

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69436; File No. SR-NYSEARCA-2013-40)

April 23, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.11 Clarifying the Exchange's Treatment of Discretionary Orders that have Discretionary Prices Outside of the Limit Up-Limit Down Price Bands

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 10, 2013, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") 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 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 NYSE Arca Equities Rule 7.11 to clarify the Exchange's treatment of Discretionary Orders that have discretionary prices outside the Price Bands. The text of 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 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 is proposing to amend new NYSE Arca Equities Rule 7.11 (“New Rule 7.11” or the “New Rule”), which implements the Limit Up – Limit Down Plan,³ the first phase of which becomes effective on April 8, 2013, to clarify the Exchange’s treatment of Discretionary Orders that have discretionary prices outside the Price Bands. Under New Rule 7.11, buy or sell interest that is priced or could be executed above or below the Price Bands, as that term is used in the New Rule, would be canceled, with one exception. That exception, set out in subparagraph (a)(6) of the New Rule, permits an ETP Holder to instruct the Exchange to reprice eligible limit orders that are priced above or below the Price Bands, rather than cancel such orders. Eligible limit orders would be repriced to the Price Bands.

The Exchange is proposing to amend New Rule 7.11 to clarify its treatment of Discretionary Orders, including Discretion Limit Orders and Passive Discretionary Orders,⁴ in certain circumstances. A Discretionary Order is an order to buy or sell securities at a specified, undisplayed price, called the “discretionary price,” as well as at a specified, displayed price. Pursuant to New Rule 7.11(a)(6)(C), an ETP Holder can enter an instruction to re-price

³ As defined in New Rule 7.11, “Plan” means the Plan to Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934, Exhibit A to Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012), as it may be amended from time to time.

⁴ “Discretionary Order,” “Passive Discretionary Order,” and “Discretion Limit Order” are defined in paragraph (h) of Arca Equities Rule 7.31.

Discretionary Orders rather than cancel them. However, if a Discretionary Order includes a discretionary price that is priced outside the Price Bands, the Exchange would cancel the order because it would be unexecutable at the discretionary price, even if the displayed price of the order is repriced to the Price Bands. Accordingly, the Exchange proposes to clarify in the Rule that in this scenario, the Exchange would cancel a Discretionary Order rather than reprice it.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁵ in general, and furthers the objectives of Section 6(b)(5),⁶ 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 proposal would clarify to ETP Holders how the Exchange would treat Discretionary Orders with discretionary prices outside the Price Bands. The Exchange believes that the clarifying change removes impediments to and perfects the mechanism of a free and open market because it makes clear that an order with a discretionary price that is outside the Price Bands, and therefore unexecutable, would be cancelled.

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 Exchange believes that the proposed amendment will not impose any burdens on competition

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

because the proposal would clarify to ETP Holders how Discretionary Orders with discretionary prices outside the Price Bands would be treated, which would provide ETP Holders with more information in setting discretionary prices for such orders.

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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ 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 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)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁰ 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

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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 Commission has waived the five-day prefiling requirement in this case.

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange immediately to clarify its treatment of Discretionary Orders that may be affected by the Limit Up – Limit Down Plan, which was implemented on April 8, 2013. Accordingly, the Commission hereby grants the Exchange’s request and designates the proposal operative upon filing.¹¹

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.

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-2013-40 on the subject line.

Paper comments:

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

¹¹ 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).

All submissions should refer to File Number SR- NYSEARCA-2013-40. 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 publicly available. All submissions should refer

to File Number SR- NYSEARCA-2013-40 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).