

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78674; File No. SR-NYSEArca-2016-116)

August 25, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 5.3(i)(3) to Amend the Requirements for the Dissemination of News in Compliance with the Exchange's Immediate Release Policy

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 12, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 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 Equities Rule 5.3(i)(3) to amend the requirements for the dissemination of news in compliance with the Exchange's immediate release policy. 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

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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.

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

NYSE Arca Equities Rules 5.3(i)(2) and (3) require a listed company to make immediate public disclosure of all material information concerning its affairs (the “immediate release policy”). NYSE Arca Equities Rule 5.3(i)(3) provides that companies should comply with the immediate release policy by releasing material information “simultaneously to any of the following organizations”:

“(a) the primary business and financial newswire services (Dow Jones and Reuters);

(b) the national services (e.g., Associated Press);

(c) The WALL STREET JOURNAL, NEW YORK TIMES, LOS ANGELES TIMES, SAN FRANCISCO CHRONICLE, and SAN FRANCISCO EXAMINER;

(d) Moody's Investors Service and Standard & Poor's Corporation; and

(e) a company that distributes press releases over private teletype networks may find PR Newswire and Business Wire helpful in gaining news coverage.”

The Exchange proposes to amend Rule 5.3(i)(3) to conform it to the immediate release policies of the New York Stock Exchange (“NYSE”), NYSE MKT and Nasdaq.<sup>4</sup> Most

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<sup>4</sup> See Securities Exchange Act Release No. 34-59823 (April 27, 2009); 74 FR 20516 (May 4, 2009) ( SR-NYSE-2009-40). See also Securities Exchange Act Release No. 46288

significantly, the amended rule will provide that companies can comply with the Exchange's immediate release policy by disseminating the material information by any Regulation FD compliant method or combination of methods. Regulation FD was adopted by the Commission in 2000 in order to curb the selective disclosure of material non-public information by issuers to analysts and institutional investors.<sup>5</sup> Generally, Regulation FD requires that when an issuer discloses material information, it do so publicly. Public disclosure under Regulation FD can be accomplished by filing a Form 8-K with the Commission or through another method of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public (e.g. press releases, conference calls, press conferences and webcasts, so long as the public is provided adequate notice and granted access).<sup>6</sup> The Exchange now proposes to amend Rule 5.3(i)(3) to provide that companies may comply with the immediate release policy by disseminating the information using any method (or combination of methods) that constitutes compliance with Regulation FD.

Foreign private issuers and issuers registered under the Investment Company Act other than closed end funds are subject to the immediate release policy but they are not required to comply with Regulation FD.<sup>7</sup> Notwithstanding their exemption from Regulation FD, Rule

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(July 31, 2002), 67 FR 51306 (August 7, 2002) (SR–NASD–2002–85). See also Securities Exchange Act Release No. 34–75167 (June 12, 2015); 80 FR 34949 (June 18, 2015) (SR–NYSEMKT–2015–40).

<sup>5</sup> See Securities Exchange Act Release No. 43154 (August 15, 2000), 65 FR 51716 (August 24, 2000) (“Regulation FD Adopting Release”).

<sup>6</sup> See Regulation FD Adopting Release at pages 51723–51724.

<sup>7</sup> See the definition of an “issuer” subject to Regulation FD as set forth in Section 101(b) thereof: An “issuer” subject to this regulation is one that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), including any closed-end investment company (as defined in Section 5(a)(2) of the Investment Company Act of 1940) (15 U.S.C. 80a-5(a)(2)), but not

5.3(i)(3) as amended will allow foreign private issuers and Investment Company Act registrants other than closed end funds to comply with the Exchange's immediate release policy by any method (or combination of methods) that would constitute compliance with Regulation FD for a domestic U.S. issuer.

While the Exchange continues to believe that there are benefits to the market and investors generally if companies issue press releases when disclosing material information, the Exchange nonetheless believes that it is appropriate to harmonize its requirements in this regard with Regulation FD, as well as with Section 202.06 of the NYSE Listed Company Manual, NYSE MKT Company Guide Section 402 and Nasdaq Marketplace Rule 5250(b)(1), thereby eliminating the confusion inherent in having different regimes applied by different listing exchanges and the Commission. The Exchange believes that many companies will continue to issue press releases in relation to material news events, and the proposed amendment includes language that encourages companies to disclose material news via a press release. However, the Exchange also believes that it is appropriate to enable companies to utilize the [sic] flexibility and discretion with respect to the method of disclosure provided by Regulation FD.

The Exchange also proposes to delete from the rule the existing list of methods for disseminating material news and to instead specify in the revised rule that any company disseminating material news by means of a press release should release it to the major news wire services, including, at a minimum, Dow Jones & Company, Inc., Reuters Economic Services and Bloomberg Business News. This revised provision is the same as the press release requirements of the NYSE and, in the Exchange's opinion, it represents a more effective approach to news

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including any other investment company or any foreign government or foreign private issuer, as those terms are defined in Rule 405 under the Securities Act.

dissemination than may be the case under some of the approaches permitted under the current rule.

The Exchange proposes to include language in the revised rule specifying that listed companies choosing to comply with the immediate release policy by disseminating information via their website or social media must comply with the Commission’s guidelines applicable to the use of companies’ websites or social media for purposes of compliance with Regulation FD.<sup>8</sup>

The Exchange also proposes to replace references to the “Securities Qualification Department” and the “Surveillance Department” throughout Rule 5.3 and in Rule 5.5(m) with references to NYSE Regulation, as there are no longer groups within the Exchange with those titles and the relevant work is performed in each case by the staff of NYSE Regulation.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(5)<sup>10</sup> of the Act, in particular, in that it is designed 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. The Exchange believes the proposed amendment is consistent

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<sup>8</sup> See Securities Exchange Act Release No. 58288 (August 1, 2008); 73 FR 45862 (August 7, 2008) (Commission Guidance on the Use of Company Web Sites). See also Securities Exchange Act Release No. 69279 (April 2, 2013) (Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: Netflix, Inc., and Reed Hastings) (available at <https://www.sec.gov/litigation/investreport/34-69279.pdf>). The Exchange will remind listed companies of the Commission’s guidelines with respect to the use of websites and social media to disseminate material information.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

with the investor protection objectives of the Act in that it harmonizes the Exchange's immediate release policy with the Commission's requirements in Regulation FD. The Exchange believes that the remaining proposed amendments are consistent with Section 6(b)(5) of the Act, as none of them make substantive changes to the Exchange's listing requirements.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendment simply harmonizes the Exchange's immediate release policy with the Commission's requirements in Regulation FD. The proposed amendment also harmonizes the method of compliance with the Exchange's immediate release policy with the methods of compliance for the NYSE, NYSE MKT and Nasdaq immediate release policies and makes other non-substantive changes to the Company Guide. Accordingly, there will be no burden on competition because the other markets already have similar 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 Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>13</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

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)<sup>15</sup> of the Act 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-2016-116 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.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, the Commission notes that Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its 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, or such shorter time as the Commission may designate. The Exchange has satisfied that requirement.

<sup>15</sup> 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEArca-2016-116. 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 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-2016-116 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>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).