

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79476; File No. SR-NYSEARCA-2016-159)

December 6, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.46 to Modify the Website Data Publication Requirements Relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program

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 November 30, 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 amend Rule 7.46 to modify the website data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”). 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

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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.

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

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, New York Stock Exchange LLC, NYSE MKT LLC, the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. (“BZX”), BATS BYX Exchange, Inc. f/k/a BATS Y-Exchange, Inc. (“BYX”), Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), NASDAQ OMX BX, Inc., NASDAQ OMX PHILX LLC, and the Nasdaq Stock Market LLC (collectively “Participants”) filed with the Commission, pursuant to Section 11A of the Act<sup>4</sup> and Rule 608 of Regulation NMS thereunder,<sup>5</sup> the Plan to Implement a Tick Size Pilot Program.<sup>6</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.<sup>7</sup> The Plan was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.<sup>8</sup> The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.<sup>9</sup> On November 6, 2015, the SEC exempted the Participants from

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<sup>4</sup> 15 U.S.C. 78k-1.

<sup>5</sup> 17 CFR 242.608.

<sup>6</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

<sup>7</sup> See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>8</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

<sup>9</sup> See Approval Order at 27533 and 27545.

implementing the Pilot until October 3, 2016.<sup>10</sup> Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.<sup>11</sup>

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Exchange adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to website data publication.<sup>12</sup> Specifically, with respect to the website data publication requirements pursuant to Section VII and Appendices B and C to the Plan, Rule 7.46(b)(2) provides, among other things, that the Exchange shall make the data required by Items I and II of Appendix B to

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<sup>10</sup> See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

<sup>11</sup> See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; see also Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

<sup>12</sup> See Securities Exchange Act Release No. 77484 (March 31, 2016), 81 FR 20024 (April 4, 2016) (Immediate Effectiveness of Proposed Rule Change Adopting Requirements for the Collection and Transmission of Data Pursuant to Appendices B and C of Regulation NMS Plan to Implement a Tick Size Pilot Program) (SR-NYSEARCA-2016-52); see also Securities Exchange Act Release No. 78814 (September 12, 2016), 81 FR 63818 (September 16, 2016) (Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.46 to Modify Certain Data Collection Requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program) (SR-NYSEARCA-2016-124); see also Letter from John C. Roeser, Associate Director, Division of Trading and Markets, Commission, to Sherry Sandler, Associate General Counsel, NYSE Arca, dated April 4, 2016.

the Plan, and collected pursuant to paragraph (b)(2) of Rule 7.46, publicly available on the Exchange's website on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Rule 7.46(b)(3)(C), provides, among other things, that the Exchange shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) of Rule 7.46, publicly available on the Exchange's website on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Supplementary Material .70 to Rule 7.46 provides, among other things, that the requirement that the Exchange or their DEA make certain data publicly available on the Exchange's or DEA's website pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

The Exchange is proposing amendments to Rule 7.46(b)(2) (regarding Appendix B.I and B.II data) and Rule 7.46(b)(3)(C) (regarding Appendix B.IV data), to provide that data required to be made available on the Exchange's website be published within 120 calendar days following month end. In addition, the proposed amendments to Supplementary Material .70 to Rule 7.46 would provide that, notwithstanding the provisions of paragraphs (b)(2), (b)(3)(C) and (b)(5), the Exchange shall make data for the Pre-Pilot period publicly available on the Exchange's or DEA's website pursuant to Appendix B and C to the Plan by February 28, 2017.<sup>13</sup>

The purpose of delaying the publication of the website data is to address confidentiality concerns by providing for the passage of additional time between the market information

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<sup>13</sup> With respect to data for the Pilot Period, the requirement that the Exchange or their DEA make data publicly available on the Exchange's or DEA's website pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first website publication date for Pilot Period data (covering October 2016) would be published on the Exchange's or DEA's website by February 28, 2017, which is 120 days following the end of October 2016.

reflected in the data and the public availability of such information.<sup>14</sup>

The proposed rule change also will provide that, with respect to Appendix C data, The Corporation, as DEA, shall collect the data required by Item I of Appendix C to the Plan for those ETP Holders that are Market Makers for which the Corporation is DEA, and on a monthly basis transmit such data, categorized by the Control Group and each Test Group, to the SEC in a pipe delimited format. The Corporation, as DEA, shall also make the data collected pursuant to subparagraph (4) of Rule 7.46(b) available to FINRA for aggregation and publication, categorized by the Control Group and each Test Group, on the FINRA website pursuant to FINRA Rules.<sup>15</sup> The Corporation is proposing such an amendment in order to add a provision in its rules to comply with such requirement and provision in the Plan.<sup>16</sup>

Finally, the Corporation is proposing an amendment to Rule 7.46(b)(5) (regarding data described in Item III of Appendix B) to add a provision identical to Rule 7.46(b)(2) (as amended above pursuant to the proposed changes described above to such Rule), which shall require the Corporation to make the data described in Item III of Appendix B publicly available on the Corporation web site within 120 calendar days following month end at no charge and shall not identify the ETP Holder that generated the data. The Corporation is proposing such an amendment in order to add a provision in its rules to comply with such requirement and provision in the Plan.<sup>17</sup>

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

<sup>15</sup> FINRA will make this data publicly available on the FINRA web site within 120 calendar days following month end at no charge and will not identify the Market Makers that generated the data or the individual securities. See FINRA Rule 6191(b)(4).

<sup>16</sup> See Section VII of the Plan.

<sup>17</sup> See supra note 14.

As noted in Item 2 of this filing, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>19</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 this proposal is consistent with the Act because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC. The Exchange believes that the instant proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting the Exchange to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The

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<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting the Exchange to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The Exchange notes that the proposal does not alter the information required to be submitted to the SEC.

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 foregoing 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)<sup>20</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>22</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>23</sup> the Commission may designate a shorter time if such action is consistent with the

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

<sup>23</sup> 17 CFR 240.19b-4(f)(6)(iii).

protection of investors and the public interest. The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting the Exchange to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The proposal also does not alter the information required to be submitted to the SEC.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement proposed changes that are intended to address confidentiality concerns. The Commission notes that some Pilot data was scheduled to be published on November 30, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative as November 30, 2016.<sup>24</sup>

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<sup>24</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



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.<sup>25</sup> If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-2016-159 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-2016-159. 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

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<sup>25</sup> 15 U.S.C. 78s(b)(3)(C).

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-2016-159, 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>26</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).