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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84547; File No. SR-NYSEARCA-2018-77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend Rule 7.44-E

November 7, 2018.

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 October 26, 2018, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 7.44-E, which sets forth the Exchange’s Retail Liquidity Program. The proposed 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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Rule 7.44-E, which sets forth the Exchange's Retail Liquidity Program (the "Program"), to: (i) expand the Program's availability to all securities traded on the Exchange; (ii) remove unused functionality by eliminating the Type 2 - Retail Order and no longer permit Retail Price Improvement Orders ("RPI") to be designated as a Mid-Point Liquidity ("MPL") Order;³ and (iii) offer additional functionality to RPI Orders by allowing them to include an optional offset.

The Exchange established the Program to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement.⁴ The Program is currently limited to trades occurring at prices equal to and greater than \$1.00 a share. The program currently operates on a pilot basis and is set to expire on December 31, 2018.

Under Exchange Rule 7.44-E, a class of market participant called Retail Liquidity Providers ("RLPs")⁵ and non-RLP member organizations are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer ("PBBO"), called an RPI. When there is an RPI in a particular security priced at least \$0.001 better than the PBB or PBO, the Exchange disseminates

³ Rule 7.31-E(d)(3).

⁴ See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107) ("RLP Approval Order").

⁵ The Program also allows for RLPs to register with the Exchange. However, any firm can enter RPI orders into the system.

an indicator, known as the Retail Liquidity Identifier (“RLI”), that such interest exists. Retail Member Organizations (“RMOs”) can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPIs and orders with a working price between the PBBO. The segmentation in the Program allows retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by liquidity providers.⁶

Expansion of Program’s Scope

The Exchange proposes to expand the Program’s availability to all securities traded on the Exchange. Today, the Program is limited to NYSE Arca-listed securities and UTP Securities. Securities listed on the New York Stock Exchange LLC (“NYSE”) are specifically excluded from the Program. Rule 7.44-E(a)(4), therefore, states that a RPI Order is “non-displayed interest in NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that would trade at prices better than the PBB or PBO by at least \$0.001 and that is identified as such.” To expand the Program to all securities traded on the Exchange, including NYSE-listed securities, the Exchange proposes to amend Rule 7.44-E(a)(4) to provide that a RPI Order is “non-displayed interest that would trade at prices better than the PBB or PBO by at least \$0.001 and that is identified as such.” This language is similar to that of Cboe BYX Exchange, Inc. (“BYX”), which also operates a retail price improvement program that is available to all securities trading on BYX.⁷

Elimination of Type 2 - Retail Orders

⁶ RLP Approval Order, 77 FR at 79528.

⁷ See BYX Rule 11.24(a)(3). See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (“BYX RPI Approval Order”). See also and NASDAQ Stock Market LLC (“NASDAQ”) Rule 4780(a)(3). See Securities Exchange Act Release No. 69837 (February 15, 2013), 78 FR 12397 (February 22, 2013) (“NASDAQ RPI Approval Order”). See also Securities Exchange Act Release No. 75252 (June 22, 2015), 80 FR 36866 (June 26, 2015) (SR-NASDAQ-2015-024) (removing NASDAQ’s Retail Price Improvement Program from its rules).

The Exchange proposes to amend Rule 7.44-E(k) to remove unused functionality by eliminating the Type 2 - Retail Order. As a result, the Exchange would now offer a single category of Retail Orders. To date, the Exchange has not received a Retail Order designated as Type 2 and, therefore, proposes to no longer support this functionality.

Rule 7.44-E(a)(3) defines a “Retail Order” as 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. Under Rule 7.44-E(k), an RMO may designate how their Retail Order interacts with available contra-side interest by designating it as either a Type 1 or Type 2 Retail Order.

A Type 1- Retail Order to buy (sell) is a Limit Immediate-or-Cancel (“IOC”) Order that will trade only with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book and will not route. The quantity of a Type 1-Retail Order to buy (sell) that does not trade with eligible orders to sell (buy) will be immediately and automatically cancelled. A Type-1 designated Retail Order will be rejected on arrival if the PBBO is locked or crossed.

A Type 2- Retail Order may be a Limit Order designated IOC or Day or a Market Order, and functions as follows:

- A Type 2- Retail Order IOC to buy (sell) is a Limit IOC Order that will trade first with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book. Any remaining quantity of the Retail Order will trade with orders to

sell (buy) on the NYSE Arca Book at prices equal to or above (below) the PBO (PBB) and will be traded as a Limit IOC Order and will not route.

- A Type 2- Retail Order Day to buy (sell) is a Limit Order that will trade first with available RPI Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book. Any remaining quantity of the Retail Order, if marketable, will trade with orders to sell (buy) on the NYSE Arca Book or route, and if non-marketable, will be ranked in the NYSE Arca Book as a Limit Order.
- A Type 2- Retail Order Market to buy (sell) is a Market Order that will trade first with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the NBO (NBB). Any remaining quantity of the Retail Order will function as a Market Order.

The Exchange proposes to no longer offer the Type 2-Retail Order and delete all references to it in Rule 7.44-E. Rule 7.44-E(k) would be amended to delete subparagraph (2) that describes the operation of the Type 2-Retail Order. The Exchange would continue to offer Type 1-Retail Orders, which would be referred to as “Retail Orders” in Rule 7.44-E(k) and described as:

“[a] Retail Order to buy (sell) is a Limit IOC Order that will trade only with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book and will not route. The quantity of a Retail Order to buy (sell) that does not trade with eligible orders to sell (buy) will be immediately and automatically cancelled. A Retail Order will be rejected

on arrival if the PBBO is locked or crossed.”

The Exchange does not propose to amend the operation of Retail Orders. The proposed text is substantially similar to current Rule 7.44-E(k)(1) with minor changes to remove references to “Type 1”.

The Exchange also proposes to make related changes to Rule 7.44-E(l). First, the last sentence in the first paragraph (l) would be amended to no longer state that any remaining unfilled quantity of a Retail Order posts to the NYSE Arca Book. Only Type 2-Retail Orders designated as Day were able to be posted the NYSE Arca Book and would no longer be offered by the Exchange. Retail Orders would be Limit IOC orders and would either execute or be cancelled upon entry and, therefore, never post to the NYSE Arca Book. As such, the last sentence of the first paragraph Rule 7.44-E(l) would be amended to remove a reference to posting to the NYSE Arca Book and state, “[a]ny remaining unfilled quantity of the Retail Order will cancel or execute [sic] in accordance with Rule 7.44-E(k).” The Exchange notes that treating all Retail Orders as IOC is similar to that of BYX and the Exchange’s affiliate, NYSE, both of which also operate retail price improvement programs that treats their similar retail orders as IOC.⁸

The Exchange also proposes to remove from Rule 7.44-E(l) an example that describes the operation of a Type 2-Retail Order and to replace all references to Type 1-Retail Orders in the remaining examples with the term Retail Order.

RPI Orders

The Exchange proposes to remove unused functionality by no longer permitting RPI Orders to be designated as MPL Orders. The Exchange also proposes to offer additional

⁸ See NYSE Rule 107C(k). See also BYX Rule 11.24(f).

functionality to RPI Orders by allowing them to include an optional offset.

RPIs are non-displayed and only execute against Retail Orders. RPIs are generally entered at a single limit price, rather than being pegged to the PBBO. One exception is that a RPI Order could also be designated as an MPL Order, in which case the order would be pegged to the midpoint of the PBBO and re-priced as the PBBO changes.

Designation as MPL Orders. The Exchange proposes to remove unused functionality that permits RPI Orders to be designated as MPL Orders. Rule 7.44-E(a)(4)(D) currently states that “[a]n RPI must be designated as either a Limit Non-Displayed Order or MPL Order, and an order so designated will interact with incoming Retail Orders only and will not interact with either a Type 2- Retail Order Day or Type 2- Retail Order Market that is resting on the NYSE Arca Book.” The Exchange notes that to date all RPI Orders have been designated as Non-Displayed Limit Orders, not MPL Orders.

As proposed, RPI Orders could no longer be designated as MPL Orders. To effect this change, the Exchange proposes to revise the above-referenced sentence from Rule 7.44-E(a)(4)(D) to provide instead that “[a]n RPI . . . will interact with incoming Retail Orders only.” The remaining text of the current rule is no longer necessary because the reference to Non-Displayed Limit Orders is superfluous as RPI Orders by definition are non-displayed and must include a limit price.⁹ Further, references to Type 2-Retail Orders are unnecessary because they would no longer be offered by the Exchange, as proposed above.

Optional Offset Functionality. The Exchange proposes to allow RPIs to include an optional offset. Rule 7.44-E(a)(4) would be amended to include new paragraph (a)(4)(C)¹⁰ that

⁹ Under Rule 7.44-E(a),

¹⁰ The Exchange proposes to renumber the remaining paragraphs under Rule 7.44-E(a)(4) accordingly.

would provide that an RPI may include an optional offset, which may be specified up to three decimals. The working price of an RPI to buy (sell) with an offset would be the lower (higher) of the PBB (PBO) plus (minus) the offset or the limit price of the RPI. An RPI with an offset would not be eligible to trade if the working price is below \$1.00. If an RPI to buy (sell) with an offset would have a working price that is more than three decimals, the working price would be truncated to three decimals.

RPIs that include an offset would interact with Retail Orders as follows. Assume an RLP enters RPI sell interest with an offset of \$0.001 and a limit price of \$10.10 while the PBO is \$10.11. The RPI could interact with an incoming buy Retail Order at \$10.109. If the PBO changes to \$10.12, the RPI could interact with an incoming buy Retail Order at \$10.119. If, however, the PBO changes again to \$10.10, the RPI could not interact with the Retail Order because the price required to deliver the minimum \$0.001 price improvement (\$10.099) would violate the RLP's limit price of \$10.10.

If an RLP otherwise enters an offset greater than the minimum required price improvement and the offset would produce a price that would violate the RLP's limit price, the offset would be applied only to the extent that it respects the RLP's limit price. By way of illustration, assume RPI buy interest is entered with an offset of \$0.005 and a limit price of \$10.112 while the PBB is at \$10.11. The RPI could interact with an incoming sell Retail Order at \$10.112, because it would produce the required price improvement without violating the RLP's limit price, but it could not interact above the \$10.112 limit price.

The Exchange proposes to make a related change to Rule 7.16-E(f)(5)(C) to specify that, like Pegged Orders and MPL Orders, RPIs with an offset would use the National Best Bid ("NBB") instead of the PBB as the reference price when a Short Sale Price Test is triggered

pursuant to Rule 201 of Regulation SHO.¹¹

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The Exchange anticipates implementing this proposed rule change in the second quarter of 2019, subject to Commission approval, and will publicly announce the exact implementation date by Trader Update.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹³ in particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. As explained below, the proposed rule change would further align the Program with that offered by the Exchange's affiliate, NYSE, by adopting optional offset functionality for RPIs and removing unused functionality that is not offered by the NYSE. The proposal also expands the scope of the Program to mirror that of BYX and improve the Program's overall competitiveness. Each portion of the proposal is based on the rules of NYSE and/or BYX, and, therefore, does not raise any new or novel issues not already considered by the Commission. First, the proposal to expand the Program to include all securities traded on the Exchange is identical to the scope of a

¹¹ 17 CFR 242.201.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

similar retail order price improvement program operated by BYX. Second, the proposal provide RLPs with greater pricing flexibility in the form of an optional offset for their RPIs is based on the rules of its affiliate, NYSE, and BYX, both of which permit their equivalent RPI Orders to include an offset. Lastly, the proposal to eliminate Type 2-Retail Orders and RPIs designated as MPL Orders is based on the rules of its affiliate, NYSE, or BYX, neither of which offer similar functionality as part of their respective retail price improvement programs.

Expansion of Program's Scope. The Exchange believes expanding the Program's availability to all securities traded on the Exchange would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest by enabling Retail Orders in all securities to participate in the Program and receive potential price improvement. The proposal should benefit retail investors by providing increased opportunities for price improvement in any security traded on the Exchange. The proposed scope of the Program would improve its competitiveness because it would be identical to BYX, which also operates a retail price improvement program that is available to all securities traded on BYX.¹⁴

Type 2-Retail Orders. The Exchange believes that its proposal to eliminate the Type 2 - Retail Order would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system by simplifying and streamlining the operation of Retail Orders. To date, the Exchange has not received a Retail Order designated as Type 2 for participation in the Program. Therefore, no longer offering the Type 2-Retail Order should not impact market participants' trading activity and would serve to remove unused functionality from the Program and the Exchange's rules. The Proposal would also simplify the operation of

¹⁴ See BYX Rule 11.24(a)(3).

the Program and allow the Exchange to no longer support functionality that is not utilized.

Lastly, the proposal would result in all Retail Orders being treated as IOC, which is identical to the treatment of retail orders on the Exchange's affiliate, NYSE, and BYX, both of which execute Retail Orders upon entry or cancel.¹⁵

RPI Orders Designated as MPL Orders. The Exchange believes that its proposal to no longer permit RPI Orders to be designated as MPL Orders would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system by simplifying and streamlining the operation of RPIs. The Exchange notes that to date, all RPIs have been designated as Limit Orders, not MPL Orders. ETP Holders that wish to interact with Retail Orders at the midpoint are not limited to utilizing RPI Orders designated as MPL Orders and may enter an MPL Order generally to interact with Retail Orders at the midpoint of PBBO. Therefore, elimination of this functionality from the Program would have little to no impact on an ETP Holder's trading activity. The Exchange also notes that similar functionality is not offered as part of the retail price improvement programs operated by BYX and NYSE, neither of which specifically permit their retail price improvement orders to be designated as midpoint only order types.¹⁶

Options Offset Functionality. The Exchange believes that providing the option for RPI Orders to include an offset would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest by enhancing the operation of the Program while creating additional price improvement opportunities for retail investors and their order flow. The proposed rule change should

¹⁵ See NYSE Rule 107C(k). See also BYX Rule 11.24(f).

¹⁶ See BYX Rule 11.24(f). See NYSE Rule 107C(a)(4)(B). See also Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (Order approving SR-NYSE-2011-55).

encourage RLPs and non-RLP member organizations to enter RPI Orders by allowing them to include an offset amount by which it is willing to improve the PBBO, subject to a the limit price of the order. Absent the ability, RLPs would only be able to enter RPIs with a single limit price. The ability to add an offset would provide RLPs with increased control over their RPIs as well as greater pricing flexibility. The anticipated increased availability of RPIs would, therefore, facilitate transactions in securities, remove impediments to, and perfect the mechanisms of a free and open market and a national market system by increasing price improvement opportunities on the Exchange for retail order flow. The proposed rule change is based on and would operate in an identical manner as the rules of its affiliate, NYSE,¹⁷ and BYX,¹⁸ both of which permit their equivalent RPI Orders to include an optional offset.

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,¹⁹ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it should promote competition for retail order flow among exchanges and execution venues. The proposed rule change to expand the Program to include all securities traded on the Exchange and to allow RPIs to include an optional offset should increase competition because it would enable the Exchange to better compete with similar programs on other exchanges, such as BYX, that are of similar scope and offer the same functionality.

¹⁷ See NYSE Rule 107C(a)(4)(B).

¹⁸ See BYX Rule 11.24(a)(3).

¹⁹ 15 U.S.C. 78f(b)(8).

The proposal to eliminate Type 2-Retail Orders and RPIs designated as MPL Orders are not intended to have a competitive impact. These changes simply remove functionality from the Program that has not been used at all to date.

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

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

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

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

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2018-77 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-2018-77. 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 the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2018-77 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

²⁰ 17 CFR 200.30-3(a)(12).

Eduardo A. Aleman,
Assistant Secretary.

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