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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76549; File No. SR-NYSEArca-2015-115)

December 3, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rules 7.44 and 7.44P to Distinguish Between Retail Orders Routed on Behalf of Other Broker-Dealers and Retail Orders that are Routed on Behalf of Introduced Retail Accounts that are Carried on a Fully Disclosed Basis

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 November 19, 2015, 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 Equities Rules 7.44 and 7.44P ("Retail Liquidity Program") to distinguish between retail orders routed on behalf of other broker-dealers and retail orders that are routed on behalf of introduced retail accounts that are carried on a fully disclosed basis. The proposed rule change is available on the Exchange's website 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

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 Equities Rules 7.44 and 7.44P,[4] which govern the Exchange's Retail Liquidity Program (the "Program"), to distinguish between orders routed on behalf of other broker-dealers and orders routed on behalf of introduced retail accounts that are carried on a fully disclosed basis, as further described below.

The Exchange established the Program in an attempt to attract retail order flow to the Exchange, primarily by offering pricing incentives. Under the Program, Retail Member Organizations[5] ("RMOs") are permitted to submit Retail Orders,[6] and receive rebates for added liquidity that are higher than the exchanges [sic] standard rebates for added liquidity.[7]

Rule 7.44(b)(1) currently states that "[t]o qualify as an RMO, an ETP Holder must

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4 The relevant portions of Rules 7.44 and 7.44P proposed to be amended have identical rule text and will be referred to collectively as "Rule 7.44."

5 As defined in Rule 7.44(a)(2), a Retail Member Organization is an ETP Holder that has been approved by the Exchange under Rule 7.44 to submit Retail Orders.

6 As defined in Rule 7.44(a)(3), a Retail Order is an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

7 See the Exchange's Price List, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

conduct a retail business or handle retail orders on behalf of another broker-dealer." Rather than stating that one way to qualify as an RMO is to "handle" retail orders on behalf of another broker-dealer, the Exchange proposes to state that an ETP Holder may qualify as an RMO if it "routes" retail orders on behalf of another broker-dealer. The Exchange believes that providing routing services on behalf of other broker-dealers with retail order flow better represents the function that ETP Holders would be performing on behalf of other broker-dealers. Thus, the Exchange believes that the description would be more transparent if it referred to routing services provided to another broker-dealer with retail customers. The Exchange also proposes to distinguish such routing services on behalf of another broker-dealer from services provided by broker-dealers that carry retail customer accounts on a fully disclosed basis, as described below.

As background with respect to the proposed change, the Exchange first would like to describe the terms "introducing broker", "carrying firm" or "carrying broker-dealer", and "fully disclosed," as such terms are commonly used in the securities industry. An "introducing" broker-dealer is "one that has a contractual arrangement with another firm, known as the carrying or clearing firm, under which the carrying firm agrees to perform certain services for the introducing firm. Usually, the introducing firm submits its customer accounts and customer orders to the carrying firm, which executes the orders and carries the account. The carrying firm's duties include the proper disposition of the customer funds and securities after the trade date, the custody of customer securities and funds, and the recordkeeping associated with carrying customer accounts."[8]

Further, a "fully disclosed" introducing arrangement is "distinguished from an omnibus clearing arrangement where the clearing firm maintains one account for all the customer

[8] See Securities Exchange Act Release No. 31511 (Nov. 24, 1992), 57 FR 56973 (December 2, 1992).

transactions of the introducing firm. In an omnibus relationship, the clearing firm does not know the identity of the customers of the introducing firm. In a fully disclosed clearing arrangement, the clearing firm knows the names, addresses, securities positions and other relevant data as to each customer."[9]

With respect to a broker-dealer that is routing on behalf of another broker-dealer, the Exchange does not believe that the routing broker-dealer has sufficient information to assess whether orders are truly retail in nature, and thus, requires an RMO routing on behalf of other broker-dealers to maintain additional supervisory procedures and obtain annual attestations, as described below, in order to submit Retail Orders to the Exchange. In contrast, however, if an ETP Holder is carrying a customer account on a fully disclosed basis, then such carrying broker-dealer is required to perform certain diligence regarding such account that the Exchange believes is sufficient to assess whether a customer is a retail customer in order to submit orders on behalf of such a customer to the Exchange as a Retail Order. The carrying broker of an account typically handles orders from its retail customers that are "introduced" by an introducing broker. However, as noted above, in contrast to a typical routing relationship on behalf of another broker-dealer, a carrying broker obtains a significant level of information regarding each customer introduced by the introducing broker. Accordingly, the Exchange proposes to state in Rule 7.44(b)(1) that for purposes of Rule 7.44, "conducting a retail business includes carrying retail customer accounts on a fully disclosed basis."

Rule 7.44(b)(6) currently states, in part, that "[i]f an RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail

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9 Id.

Orders meet the definition of a Retail Order." This includes obtaining attestations from the other broker-dealers for whom the RMO routes. In addition to the proposed changes to Rule 7.44 (b)(1) described above, the Exchange proposes to modify the language of Rule 7.44(b)(6) to again distinguish between an RMO that conducts a retail business because it carries accounts on a fully disclosed basis from an RMO that routes orders on behalf of another broker-dealer. As proposed, the additional annual written representation requirements of Rule 7.44(b)(6) would apply to an RMO that does not itself conduct a retail business but routes Retail Orders on behalf of other broker-dealers. In turn, such additional annual written representation requirements of Rule 7.44(b)(6) would not apply to an RMO that carries retail customer accounts on a fully disclosed basis. In connection with this change, the Exchange is proposing various edits to the existing rule text so that the reference is consistently to "other broker-dealers" rather than "broker-dealer customers."

The Exchange believes that allowing an RMO that carries retail customer accounts on a fully disclosed basis to submit Retail Orders to the Exchange without obtaining attestations from broker-dealers that might introduce such accounts will encourage participation in the Program. As noted above, the Exchange believes that the carrying broker has sufficient information to itself confirm that orders are Retail Orders without such attestations. The Exchange still believes it is necessary to require the attestation by broker-dealers that route Retail Orders on behalf of other broker-dealers, because, in contrast, such broker-dealers typically do not have a relationship with the retail customer and would not be in position to confirm that such customers are in fact retail customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, 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 proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it highlights the parties for whom additional procedures are required because they do not maintain relationships with the end customer (i.e., routing brokers) and still requires the RMO to follow such procedures to ensure that such orders qualify as Retail Orders. As proposed, however, an RMO would not be required to follow such procedures, including obtaining annual attestations, to the extent such RMO actually knows the end customer and carries the account of such customer and thus can itself confirm that the orders qualify as Retail Orders.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow RMOs that carry retail customer accounts to participate in the Program without imposing additional attestation requirements that the Exchange did not initially intend to impose upon them. By removing impediments to participation in the Program, the proposed change would permit expanded access of retail customers to the Program.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The

10 15 U.S.C. 78f(b).

11 15 U.S.C. 78f(b)(5).

Exchange believes that the amendment, by increasing the level of participation in the Program, will increase the level of competition around retail executions. The Exchange believes that the transparency and competitiveness of operating a program such as the Program on an exchange market would result in better prices for retail investors and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-exchange venues.

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b-4(f)(6) thereunder.[13] 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b-4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b-4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-

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12 15 U.S.C. 78s(b)(3)(A)(iii).

13 17 CFR 240.19b-4(f)(6).

14 15 U.S.C. 78s(b)(3)(A).

15 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

16 17 CFR 240.19b-4(f)(6).

4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately.[18] In requesting the waiver, the Exchange stated its belief that having harmonized requirements for RMOs across multiple exchanges with a retail program would promote competition by enabling ETP Holders to operate as RMOs on multiple exchanges in the same manner. The Commission notes that, to become an RMO, an ETP Holder would still be required under Exchange Rules 7.44(b)(2)(C) and 7.44P(b)(2)(C) to submit an attestation to the Exchange that substantially all orders submitted as Retail Orders would qualify as such under Exchange Rules 7.44 and 7.44P. Rather, the proposal would change when an RMO must obtain the annual written representation from other broker-dealers that send Retail Orders to the RMO. The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[19]

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

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17 17 CFR 240.19b-4(f)(6)(iii).

18 The Commission notes that another national securities exchange has a similar rule for its Retail Member Organizations and that the proposal does not raise any novel regulatory issues. See Securities Exchange Act Release No. 76207 (October 21, 2015), 80 FR 65824 (October 27, 2015) (SR-BYX-2015-45).

19 For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2015-115 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2015-115. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal 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-2015-115 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett
Deputy Secretary

[20] 17 CFR 200.30–3(a)(12).

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