

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77535; File No. SR-NYSEArca-2016-11)

April 6, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending Section 4.01(a) of the NYSE Arca's Bylaws and NYSE Arca Rule 3.3 to Establish a Committee for Review as a Sub-Committee of the ROC and Making Conforming Changes to NYSE Arca Rules

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 24, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On April 4, 2016, the Exchange filed Amendment No. 1 to the proposal.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange proposes to (1) amending Section 4.01(a) of the NYSE Arca's Bylaws and NYSE Arca Rule 3.3 to establish a Committee for Review as a sub-committee of the Regulatory Oversight Committee ("ROC"), deleting NYSE Arca Rule 3.2(b)(3) governing the OTP Advisory Committee and NYSE Arca Equities Rule 3.2(b)(3) governing the Member Advisory Committee, both of whose functions will be assumed by the Committee for Review, and making

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Amendment No. 1 amends and replaces the original filing in its entirety. In Amendment No. 1, the Exchange, among other things, deleted language in the description of the proposed rule change that was not relevant to the proposed rule change.

conforming changes to NYSE Arca Rules 2.4, 10.3, 10.6, 10.8, 10.11, 10.12, 10.14 and NYSE Arca Equities Rules 2.3, 3.3, 5.5, 10.3, 10.6, 10.8, 10.11, 10.12, and 10.13; and (2) deleting references to “NYSE Regulation, Inc.” and “NYSE Regulation” in NYSE Arca and NYSE Arca Equities Rule 0 and NYSE Arca Equities Rule 5.3(i)(1) and replacing a reference to the “NYSE Regulation, Inc. Chief Executive Officer” in NYSE Arca Equities Rules 2.100. This Amendment No. 1 to SR-NYSEArca-2016-11 amends and replaces the original filing in its entirety. The proposed rule change is available on the Exchange’s website 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes the following changes to the Rules of NYSE Arca and NYSE Arca Equities:

- amending Section 4.01(a) of the NYSE Arca’s Bylaws and NYSE Arca Rule 3.3 to establish a Committee for Review (“CFR”) as a sub-committee of the ROC, deleting NYSE Arca Rule 3.2(b)(3) governing the OTP Advisory Committee and NYSE Arca Equities Rule 3.2(b)(3) governing the Member Advisory Committee,

- both of whose functions will be assumed by the CFR, and making conforming changes to NYSE Arca Rules 2.4, 10.3, 10.6, 10.8, 10.11, 10.12, 10.14 and NYSE Arca Equities Rules 2.3, 3.3, 5.5, 10.3, 10.6, 10.8, 10.11, 10.12, and 10.13;
- deleting references to “NYSE Regulation, Inc.” and “NYSE Regulation”<sup>5</sup> in NYSE Arca and NYSE Arca Equities Rule 0 and NYSE Arca Equities Rule 5.3(i)(1); and
  - replacing a reference to the “NYSE Regulation, Inc. Chief Executive Officer” in NYSE Arca Equities Rule 2.100.<sup>6</sup>

### Background

NYSE Arca, a registered securities exchange, operates a marketplace for trading options and, through its wholly-owned subsidiary NYSE Arca Equities, a marketplace for trading equities.<sup>7</sup> NYSE Arca administers the disciplinary program for the options marketplace, which encompasses investigations, adjudication of cases, and the imposition of fines and other sanctions, and has delegated disciplinary and adjudicatory functions for the equities marketplace to NYSE Arca Equities.<sup>8</sup> As summarized below, NYSE Arca and NYSE Arca Equities each

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<sup>5</sup> NYSE Regulation, a not-for-profit subsidiary of the Exchange’s affiliate New York Stock Exchange LLC (“NYSE”), performed regulatory functions for the Exchange pursuant to an intercompany Regulatory Services Agreement (“RSA”) that gave the Exchange the contractual right to review NYSE Regulation’s performance. See Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015) (SR-NYSE-2015-27) (“NYSE Approval Order”). The RSA terminated on February 16, 2016. The proposed changes relating to references to NYSE Regulation and the NYSE Regulation Chief Executive Officer are therefore appropriate because NYSE Regulation has ceased providing regulatory services to the Exchange, which has re-integrated its regulatory functions.

<sup>6</sup> The Exchange would effect the proposed changes described herein no later than June 30, 2016, on a date determined by its Board.

<sup>7</sup> See NYSE Arca Rule 10.

<sup>8</sup> See NYSE Arca Equities Rule 3.4, 3.5, 14.1 & 14.2.

utilizes its own committee structure for appeals of disciplinary decisions or summary determinations.<sup>9</sup> The Exchange proposes to amend the current appellate structure to establish a single CFR to hear appeals for both marketplaces.

### NYSE Arca

The Exchange's disciplinary jurisdiction extends to Options Trading Permit ("OTP") Holders, OTP Firms and associated persons of an OTP Firm or OTP Holder alleged to have violated or aided and abetted a violation of any provision of the Exchange Act or the rules and regulations thereunder, any provision of the Exchange's Bylaws or Rules or any commentary thereof, any resolution of the Board of Directors of the Exchange regulating the conduct of business on the Exchange, or Exchange policy or procedure.<sup>10</sup> Disciplinary proceedings are heard by a "Conduct Panel" appointed by the NYSE Arca Ethics and Business Conduct Committee ("EBCC").<sup>11</sup>

Under current NYSE Arca Rules 3.3 and 10.8, an appeal of matters subject to the applicable provisions of NYSE Arca Rules 3.2(b)(1)(C) or 10, including a Conduct Panel decision pursuant to Rule 10.7 or summary determination pursuant to Rule 10.4(c), may be reviewed by the NYSE Arca Board Appeals Committee ("NYSE Arca BAC") or an "Appeals

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<sup>9</sup> A summary determination is a determination without a hearing where a penalty is imposed as to such charges that a respondent has admitted or failed to answer or which otherwise does not appear to be in dispute. See NYSE Arca Rule 10.4(c); NYSE Arca Equities Rule 10.4(c).

<sup>10</sup> See Rule 10.1.

<sup>11</sup> See NYSE Arca Rule 10.5(a).

Panel’ appointed by the NYSE Arca BAC.<sup>12</sup> The NYSE Arca BAC is a committee of the NYSE Arca board of directors (the “SRO Board”) made up of the OTP Director(s), the ETP Director(s) and all of the Public Directors of the NYSE Arca Board of Directors.<sup>13</sup> Under current NYSE Arca Rule 3.3(a)(1)(B), if an Appeals Panel is appointed, it must include at least one Public Director and at least one Director that is an OTP Holder or Allied Person of an OTP Firm.<sup>14</sup>

### NYSE Arca Equities

NYSE Arca Equities’ disciplinary jurisdiction extends to any ETP Holder or associated person of an ETP Holder alleged to have violated or aided and abetted a violation of any provision of the Exchange Act or the rules and regulations thereunder, any provision of NYSE Arca Equities’ Bylaws or Rules or any commentary thereof, any resolution of the Board of Directors of NYSE Arca Equities regulating the conduct of NYSE Arca Equities, or NYSE Arca Equities policy or procedure.<sup>15</sup> Similar to NYSE Arca, disciplinary proceedings of NYSE Arca

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<sup>12</sup> See NYSE Arca Rule 10.8. In addition, NYSE Arca Rule 3.2(b)(1)(C) provides that the NYSE Arca EBCC has the authority, whenever it appears that an OTP Firm or OTP Holder is in violation of NYSE Arca Rule 4 (Capital Requirements, Financial Reports, Margin), to direct a representative of such OTP Firm or OTP Holder to appear before the committee for examination upon 48 hours’ notice, following which the EBCC can suspend such OTP Firm or OTP Holder until the requirements of NYSE Arca Rule 4 are fully met. NYSE Arca Rule 10 governs disciplinary proceedings and appeals. Under NYSE Arca Rule 10.8, the NYSE Arca BAC has the option of appointing an Appeals Panel to review disciplinary appeals or conduct review proceedings on its own. See also note 17, infra.

<sup>13</sup> See Article III, Section 3.02 of the bylaws of the Exchange. An “ETP Director” is a director nominated by the Equities Trading Permit (“ETP”) Holders of NYSE Arca Equities, Inc. and an “OTP Director” is a director nominated by the OTP Holders of the Exchange. “Public Directors” of the Exchange are directors that are “persons from the public and will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates”. Id.

<sup>14</sup> See NYSE Arca Rule 3.3(a)(1)(B). See also NYSE Arca Rule 3.2.

<sup>15</sup> See NYSE Arca Equities Rule 10.1.

Equities are heard by a “Conduct Panel” appointed by the NYSE Arca Equities Business Conduct Committee (“BCC”).<sup>16</sup>

Under current NYSE Arca Equities Rules 3.3 and 10.8, an appeal of matters subject to the applicable provisions of NYSE Arca Equities Rules 3.2(b)(1)(C), 5 or 10 may be reviewed by the NYSE Arca Equities Board Appeals Committee (“NYSE Arca Equities BAC”).<sup>17</sup> The NYSE Arca Equities BAC is an equity committee of the NYSE Arca Equities board of directors, and is made up of, in addition to any members of the public on the committee, at least one director that is an ETP Holder or Allied Person of an ETP Holder.<sup>18</sup>

#### Proposal to Establish CFR as a Sub-Committee of the ROC

In 2015, the Board established a ROC as a committee of the SRO Board.<sup>19</sup> As discussed below, the Exchange proposes to create a CFR as a sub-committee of the ROC to replace the current structure of separate NYSE Arca and NYSE Arca Equities BACs for the options and equities markets. The proposed CFR would incorporate the salient requirements of both markets’ current BAC process.

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<sup>16</sup> See NYSE Arca Equities Rule 10.5(a).

<sup>17</sup> NYSE Arca Equities Rule 3.2(b)(1)(C), like NYSE Arca Rule 3.2(b)(1)(C), provides that the NYSE Arca Equities BCC has the authority, whenever it appears that an ETP Holder is in violation of NYSE Arca Equities Rule 4 (Capital Requirements, Financial Reports, Margin), to direct a representative of such ETP Holder to appear before the committee for examination upon 48 hours’ notice, following which the BCC can suspend such ETP Holder until the requirements of NYSE Arca Equities Rule 4 are fully met. NYSE Arca Equities Rule 5 governs listing and continued listing requirements and delisting procedures (see NYSE Arca Equities Rule 5.5(m)). NYSE Arca does not have a comparable rule. NYSE Arca Equities Rule 10 governs disciplinary proceedings and appeals. Under NYSE Arca Equities Rule 10.8, the Board Appeals Committee has the option of appointing an Appeals Panel to review disciplinary appeals or conduct review proceedings on its own.

<sup>18</sup> See NYSE Arca Equities Rule 3.3(a)(1)(A). See also NYSE Arca Rule 3.1 & Rule 3.2.

<sup>19</sup> See Securities Exchange Act Release No. 75155 (June 11, 2015), 80 FR 34744 (June 17, 2015) (SR-NYSEArca-2015-29) (“Release No. 75155”). The Exchange does not propose to amend the provisions relating to the EBCC or BCC, which will remain separate.

By establishing a single CFR, the Exchange proposes to make its appellate process consistent with that of its affiliates NYSE and NYSE MKT LLC (“NYSE MKT”), both of which recently established a CFR as a subcommittee of the respective affiliate’s ROC.<sup>20</sup> In particular, the Exchange proposes to incorporate the salient requirements of the NYSE and NYSE MKT CFRs.<sup>21</sup>

As proposed, the CFR would be composed of OTP Director(s) of NYSE Arca, ETP Director(s) of NYSE Arca Equities and the Public Directors of both markets<sup>22</sup> and would have the authority to appoint “CFR Appeals Panels” to conduct reviews of matters decided by the EBCC and BCC for the options and equities marketplaces, respectively. CFR Appeals Panels would also have the authority to conduct reviews of BCC determinations to limit or prohibit the continued listing of an issuer’s securities.<sup>23</sup>

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<sup>20</sup> See NYSE Approval Order, 80 FR at 59840; Securities Exchange Act Release No. 77008 (February 1, 2016), 81 FR 6311, 6312 (February 5, 2016) (NYSEMKT 2015-106) (“NYSE MKT Approval Order”). The NYSE and NYSE MKT CFRs became operative on February 16, 2016 following the NYSE’s termination of the agreement delegating the NYSE’s regulatory functions to NYSE Regulation and NYSE MKT’s termination of the related RSA pursuant to which NYSE Regulation performed regulatory functions for NYSE MKT.

<sup>21</sup> The NYSE and NYSE MKT CFRs were modeled on the former committee for review of the NYSE Regulation board of directors (the “NYSE Regulation CFR”). The salient requirements of the NYSE Regulation CFR were set forth in Article III, Section 5 of the NYSE Regulation Bylaws. See Securities Exchange Act Release No. 53382, 71 FR 11251, 11259 & 11266 (February 27, 2006) (SR-NYSE-2005-77). See NYSE Approval Order, 80 FR at 59840 & NYSE MKT Approval Order, 81 FR at 6313 & n. 27.

<sup>22</sup> Article III, Section 3.02 of the NYSE Arca Bylaws and the NYSE Arca Equities Bylaws require that at least 50% of the directors be “Public Directors”, defined as persons from the public that are not affiliated with a broker-dealer in securities. The NYSE Arca Bylaws further require that a Public Director not be employed by, or involved in any material business relationship with, the Exchange or its affiliates. See note 13, supra.

<sup>23</sup> The NYSE Arca Equities BAC currently has the same mandate. See note 17, supra. The NYSE Arca BAC’s mandate does not include reviews of delisting determinations. See notes 12 & 17, supra.

To effect these changes, the Exchange proposes amending Section 4.01(a) of the NYSE Arca's Bylaws and NYSE Arca Rule 3.3, deleting NYSE Arca Rule 3.2(b)(3) and NYSE Arca Equities Rule 3.2(b)(3), and make conforming changes to NYSE Arca Rules 2.4, 10.3, 10.6, 10.8, 10.11, 10.12, 10.14 and NYSE Arca Equities Rules 2.3, 3.3, 5.5, 10.3, 10.6, 10.8, 10.11, 10.12, and 10.13.

NYSE Arca Rule 3.1(a) provides the Board with authority to establish one or more committees consisting partly or entirely of directors of NYSE Arca. The Exchange proposes to amend NYSE Arca Rule 3.3 to provide for a CFR and delineate its composition and functions.

Proposed NYSE Arca Rule 3.3(a)(2)(A) would provide that the Board shall annually appoint a CFR as a sub-committee of the ROC.<sup>24</sup> Proposed NYSE Arca Rule 3.3(a)(2)(A) would provide that the CFR would be responsible for reviewing disciplinary decisions; reviewing determinations to limit or prohibit the continued listing of an issuer's securities on NYSE Arca Equities; and acting in an advisory capacity to the Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking, and regulatory rules, including trading rules. As is currently the case for the NYSE Arca BAC, proposed Rule 3.3(a)(2) would provide that the CFR would be comprised of the OTP Director(s), the ETP Director(s) and all of the Public Directors.

#### NYSE Arca

Proposed NYSE Arca Rule 3.3(a)(2)(B) would provide that the CFR may appoint a CFR Appeals Panel made up of members of the CFR. Like the current requirements for the Appeals Panels of the NYSE Arca BAC, the proposed Rule would provide that the CFR Appeals Panel

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<sup>24</sup> The Exchange proposes to delete current Rule 3.3(a)(1) which describes the Board Appeals Committee and move the text, with modifications, to proposed Rule 3.3(a)(2), following the provision regarding the ROC.



would be made up of no less than three but no more than five individuals. Proposed NYSE Arca Rule 3.3(a)(2)(B) would provide that a CFR Appeals Panel for NYSE Arca would, like current NYSE Arca BAC Appeals Panels provided for in NYSE Arca Rule 3.3(a)(1)(B), conduct reviews of matters subject to the applicable provisions of NYSE Arca Rule 3.2(b)(1)(C) or 10.<sup>25</sup>

Proposed NYSE Arca Rule 3.3(a)(2)(B) would further provide that each CFR Appeals Panel would contain at least one Public Director and at least one Director that is an OTP Holder or Allied Person or Associated Person of an OTP Firm.<sup>26</sup> This is the same as the current requirement for Appeals Panels of the NYSE Arca BAC.

Finally, proposed NYSE Arca Rule 3.3(a)(2)(C) would retain the current provision governing the NYSE Arca BAC that, subject to Rule 10, decisions of the CFR would be subject to SRO Board review. Proposed subsection (a)(2)(C) would also provide, like the current

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<sup>25</sup> Under current NYSE Arca and NYSE Arca Equities Rules, decisions by an Appeals Panels appointed by the Board Appeals Committee of both markets are final unless appealed to the Board of Directors or called for review by the Board of Directors. See, e.g., NYSE Arca Rule 10.8(b) & (d); NYSE Arca Equities Rule 10.8(d). The Exchange proposes that CFR Appeals Panels retain this ability to resolve appeals and therefore does not propose that appellate panels appointed by the CFR would make recommendations to the CFR, as is the case with appellate panels for the Exchange's affiliate NYSE MKT, which did not previously have appellate panels. See NYSE MKT Approval Order, 81 FR at 6312.

<sup>26</sup> Section 6(b)(3) of the Exchange Act requires that the rules of an exchange "assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer." 15 U.S.C. 78f(b)(3). Exchange members who serve on exchange boards thus are sometimes referred to as "fair representation directors." In 2012, the Exchange expanded the eligibility for fair representation directors to include Associated Persons of OTP Firms and Associated Persons of ETP Holders, and amended NYSE Arca Rule 3.3 and NYSE Arca Equities Rule 3.3 so that Associated Persons of OTP Firms and ETP Holders were eligible for membership on the Board Appeals Committee. See Securities Exchange Act Release No. 68233 (November 14, 2012), 77 FR 69677, 69677 (November 20, 2012) (SR-NYSEArca-2012-103). The Exchange proposes to carry these categories forward into proposed NYSE Arca and NYSE Arca Equities Rule 3.3.

provision governing the NYSE Arca BAC, that the decision of the Board shall constitute the final action of NYSE Arca, unless the Board remands the proceedings.<sup>27</sup>

NYSE Arca also proposes to amend Article IV, Section 4.01(a) of its Bylaws governing board committees. Specifically, NYSE Arca proposes to replace references to the “Board Appeals Committee” with references to the “Committee for Review as a subcommittee of the Regulatory Oversight Committee” and “its subcommittee, the CFR.”

NYSE Arca proposes conforming amendments to NYSE Arca Rules 2.4, 10.3, 10.6, 10.8, 10.11, 10.12, 10.14 to replace references to the Board Appeals Committee with references to the “Committee for Review” or “CFR” and references to the Appeals Panel with references to the “CFR Appeals Panel.”<sup>28</sup>

#### NYSE Arca Equities

Similar conforming changes are proposed for NYSE Arca Equities. In particular, NYSE Arca Equities Rules 3.3, which mirrors NYSE Arca Rule 3.3, would be retitled “Committee for

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<sup>27</sup> In this respect, the Exchange practice would differ from that of its affiliates NYSE and NYSE MKT, where a decision by the CFR would be a final action of the board of directors.

<sup>28</sup> NYSE Arca Rule 10.11(e)(1) currently provides that appellate review of Floor citations and minor rule plan sanctions shall be referred directly to an appropriate Board Appeals Committee Panel (defined as an “Appeals Panel”) appointed by the NYSE Arca Board of Directors. Current NYSE Arca Rule 10.11(e) (2) governs decisions by such Appeals Panels. The Exchange proposes to replace “an appropriate Board Appeals Committee Panel (‘Appeals Panel’) appointed by the Board” in NYSE Arca Rule 10.11(e)(1) with “CFR.” The Exchange believes that it would be more appropriate for such matters to be directly referred to the CFR, which can then determine whether to appoint a CFR Appeals Panel as is currently proposed for disciplinary appeals under NYSE Arca Rule 10.8(b). Accordingly, the Exchange proposes to add text to NYSE Arca Rule 10.11(e) (2) providing that the CFR may appoint a CFR Appeals Panel to conduct reviews under this subsection or may decide to conduct review proceedings on its own. References to the “Appeals Panel” would be replaced with “CFR or CFR Appeals Panel.”

Review” and amended to provide that the SRO Board shall, on an annual basis, appoint the CFR as a sub-committee of the ROC. Proposed Rule 3.3(a)(1)(A) would provide that the CFR may, in turn, appoint a CFR Appeals Panel for NYSE Arca Equities market. Like the proposed CFR Appeals Panel for NYSE Arca, any CFR Appeals Panel appointed for NYSE Arca Equities would be made up of no less than three but no more than five individuals.<sup>29</sup>

A CFR Appeals Panel reviewing matters related to the equities market would conduct reviews of matters subject to the applicable provisions of Rules 3.2(b)(1)(C), 5 or 10.<sup>30</sup> As proposed, CFR Appeals Panels for NYSE Arca Equities would have no other role in the appellate process. Each CFR Appeals Panel would contain at least one Public Director and at least one director that is an ETP Holder or Allied Person or Associated Person of an ETP Holder.

Outdated references to the NYSE Arca Board of Governors in NYSE Arca Equities Rules 3.3(a)(1)(B) would be replaced with references to the “NYSE Arca Board of Directors.” The current Rule would otherwise remain unchanged. The revised provision would thus provide that, subject to Rule 10, decisions of the CFR shall be subject to the review of the SRO Board and that the decision of the SRO Board would constitute the final action of NYSE Arca Equities, unless such SRO Board remands the proceedings.

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<sup>29</sup> NYSE Arca Equities Rule 3.3(a)(1) currently provides that the Board of Directors will determine the size of any Appeals Committee that it appoints.

<sup>30</sup> See note 17, supra.

Conforming amendments to NYSE Arca Equities Rules 2.3, 5.5, 10.3, 10.6, 10.8, 10.11,<sup>31</sup> 10.12, and 10.13<sup>32</sup> to replace references to the NYSE Arca Equities BAC with references to the “Committee for Review” or “CFR” and to replace references to the “Appeals Panel” with the “CFR Appeals Panel” are also proposed. Outdated references to the NYSE Arca Board of Governors in NYSE Arca Equities Rules 10.3, 10.12, and 10.13 would also be replaced with references to the “NYSE Arca Board of Directors.”

### Committees

The Exchange does not propose to retain the OTP Advisory Committee of NYSE Arca or the Member Advisory Committee of NYSE Arca Equities to act in an advisory capacity regarding disciplinary matters and trading rules for their respective marketplaces. Under NYSE Arca Rule 3.2(b)(3), which the Exchange proposes to delete, the OTP Advisory Committee is made up of OTP Holders and acts in an advisory capacity regarding rule changes related to

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<sup>31</sup> NYSE Arca Equities Rule 10.11(e)(1) currently provides that appellate review of Floor citations and minor rule plan sanctions shall be referred directly to an appropriate Board Appeals Committee Panel (defined as an “Appeals Panel”) appointed by the Board Appeals Committee. Current NYSE Arca Equities Rule 10.11(e) (2) governs decisions by such Appeals Panels. The Exchange proposes to replace “an appropriate Board Appeals Committee Panel (‘Appeals Panel’) appointed by the Board Appeals Committee” in NYSE Arca Equities Rule 10.11(e)(1) with “CFR.” The Exchange believes that it would be more appropriate for such matters to be directly referred to the CFR, which can then determine whether to appoint a CFR Appeals Panel as is currently proposed for disciplinary appeals under NYSE Arca Equities Rule 10.8(b). Accordingly, the Exchange proposes to add text to NYSE Arca Equities Rule 10.11(e) (2) providing that the CFR may appoint a CFR Appeals Panel to conduct reviews under this subsection or may decide to conduct review proceedings on its own. A reference to “Appeals Panel” and two references to “Appeals Board” would be replaced with “CFR or CFR Appeals Panel.” See also note 28, *supra*.

<sup>32</sup> The Exchange also proposes to amend the heading of NYSE Arca Equities Rule 10.13 to delete the references to “the Corporation,” which refers to NYSE Arca Equities, since the hearings and review of decisions referred to therein would be conducted by the CFR, a subcommittee of the SRO Board.

disciplinary matters and trading rules. Under NYSE Arca Equities Rule 3.2(b)(3), which the Exchange also proposes to delete, the Member Advisory Committee is made up of ETP Holders and acts in an advisory capacity regarding rule changes related to disciplinary matters and off-board trading rules.

The Exchange proposes that the CFR would serve in the same advisory capacity as the current OTP Advisory and Member Advisory Committees. The Exchange notes that the same categories of permit holders as the advisory committees would be represented on the proposed CFR, whose mandate as set forth in proposed Rule 3.3(a)(2)(A) would include acting in an advisory capacity to the Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking and regulatory rules, including trading rules. The proposed CFR would therefore serve in the same advisory capacity as the OTP Advisory and Member Advisory Committees. The Exchange accordingly believes that retaining the OTP Advisory Committee or Member Advisory Committee would be redundant and unnecessary. The Exchange notes that the proposal is consistent with the structure recently approved for the NYSE, which abolished its advisory committees and transferred the functions to the newly created NYSE CFR, whose mandate includes acting in an advisory capacity to the Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking and regulatory rules, including trading rules. The Exchange's affiliate NYSE MKT has a similar structure in place.<sup>33</sup> The proposal would therefore align the functions and responsibilities of the Exchange's CFR with those of its affiliates. Finally, the Exchange believes that member participation on the proposed CFR would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including

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<sup>33</sup> See NYSE Approval Order, 80 FR at 59840 & NYSE MKT Approval Order, 81 FR at 6312.

rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.<sup>34</sup>

Deletion of References to NYSE Regulation and NYSE Regulation Chief Executive Officer

In connection with the Exchange's termination of the intercompany RSA pursuant to which NYSE Regulation provided regulatory services to the Exchange,<sup>35</sup> the Exchange proposes to amend NYSE Arca and NYSE Arca Equities Rule 0 and NYSE Arca Equities Rule 5.3(i)(1) to remove references to "NYSE Regulation, Inc." and "NYSE Regulation." The Exchange also proposes to amend NYSE Arca Equities Rule 2.100 to replace a reference to "NYSE Regulation, Inc. Chief Executive Officer" with "Chief Regulatory Officer."

In particular, NYSE Arca Rule 0 (Regulation of the Exchange, OTP Holders and OTP Firms) and NYSE Arca Equities Rule 0 (Regulation of the Exchange and Exchange Trading Permit Holders), which describes the regulatory services agreement between the NYSE and FINRA, would be amended to remove references to "NYSE Regulation, Inc., NYSE Regulation staff or departments", retaining the existing reference in Rule 0 to Exchange staff, which reference would encompass the Exchange's regulatory staff.<sup>36</sup>

Similarly, subdivision (i)(1) of NYSE Arca Equities Rule 5.3 (Financial Reports and Related Notices) would be amended to replace the reference to "NYSE Regulation" with "regulatory staff" to more particularly describe who an issuer should consult with under the Rule.

Finally, the Exchange proposes to amend NYSE Arca Equities Rule 2.100 to replace "NYSE Regulation, Inc. Chief Executive Officer" with "Chief Regulatory Officer." NYSE Arca

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<sup>34</sup> See 15 U.S.C. 78f(b)(3). See also note 26, *supra*.

<sup>35</sup> See note 5, *supra*.

<sup>36</sup> The Exchange also proposes to delete the semi-colon at the end of the heading of Rule 0 as unnecessary.

Equities Rule 2.100 currently provides that, for purposes of the rule,<sup>37</sup> a “qualified Corporation officer” means the Chief Executive Officer of Intercontinental Exchange, Inc., or his or her designee, or the NYSE Regulation, Inc. Chief Executive Officer or his or her designee. “NYSE Regulation, Inc. Chief Executive Officer” is used in this Rule but CRO or Chief Regulatory Officer is used elsewhere in the Exchange’s rules to designate the same position.<sup>38</sup> In particular, Chief Regulatory Officer is used to designate the individual who can participate or designate participants to various panels, including panels adjudicating clearly erroneous transactions (NYSE Arca Equities 7.10) and ETP Holders disputing an NYSE Arca Equities decision to disapprove or disqualify it from the participating in the Retail Liquidity Program (NYSE Arca Equities Rule 7.44). Chief Regulatory Officer is also used in NYSE Arca’s Rules to designate the individual who can participate or designate participants to panels adjudicating erroneous trades due to system disruptions or malfunctions (NYSE Arca Rule 6.89) and nullification and adjustment of options transactions, including obvious errors (NYSE Arca Rule 6.87). Accordingly, the Exchange proposes to replace references to “NYSE Regulation, Inc. Chief Executive Officer” with “Chief Regulatory Officer” in Rule 2.100.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act<sup>39</sup> in general, and with Section 6(b)(1)<sup>40</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

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<sup>37</sup> NYSE Arca Equities Rule 2.100 provides that if a qualified Affiliated Exchange (as defined therein) officer declares an emergency condition under that market’s rules, a qualified NYSE Arca Equities officer may authorize NYSE Arca Equities to perform certain functions on behalf of the Affiliated Exchange.

<sup>38</sup> See, e.g., NYSE Arca Rules 6.89 & 6.87 and NYSE Arca Equities Rules 7.10 & 7.44.

<sup>39</sup> 15 U.S.C. 78f(b).

<sup>40</sup> 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 proposal to amend Section 4.01(a) of the NYSE Arca Bylaws and NYSE Arca and NYSE Arca Equities Rules 3.3 to establish a Committee for Review as a sub-committee of the recently approved ROC, and to delete NYSE Arca Rule 3.2(b)(3) governing the OTP Advisory Committee and NYSE Arca Equities Rule 3.2(b)(3) governing the Member Advisory Committee, both of whose functions will be assumed by the Committee for Review, complies with Section 6(b)(7) of the Exchange Act,<sup>41</sup> which requires that the rules of a national securities exchange provide a fair procedure for the disciplining of members and persons associated with members. The members of the Exchange's ROC are all Public Directors of the Exchange Board, thereby ensuring that the ROC is comprised of independent members.<sup>42</sup> The Exchange proposes to retain in the CFR the requirement currently applicable to the Board Appeals Committee that the committee be made up of the OTP Director(s), the ETP Director(s) and the Public Directors of both markets.

Further, the Exchange believes that permitting the CFR to appoint CFR Appeals Panels composed of at least three and no more than five individuals to conduct reviews of matters decided by the EBCC and BCC for the options and equities marketplaces is consistent with Section 6(b)(7) of the Exchange Act. CFR Appeals Panels for NYSE Arca would contain at least one Public Director and at least one Director that is an OTP Holder or Allied Person or Associated Person of an OTP Firm, and CFR Appeals Panels for NYSE Arca Equities would contain at least one Public Director and at least one director that is an ETP Holder or Allied

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<sup>41</sup> See 15 U.S.C. 78f(b)(7).

<sup>42</sup> See Release No. 75155, 80 FR at 34744.



Person or Associated Person of an ETP Holder. The Exchange believes that the role of the CFR Appeals Panels, including that the CFR would retain authority to determine the disposition of appeals, would ensure that the Exchange's rules provide a fair procedure for the disciplining of members and persons associated with members. In addition, for the reasons stated below, the Exchange believes that participation on the proposed CFR and CFR Appeals Panels of permit holders and persons allied or associated with permit holders would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.

The Exchange believes that having the Exchange Board, rather than the board of directors of its subsidiary NYSE Arca Equities, appoint the members of the appeals panel for the equities marketplace complies with Section 6(b)(7) of the Exchange Act. The Exchange is the entity with ultimate legal responsibility for the regulation of its permit holders and markets. As noted, under the proposal, the CFR would consist of the OTP Director(s), the ETP Director(s) and the Public Directors, thereby ensuring that CFR Appeals Panels named for the equities marketplace would consist of at least one Public Director and at least one director that is an ETP Holder or Allied Person or Associated Person of an ETP Holder.

The Exchange believes that having the CFR serve in the advisory capacity of the OTP Advisory Committee and Member Advisory Committee for the Exchange's options and equities marketplaces, respectively, is consistent with and facilitates a governance and regulatory

structure that furthers the objectives of Section 6(b)(5) of the Exchange Act.<sup>43</sup> The Exchange believes that permit holder participation on the proposed CFR would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.

The Exchange believes that deleting the reference to the “NYSE Regulation, Inc. Chief Executive Officer” in NYSE Arca Equities Rule 2.100 and replacing it with Chief Regulatory Officer, which is used throughout the Exchange’s rules, removes impediments to and perfects a national market system because it would reduce potential confusion that may result from retaining different designations for the same individual in the Exchange’s rulebook. Removing potentially confusing conflicting designations would also further the goal of transparency and add consistency to the Exchange’s rules.

Finally, making conforming amendments to NYSE Arca Rules 2.4, 10.3, 10.6, 10.8, 10.11, 10.12, 10.14 and NYSE Arca Equities Rules 2.3, 5.5, 10.3, 10.6, 10.8, 10.11, 10.12, and 10.13 in connection with creation of the proposed CFR removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having obsolete references in the Exchange’s rulebook. Deleting references to “NYSE Regulation, Inc.” and “NYSE Regulation” in NYSE Arca and NYSE Arca Equities Rule 0 and NYSE Arca Equities Rule 5.3(i)(1) and references to the “NYSE Arca Board of Governors” in NYSE Arca Equities Rules 3.3, 10.3, 10.12 and 10.13 removes impediments to and perfects the mechanism

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<sup>43</sup> 15 U.S.C. 78f(b)(5). Section 6(b)(5) of the Exchange Act requires the proposed rules to be consistent with and facilitate a governance and regulatory structure that 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 mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

of a free and open market by removing confusion that may result from having obsolete references in the Exchange's rulebook. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rulebook. The Exchange believes that eliminating obsolete references would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such obsolete references will also further the goal of transparency and add clarity to the Exchange's rules.

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 Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange and its board of directors.

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](mailto:rule-comments@sec.gov). Please include File Number SR- NYSEArca-2016-11 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-2016-11. 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-2016-11, 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.<sup>44</sup>

Robert W. Errett  
Deputy Secretary

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<sup>44</sup> 17 CFR 200.30-3(a)(12).