



8011-01
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81713; File No. SR-NYSEArca-2017-109)

September 25, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 14.2 to Make Technical and Conforming Updates in Connection With the Recent Merger of NYSE Arca Equities, Inc. With and Into the Exchange

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 12, 2017, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“SEC” or “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 14.2 (Liability of Exchange) to make technical and conforming updates in connection with the recent merger of NYSE Arca Equities, Inc. (“NYSE Arca Equities”) with and into the Exchange.

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

In its filing with the Commission, the self-regulatory organization included statements

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 14.2 to make technical and conforming updates in connection with the recent merger of its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”) with and into the Exchange (the “Merger”).

On June 2, 2017, the Exchange filed rule changes with the Securities and Exchange Commission (“Commission”) in connection with the proposed Merger (the “Original Filing”).⁴ On August 15, 2017, the Exchange filed a partial amendment to the Original Filing (the “Amendment”), which, among other things, amended the Original Filing to reflect changes to the proposed rule text that resulted from changes to the NYSE Arca and NYSE Arca Equities rules that became operative after June 2, 2017.⁵ On August 17, 2017, the Commission approved the proposed rule changes, as amended, and the Merger occurred on that same date.⁶

Prior to the Merger, NYSE Arca had two rulebooks: the NYSE Arca rules for its options

⁴ See Securities Exchange Act Release No. 80929 (June 14, 2017), 82 FR 28157 (June 20, 2017) (SR-NYSEArca-2017-40) (“Notice”).

⁵ See Partial Amendment 2 to SR-NYSEArca-2017-40 (August 15, 2017). The Amendment also was submitted to the Commission as a comment letter on the Original Filing. See letter from Martha Redding, Associate General Counsel, NYSE Group, to Brent J. Fields, Secretary, Commission (August 15, 2017), available at <https://www.sec.gov/comments/sr-nysearca-2017-40/nysearca201740-2221802-160732.pdf>.

⁶ See Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40) (Approval Order).

market and the NYSE Arca Equities rules for its equities market. At the Merger, the NYSE Arca Equities rules were integrated into the NYSE Arca rules, so that there is now one NYSE Arca rulebook.⁷ In that process, NYSE Arca Rule 14 (Liability of Directors and Exchange) was amended to incorporate NYSE Arca Equities Rule 13 (Liability of Directors and Corporation).⁸

On July 24, 2017, the Commission approved a proposed rule change to amend NYSE Arca Equities Rule 13.2 (Liability of Corporation).⁹ Because such rule change was approved after the Original Filing but prior to the Merger, it should have been included in the Amendment. However, due to an oversight, the Amendment did not incorporate the changes to NYSE Arca Equities Rule 13.2 into NYSE Arca Rule 14.2.¹⁰ Accordingly, the Exchange proposes to make technical and conforming changes to NYSE Arca Rule 14.2 in order to conform it to the text of previous NYSE Arca Equities Rule 13.2 approved by the Commission on July 24, 2017.¹¹

More specifically, the Exchange proposes to:

- Amend Rule 14.2(a) to provide that the limitation of liability set forth in that paragraph would apply to “successors, representatives, or customers” of Equities Trading Permit holders (“ETP Holders”), Options Trading Permit holders (“OTP Holders”) and Options Trading Permit firms (“OTP Firms”) of the Exchange, consistent with previous NYSE Arca Equities Rule 13.2(a);

⁷ See id. at 40044.

⁸ See id. at 40048.

⁹ See Securities Exchange Act Release No. 81197 (July 24, 2017), 82 FR 35244 (July 28, 2017) (SR-NYSEArca-2017-46) (Approval Order).

¹⁰ The Amendment updated NYSE Arca Equities Rule 13.2 in Exhibit 5I to Original Filing to reflect the changes made in SR-NYSEArca-2017-46. See Item 19 of the Amendment, supra note 5, at 13-15. Exhibit 5I set forth the NYSE Arca Equities Rules, which were deleted in their entirety at the time of the Merger.

¹¹ The Exchange notes that during the period between the Merger and the date of the present filing, it did not receive a claim that exceeded the liability limits and thus the Exchange was not prevented from fully compensating an ETP Holder for losses suffered in connection with the use of the Exchange’s facilities, including losses caused by the negligent act or omission of an Exchange employee.

- Amend Rule 14.2(b), which describes certain prerequisites for qualifying for compensation, to replace the words “acknowledged receipt of” with the word “received,” consistent with previous NYSE Arca Equities Rule 13.2(b);
- Amend Rule 14.2(b) and (c) to eliminate the daily caps on liability, consistent with previous NYSE Arca Equities Rule 13.2(b) and (c); and
- Amend Rule 14.2(c) and add a new Rule 14.2(d) to change the procedural requirements for submitting notification to the Exchange of any claims for compensation, consistent with previous NYSE Arca Equities Rule 13.2(c) and (d). As a technical change, the obsolete reference to the “Corporation” in NYSE Arca Equities Rule 13.2(d), which referred to NYSE Arca Equities, would be updated to refer to the “Exchange” in new Rule 14.2(d).¹²

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,¹³ in general, and with Section 6(b)(1)¹⁴ 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 the Exchange.

The Exchange believes that the proposed change to Rule 14.2 would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because, by incorporating the amendments to NYSE Arca Equities Rule 13.2 that the Commission approved on July 24, 2017, the proposed change would ensure that the changes made to Rule 14.2 to reflect the Merger were accurate and

¹² See Notice, supra note 4, at 28161 (noting that in rule text based on NYSE Arca Equities rules, references to the Corporation would be replaced with references to the Exchange).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(1).

complete.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system in general, to protect investors and the public interest, because, by incorporating the amendments to NYSE Arca Equities Rule 13.2 that the Commission approved on July 24, 2017, the proposed change would ensure that the changes made to Rule 14.2 to reflect the Merger were accurate and complete, thereby reducing potential investor or market participant confusion. The proposed change would clarify the scope of the limitation of liability, including the elimination of daily liability caps and applicable procedural requirements, for all ETP Holders, OTP Holders, and ETP Firms [sic], and ensure that all Exchange permit holders would be subject to the same rule.¹⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,¹⁷ in general, and with Section 6(b)(1)¹⁸ 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

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ The Commission notes that NYSE Arca Rule 14.2 applies to ETP Holders, OTP Holders, and OTP Firms.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(1).

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 the Exchange.

The Exchange believes that the proposed change to Rule 14.2 would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because, by incorporating the amendments to NYSE Arca Equities Rule 13.2 that the Commission approved on July 24, 2017, the proposed change would ensure that the changes made to Rule 14.2 to reflect the Merger were accurate and complete.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁹ 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system in general, to protect investors and the public interest, because, by incorporating the amendments to NYSE Arca Equities Rule 13.2 that the Commission approved on July 24, 2017, the proposed change would ensure that the changes made to Rule 14.2 to reflect the Merger were accurate and complete, thereby reducing potential investor or market participant confusion. The proposed

¹⁹ 15 U.S.C. 78f(b)(5).

change would clarify the scope of the limitation of liability, including the elimination of daily liability caps and applicable procedural requirements, for all ETP Holders, OTP Holders, and ETP Firms [sic], and ensure that all Exchange permit holders would be subject to the same rule.²⁰

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 proposed rule change is not intended to address competitive issues but rather is concerned solely with updating Rule 14.2 to reflect the previously approved amendments to NYSE Arca Equities Rule 13.2, ensuring that all Exchange permit holders would be subject to the same rules.

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 Act²¹ and Rule 19b-4(f)(6) thereunder.²² 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 prior to 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

²⁰ See supra note 16.

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁴ 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 proposal may become operative immediately upon filing. The Exchange notes that such waiver would allow the Exchange to implement without further delay the previously-approved amendments to NYSE Arca Equities Rule 13.2 and would ensure continuity in the Exchange's treatment of ETP Holders, as ETP Holders subject to NYSE Arca Rule 14.2 would be subject to the same limitations of liability as they were under NYSE Arca Equities Rule 13.2 prior to the Merger, including the elimination of daily liability caps. In addition, the Exchange notes that the proposed rule change would clarify the scope of its limitation of liability rule, including the elimination of daily liability caps and applicable procedural requirements, for all ETP Holders, OTP Holders, and OTP Firms, and ensure that all Exchange permit holders would be subject to the same rule.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative delay will help ensure consistent treatment of ETP Holders, OTP Holders, and OTP Firms under NYSE Arca Rule 14.2 and help avoid the potential for confusion as to the applicable limitations of liability with respect to that rule. Therefore, the Commission hereby waives the 30-day operative delay and

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

designates the proposal operative upon filing with the Commission.²⁵

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) of the Act²⁶ 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-2017-109 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-2017-109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

²⁵ 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).

²⁶ 15 U.S.C. 78s(b)(2)(B).

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 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-2017-109 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.²⁷

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Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).

[FR Doc. 2017-20888 Filed: 9/28/2017 8:45 am; Publication Date: 9/29/2017]