

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76968; File No. SR-NYSEArca-2016-10)

January 22, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing the NYSE Arca Order Imbalances Proprietary Market Data Product

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 13, 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 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 establish the NYSE Arca Order Imbalances proprietary market data product. 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

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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.

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 to establish the NYSE Arca Order Imbalances datafeed as a separate, stand-alone market data product. The NYSE Arca Order Imbalances product would be a real-time datafeed of the information that the Exchange provides in advance of an auction.

The Exchange is establishing the NYSE Arca Order Imbalances product in connection with the implementation of Pillar, the Exchange's proposed new technology trading platform.<sup>4</sup> Pillar is the integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by NYSE Arca and its affiliates, New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT"). NYSE Arca Equities would be the first trading system to migrate to Pillar. Rule 7.35P(a)(4)(C) provides that the Exchange will disseminate Auction Imbalance Information via a proprietary data feed during the times specified in the rule, and through this filing, the Exchange proposes to establish the NYSE Arca Order Imbalances feed as the proprietary data feed to which Rule 7.35P(a)(4)(C) refers.

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<sup>4</sup> See Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (Notice) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (Order) (SR-NYSEArca-2015-38) ("Pillar I Filing"); 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (Notice) and 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (Order) (SR-NYSEArca-2015-56) ("Pillar II Filing"); 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (Notice) and 76198 (Oct. 20, 2015), 80 FR 65274 (Oct. 26, 2015) (Order) (SR-NYSEArca-2015-58) ("Pillar III Filing"); and 76085 (Oct. 6, 2015), 80 FR 61513 (Oct. 13, 2015) (Notice) and 76869 (Jan. 11, 2016) (Order) (SR-NYSEArca-2015-86) ("Pillar Auction Filing").

Rule 7.35P(a)(4) defines Auction Imbalance Information as the information disseminated by the Exchange for an auction. As set forth in Rule 7.35P, Auction Imbalance information includes, if applicable, the Total Imbalance, Market Imbalance, Indicative Match Price and Matched Volume, each as defined in Rule 7.35P(a). The Auction Imbalance Information would be disseminated on a time frame specified in Rule 7.35P. The NYSE Arca Order Imbalances market data product would provide Auction Imbalance Information with respect to symbols migrated to the Pillar platform.

NYSE Arca order imbalance information, as defined in Rule 7.35, is currently available through the NYSE ArcaBook and NYSE Arca Integrated proprietary market data products and would continue to be disseminated on these data feeds when symbols migrate to Pillar.<sup>5</sup> When a symbol migrates to Pillar, the NYSE Arca order imbalance information available through NYSE ArcaBook and NYSE Arca Integrated proprietary market data products would be based on Rule 7.35P.

The Exchange proposes to offer the NYSE Arca Order Imbalances product through networks in the Exchange's Mahwah, New Jersey data center that are available to users of the Exchange's co-location services. The Exchange also would offer the NYSE Arca Order Imbalances product through the Exchange's Secure Financial Transaction Infrastructure (SFTI) network, through which all other users and member organizations access the Exchange's trading and execution systems and other proprietary market data products.

The Exchange will file a separate rule filing to establish the fees for the NYSE Arca Order Imbalances product. As noted above, the Exchange is establishing the NYSE Arca Order

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<sup>5</sup> See Pillar Auction Filing Notice, footnotes 22 and 23. See also Securities Exchange Act Release Nos. 59039 (Dec. 2, 2008), 73 FR 74770 (Dec. 9, 2008) (NYSE ArcaBook); and 65669 (Nov. 2, 2011), 76 FR 69311 (Nov. 8, 2011) (NYSE Arca Integrated Data Feed).

Imbalances product in conjunction with the implementation of Pillar, the Exchange's proposed new technology trading platform,<sup>6</sup> and the Exchange will announce the date that the product will be available through an NYSE Market Data Notice.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> of the Act, 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, 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the NYSE Arca Order Imbalances market data product to those interested in receiving it.

The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving market data as requested by market data vendors and purchasers. The proposed rule change would benefit investors by facilitating their prompt access to the real-time information contained in the NYSE Arca Order Imbalances market data product.

In adopting Regulation NMS, the Commission granted self-regulatory organizations

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<sup>6</sup> See note 4, *supra*.

<sup>7</sup> 15 U.S.C. § 78f(b).

<sup>8</sup> 15 U.S.C. § 78f(b)(5).

(“SROs”) and broker dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the NYSE Arca Order Imbalances market data product is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS would itself further the Act’s goals of facilitating efficiency and competition:

Efficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.<sup>9</sup>

The Exchange further notes that the existence of alternatives to the Exchange’s product, including order imbalances products offered by the Exchange’s affiliates, NYSE and NYSE MKT,<sup>10</sup> and by the Nasdaq Stock Market (“NASDAQ”),<sup>11</sup> as well as real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the

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<sup>9</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>10</sup> See Securities Act Release Nos. 59543 (March 9, 2009), 74 FR 11159 (March 16, 2009) (SR-NYSE-2008-132) (NYSE Order Imbalances) and 59743 (April 9, 2009), 74 FR 17699 (April 16, 2009) (SR-NYSEAmex-2009-11)(NYSE Amex Order Imbalances, n/k/a NYSE MKT Order Imbalances).

<sup>11</sup> See Nasdaq TotalView-ITCH, <http://www.nasdaqtrader.com/Trader.aspx?id=Totalview2> (last visited November 25, 2015)(displays the full order book depth for Nasdaq market participants and also disseminates the Net Order Imbalance Indicator (NOII) for the Nasdaq Opening and Closing Crosses and Nasdaq IPO/Halt Cross).

Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives as their individual business cases warrant. This proposed new data feed provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.<sup>12</sup>

The NYSE Arca Order Imbalances market data product will help to protect a free and open market by providing additional data to the marketplace and by giving investors greater choices. In addition, the proposal would not permit unfair discrimination because the product will be available to all of the Exchange's customers and broker-dealers through both SFTI and the Liquidity Center Network.

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

In accordance with Section 6(b)(8) of the Act,<sup>13</sup> 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. Because other exchanges already offer similar products, the Exchange's proposed NYSE Arca Order Imbalances market data product will enhance competition. The NYSE Arca Order Imbalances product will foster competition by providing an alternative to similar products offered by other exchanges, including order imbalances products offered by the Exchange's affiliates, NYSE and NYSE MKT,<sup>14</sup> and by NASDAQ.<sup>15</sup> This proposed new data feed provides investors with new options for receiving

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<sup>12</sup> See Regulation NMS Adopting Release, supra, at 37503.

<sup>13</sup> 15 U.S.C. 78f(b)(8).

<sup>14</sup> See note 10, supra.

<sup>15</sup> See note 11, supra.

market data, which was a primary goal of the market data amendments adopted by Regulation NMS.<sup>16</sup>

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>19</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>20</sup> permits the Commission to 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 stated that it anticipates migrating symbols to Pillar beginning February 1, 2016, and that waiver of the operative delay would permit market data that would be available in

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<sup>16</sup> See Regulation NMS Adopting Release, supra, at 37503.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

existing products for symbols that have migrated to Pillar to also be available in a stand-alone product, which would offer an alternative to currently available proprietary data products. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-10 on the subject line.

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<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2016-10. 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-2016-10, 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>22</sup>

Brent J. Fields  
Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).