca has not adopted.<sup>14</sup>

#### Release Specifications

The Exchange proposes to add the title "Release Specifications" to subsection (b) of NYSE Arca Rule 10.17 and delete the current text of subsection (b).

The Exchange also proposes to delete the entire text of current Rule 10.17(b)(1) and 10.17(b)(2). The Exchange proposes new subsections (b)(1) and (b)(2) modeled on Rule 8313(b)(1) and (b)(2), as follows.

Proposed NYSE Arca Rule 10.17(b)(1) would provide that copies of, and information with respect to, any disciplinary complaint released to the public pursuant to paragraph (a) of the proposed Rule shall indicate that a disciplinary complaint represents the initiation of a formal proceeding by the Exchange in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. The proposed Rule would be the same as Rule 8313(b)(1).

Proposed NYSE Arca Rule 10.17(b)(2) provides that copies of, and information with respect to, any disciplinary decision or other decision, order, notification, or notice released to the public pursuant to paragraph (a) of the proposed Rule prior to the expiration of the time period provided for an appeal or call for review as permitted under Exchange rules or the Exchange Act, or while such an appeal or call for review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by the Exchange or the SEC. The proposed Rule would be the same as Rule 8313(b)(2).

#### Discretion To Redact Certain Information or Waive Publication

The Exchange has determined that, subject to limited exceptions, disciplinary information should be released to the public in unredacted form. The Exchange proposes to add a new subsection (c) to NYSE Arca Rule 10.17 entitled "Discretion to Redact Certain Information or Waive Publication," modeled on Rule 8313(c)(1) and (2). With respect to the limited exceptions, proposed NYSE Arca Rule 10.17(c)(1) would provide that the Exchange reserves the right to redact, on a case-by-case basis, information that contains confidential customer information, including customer identities, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns. The proposed Rule would be the same as Rule 8313(c)(1).

Similarly, proposed NYSE Arca Rule 10.17(c)(2) provides that, notwithstanding paragraph (a) of the proposed rule, the Exchange may determine, in its discretion, to waive the requirement to release a copy of, or information with respect to, any disciplinary complaint, disciplinary decision or other decision, order, notification, or notice under those extraordinary circumstances where the release of such information would

violate fundamental notions of fairness or work an injustice. The proposed Rule would be the same as Rule 8313(c)(2).

#### Notice of Appeals of Exchange Decisions

The Exchange proposes to add a new subsection (d) to NYSE Arca Rule 10.17 entitled "Notice of Appeals of Exchange Decisions to the SEC" modeled on Rule 8313(d). Proposed NYSE Arca Rule 10.17(d) provides that the Exchange must provide notice to the public when a disciplinary decision of the Exchange is appealed to the SEC and that the notice shall state whether the effectiveness of the decision has been stayed pending the outcome of proceedings before the Commission. The proposed Rule would be the same as Rule 8313(d).

#### Definitions

Finally, the Exchange proposes to add a new subsection (e) to Rule 10.17 entitled "Definitions." Proposed NYSE Arca Rule 10.17(e) would set forth definitions of the terms "disciplinary complaint" and "disciplinary decision" as used in the Rule, modeled on the definitions contained in Rule 8313(e).

First, Rule 10.17(e)(1) would define the term "disciplinary complaint" to mean any complaint issued pursuant to NYSE Arca Rule 10.4, which governs complaints. The proposed text is identical to Rule 8313(e)(1) except that the proposed Rule would substitute "Rule 10.4" for "the Rule 9200 Series."

Second, proposed NYSE Arca Rule 10.17(e)(2) would define the term "disciplinary decision" to mean any decision issued pursuant to NYSE Arca Rules 10.4(c) (Summary Determinations), 10.6 (Offers of Settlement), 10.7 (Decision) or 10.8 (Review), including, decisions issued by the Ethics and Business Conduct Committee ("EBCC"), a Conduct Panel, the Committee for Review ("CFR") or the Board of Directors, and orders accepting offers of settlement. Under proposed subsection (e)(2), the term would not include decisions, notifications, or notices issued pursuant to paragraphs (a)(2), (a)(3) and (a)(4) of the proposed Rule. Proposed NYSE Arca Rule 10.17(e)(2) provides that minor rule violation plan letters issued pursuant to NYSE Arca Rule 10.12 are not subject to the proposed Rule. The proposed Rule would be the same as Rule 8313(e)(2) except that the proposed Rule would substitute references to the relevant NYSE Arca Rules for references to the NYSE and NYSE MKT Rule 9000 Series, Rule 9550 Series, Rule 9600 Series, Rule 9800 Series, Rule 9520 Series, and Rules 9216 and 9217.

<sup>13</sup> In that regard, Rule 8313(a)(3) references summary proceedings under NYSE and NYSE MKT Rule 8320. Unlike a proceeding under NYSE or NYSE MKT Rule 8320, a proceeding under NYSE Arca Rule 13 for failure to pay fines, other monetary sanctions, or costs could not be a summary proceeding.

<sup>14</sup> The NYSE and NYSE MKT Rule 9600 Series set forth procedures for seeking exemptive relief from the requirements of certain enumerated rules.

# Amendments to NYSE Arca Equities Rule 10.15 Governing Release of Disciplinary Complaints, Decisions and Other Information Based on Rule 8313

The Exchange proposes parallel changes to NYSE Arca Equities Rule 10.15, which has the same structure as NYSE Arca Rule 10.17, in order to adopt the requirements of Rule 8313.

The Exchange proposes to amend the heading to delete the clause “Information Through the Public Disclosure Program” and replace it with “Complaints, Decisions and Other Information.” As proposed, NYSE Arca Equities Rule 10.15 would have the same title as Rule 8313.

## General Standards

The Exchange proposes to add the title “General Standards” to subsection (a) of NYSE Arca Equities Rule 10.15 and delete the current text of subsection (a). The text of subsections (a)(1)–(3) would also be deleted and replaced as follows.

First, proposed NYSE Arca Equities Rule 10.15(a)(1) would provide that the Exchange shall release to the public a copy of, and, at the Exchange’s discretion, information with respect to, any disciplinary complaint or disciplinary decision issued by the Exchange, as defined in subsection (e) of the proposed Rule, other than minor rule violations, on its Web site. Proposed NYSE Arca Equities Rule 10.15(a)(1) would also provide that, in response to a request, the Exchange shall release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Exchange, as defined in proposed NYSE Arca Equities Rule 10.15(e). These proposed amendments are modeled on Rule 8313(a)(1) and, except for an inapplicable reference to the Rule 9000 Series, would be the same as the NYSE and NYSE MKT Rule.

Second, proposed NYSE Arca Equities Rule 10.15(a)(2) would provide that the Exchange shall release to the public a copy of, and at the Exchange’s discretion information with respect to, any statutory disqualification decision, notification, or notice issued by the Exchange pursuant to NYSE Arca Equities Rules 10 or 11 that will be filed with the SEC. Proposed NYSE Arca Equities Rule 10.15(a)(2) is modeled on Rule 8313(a)(2) but substitutes references to NYSE Arca Equities Rules 10 and 11 for references to the NYSE and NYSE MKT Rule 9520 Series, and omits reference to the NYSE and NYSE MKT Rule 9800 Series. NYSE Arca Equities does not have rules governing temporary cease and desist proceedings

comparable to the Rule 9800 Series. The proposed Rule is otherwise the same as the NYSE and NYSE MKT Rule.

Third, proposed NYSE Arca Equities Rule 10.15(a)(3) would provide that the Exchange shall release to the public information with respect to any suspension, cancellation, expulsion, or bar that constitutes final Exchange action imposed pursuant to NYSE Arca Equities Rule 11, which governs cancellation, suspension and reinstatement and is the Exchange’s analogue to the various provisions of the NYSE and NYSE MKT Rule 9550 Series referenced in Rule 8313(a)(3) governing suspensions, cancellations, expulsions and bars, with the exception of NYSE and NYSE MKT Rule 9556, which governs failure to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series. NYSE Arca Equities does not have rules governing temporary cease and desist proceedings comparable to Rule 9200, 9300 or 9800 Series. Like Rule 8313(a), proposed NYSE Arca Equities Rule 10.15(a)(3) would also encompass proceedings for failure to pay fines, other monetary sanctions, or costs.<sup>15</sup> The proposed Rule is otherwise the same as Rule 8313(a)(3).

To further conform proposed NYSE Arca Equities Rule 10.15 to Rule 8313, the Exchange proposes to add a new subsection (a)(4) modeled on Rule 8313(a)(4) that provides that the Exchange may release to the public a copy of, and information with respect to, any decision or notice appealable to the SEC under Exchange Act Section 19(d). The proposed Rule is the same as Rule 8313(a)(4) but omits reference to any decision or notice issued pursuant to the NYSE and NYSE MKT Rule 9600 Series, which NYSE Arca Equities has not adopted.<sup>16</sup>

## Release Specifications

The Exchange proposes to add the title “Release Specifications” to subsection (b) of NYSE Arca Equities Rule 10.15 and delete the current text of subsection (b).

The Exchange also proposes to delete the entire text of current Rule 10.15(b)(1) and 10.15(b)(2). The Exchange proposes new subsections (b)(1) and (b)(2) modeled on Rule 8313(b)(1) and (b)(2), as follows.

<sup>15</sup> In that regard, Rule 8313(a) references summary proceedings under NYSE and NYSE MKT Rule 8320. Unlike a proceeding under NYSE or NYSE MKT Rule 8320, a proceeding under NYSE Arca Equities Rule 11 for failure to pay fines, other monetary sanctions, or costs could not be a summary proceeding.

<sup>16</sup> See note 14, *supra*.

Proposed NYSE Arca Equities Rule 10.15(b)(1) would provide that copies of, and information with respect to, any disciplinary complaint released to the public pursuant to paragraph (a) of the proposed Rule shall indicate that a disciplinary complaint represents the initiation of a formal proceeding by the Exchange in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. The proposed Rule would be the same as Rule 8313(b)(1).

Proposed NYSE Arca Equities Rule 10.15(b)(2) provides that copies of, and information with respect to, any disciplinary decision or other decision, order, notification, or notice released to the public pursuant to paragraph (a) of the proposed Rule prior to the expiration of the time period provided for an appeal or call for review as permitted under Exchange rules or the Exchange Act, or while such an appeal or call for review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by the Exchange or the SEC. The proposed Rule would be the same as Rule 8313(b)(2).

## Discretion To Redact Certain Information or Waive Publication

The Exchange has determined that, subject to limited exceptions, disciplinary information should be released to the public in unredacted form. The Exchange proposes to add a new subsection (c) to NYSE Arca Equities Rule 10.15 entitled “Discretion to Redact Certain Information or Waive Publication,” modeled on Rule 8313(c)(1) and (2). With respect to the limited exceptions, proposed NYSE Arca Equities Rule 10.15(c)(1) would provide that the Exchange reserves the right to redact, on a case-by-case basis, information that contains confidential customer information, including customer identities, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns. The proposed Rule would be the same as Rule 8313(c)(1).

Similarly, proposed NYSE Arca Equities Rule 10.15(c)(2) provides that, notwithstanding paragraph (a) of the proposed rule, the Exchange may determine, in its discretion, to waive the requirement to release a copy of, or information with respect to, any disciplinary complaint, disciplinary decision or other decision, order, notification, or notice under those extraordinary circumstances where the release of such information would

violate fundamental notions of fairness or work an injustice. The proposed Rule would be the same as Rule 8313(c)(2).

#### Notice of Appeals of Corporation Decisions

The Exchange proposes to add a new subsection (d) to NYSE Arca Equities Rule 10.15 entitled “Notice of Appeals of Corporation Decisions to the SEC” modeled on Rule 8313(d). Proposed NYSE Arca Equities Rule 10.15(d) provides that the Exchange must provide notice to the public when a disciplinary decision of the Exchange is appealed to the SEC and that the notice shall state whether the effectiveness of the decision has been stayed pending the outcome of proceedings before the Commission. The proposed Rule would be the same as Rule 8313(d).

#### Definitions

Finally, the Exchange proposes to add a new subsection (e) to NYSE Arca Equities Rule 10.15 entitled “Definitions.” Proposed NYSE Arca Equities Rule 10.15(e) would set forth definitions of the terms “disciplinary complaint” and “disciplinary decision” as used in the Rule, modeled on the definitions contained in Rule 8313(e).

First, Rule NYSE Arca Equities 10.15(e)(1) would define the term “disciplinary complaint” to mean any complaint issued pursuant to NYSE Arca Rule 10.4, which governs complaints. The proposed text is identical to Rule 8313(e)(1) except that the proposed Rule would substitute “Rule 10.4” for “the Rule 9200 Series.”

Second, proposed NYSE Arca Equities Rule 10.15(e)(2) would define the term “disciplinary decision” to mean any decision issued pursuant to NYSE Arca Equities Rules 10.4 (c) (Summary Proceedings), 10.6 (Offers of Settlement), 10.7 (Decision), or 10.8 (Review), including, decisions issued by the Business Conduct Committee (“BCC”), a Conduct Panel, the CFR or the Board of Directors,<sup>17</sup> and orders accepting offers of settlement. Under proposed subsection (e)(2), the term would not include decisions, notifications, or notices issued pursuant to paragraphs (a)(2), (a)(3) and (a)(4) of the proposed Rule. Finally, proposed NYSE Arca Equities Rule 10.15(e)(2) provides that minor rule violation plan letters issued pursuant to NYSE Arca Equities Rule 10.12 are not subject to

the proposed Rule. The proposed Rule would be the same as Rule 8313(e)(2) except that the proposed Rule would substitute references to the relevant NYSE Arca Equities Rules for references to the NYSE and NYSE MKT Rule 9000 Series, Rule 9550 Series, Rule 9600 Series, Rule 9800 Series, Rule 9520 Series, and Rules 9216 and 9217.

\* \* \* \* \*

The Exchange believes that greater access to information regarding disciplinary actions provides valuable guidance and information to permit holders, associated persons, other regulators, and investors. Further, releasing detailed disciplinary information to the public can serve to deter and prevent future misconduct and improve overall business standards in the securities industry as well as allowing investors to consider firms’ and representatives’ disciplinary histories when considering whether to engage in business with them.

Publishing more detailed information than the Exchange currently does would also allow permit holders to utilize that information to educate associated persons as to compliance matters, highlight potential violations and related sanctions, as well as inform the firms’ compliance procedures involving similar business lines, products, or industry practices. Finally, the Exchange believes that any member organization or individual facing allegations of rule violations would also have access to more information to gain greater insight on related facts and sanctions.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>19</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of NYSE Arc [sic] and NYSE Arca Equities. In particular, the Exchange believes that the proposed changes to NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15 regarding release of disciplinary complaints, decisions and other information are consistent with Section 6(b) of the Act because they would establish general standards for

the release of disciplinary information to the public in line with those in effect with its affiliates and would provide greater access to information regarding the Exchange’s disciplinary actions by enabling the Exchange to also release disciplinary complaints, which current NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15 do not provide for.

For the same reasons, the Exchange believes that the proposed changes to NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15 further the objectives of Section 6(b)(5) of the Act<sup>20</sup> because the changes are designed 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.

In particular, the proposed amendments to NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15 further the objectives of Section 6(b)(5) of the Act by providing greater clarity, consistency, and transparency regarding the release of disciplinary complaints, decisions and other information to the public. By adopting the proposed amendments to NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15 modeled on the NYSE’s and NYSE MKT’s rules, the Exchange would establish standards for the release of disciplinary information to the public in line with those in effect with its affiliates that provide greater access to information regarding the Exchange’s disciplinary actions. The Exchange would also describe the scope of information subject to proposed NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15. The Exchange believes that this proposed rule change promotes greater transparency with respect to the Exchange’s disciplinary process, and that the proposed rule change provides greater access to information regarding its disciplinary actions because, as noted, it would require the Exchange to release copies of disciplinary complaints, and also provides valuable guidance and information to permit holders, associated persons, other regulators, and the investing public.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The proposed rule change is not intended to address competitive issues, but rather it is designed to (1) enhance the Exchange’s rules governing the release of disciplinary complaints,

<sup>17</sup> NYSE Arca Equities Rule 10.8(c) and (d) refer to the “NYSE Arca Board of Governors,” an outdated reference that has been changed to “NYSE Arca Board of Directors” elsewhere in the rules. See Securities Exchange Act Release No. 77898 (May 24, 2016), 81 FR 34404 (May 31, 2016) (SR–NYSEArca–2016–11).

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

decisions and other information to the public, thereby providing greater clarity and consistency and resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions, and (2) provide greater harmonization among NYSE Arca, NYSE Arca Equities, NYSE and NYSE MKT rules of similar purpose.

*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**

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>21</sup> and Rule 19b-4(f)(6) thereunder.<sup>22</sup>

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2016-161 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-NYSEARCA-2016-161. 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-2016-161 and should be submitted on or before January 10, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 32392; 812-14653]

**Equus Total Return, Inc.; Notice of Application**

December 14, 2016.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 23(a), 23(b) and 63 of the Act; under section 61(a)(3)(B) of the Act permitting awards of common stock purchase options to non-employee directors; under section 57(i) of the Act and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act; and under section 23(c)(3) of the Act for an exemption from section 23(c) of the Act.

*Summary of the Application:* Equus Total Return, Inc. ("Applicant" or the "Fund") requests an order that would permit Applicant to (a) issue restricted shares of its common stock from treasury ("Restricted Stock") or common stock purchase options ("Options") as part of the compensation package for certain participants in its 2016 Equity Incentive Plan (the "Plan"), (b) grant Options to directors who are not also employees or officers of the Applicant ("Non-Employee Directors") under the Plan, (c) withhold shares of the Applicant's common stock or purchase shares of Applicant's common stock from participants to satisfy tax withholding obligations relating to the vesting of Restricted Stock or the exercise of Options that will be granted pursuant to the Plan, and (d) permit participants to pay the exercise price of Options with shares of Applicant's common stock.

*Filing Dates:* The application was filed on May 26, 2016, and amended on August 25, 2016, September 29, 2016 and November 23, 2016.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 9, 2017, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>22</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>23</sup> 17 CFR 200.30-3(a)(12).