

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80651; File No. SR-NYSEARCA-2017-49)

May 10, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.46 to Modify the Date of Appendix B Website Data Publication Pursuant 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 April 27, 2017, 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. 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 date of Appendix B website data publication pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 7.46(b) (Compliance with Data Collection Requirements)<sup>4</sup> implements the data collection and website publication requirements of the Plan.<sup>5</sup> Supplementary Material .70 to Rule 7.46 provides, among other things, that the requirement that the Exchange or their DEA make certain data for the Pre-Pilot Period and Pilot Period<sup>6</sup> publicly available on the Exchange’s or DEA’s website pursuant to Appendix B to the Plan shall commence on April 28, 2017.<sup>7</sup> The Exchange is proposing to amend Supplementary Material .70 to Rule 7.46 to delay the Appendix

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<sup>4</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.

<sup>5</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014. See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014 (“SRO Tick Size Plan Proposal”). See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014); see also Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015).

<sup>6</sup> Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Plan.

<sup>7</sup> See Supplementary Material .70 to Rule 7.46. See also Securities Exchange Act Release No. 80175 (March 8, 2017), 82 FR 13688 (March 14, 2017). See also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Robert L.D. Colby, Executive Vice President and Chief Legal Officer, Financial Industry Regulatory Authority, Inc. (“FINRA”), dated February 28, 2017.

B data website publication date until August 31, 2017. The Exchange is proposing to further delay the website publication of Appendix B data until August 31, 2017 to permit additional time to consider a methodology to mitigate concerns raised in connection with the publication of Appendix B data.<sup>8</sup>

Pursuant to this proposed amendment, the Exchange would publish the required Appendix B data for the Pre-Pilot Period through April 30, 2017, by August 31, 2017. Thereafter, Appendix B data for a given month would be published within 120 calendar days following month end.<sup>9</sup> Thus, for example, Appendix B data for May 2017 would be made available on the Exchange's or DEA's website by September 28, 2017, and data for the month of June 2017 would be made available on the Exchange's or DEA's website by October 28, 2017.

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>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is

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<sup>8</sup> On March 3, 2017, FINRA filed a proposed rule change to implement an anonymous, grouped masking methodology for Appendix B.I, B.II. and B.IV. data. The comment period ended on April 5, 2017, and the Commission received three comment letters. See Securities Exchange Act Release No. 80193 (March 9, 2017) 82 FR 13901 (March 15, 2017).

<sup>9</sup> FINRA also submitted an exemptive request, on behalf of all Participants, to the SEC in connection with the instant filing.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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 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. The Exchange believes that this proposal is consistent with the Act because it is in furtherance of the objectives of Section VII(A) of the Plan in that it is designed to provide the Exchange with additional time to consider a methodology to mitigate concerns raised in connection with the publication of Appendix B data.

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 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.

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) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

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

The Exchange notes that the proposed rule change is intended to mitigate confidentiality concerns raised in connection with Section VII(A) of the Plan, which provides that the data made publicly available will not identify the Trading Center that generated the data. The Exchange states that the additional time would allow consideration of a methodology to mitigate concerns related to the publication of Appendix B data.<sup>14</sup>

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will synchronize the timing for publication of Appendix B data for all Participants, which should enhance the consistency and usefulness of the data.<sup>15</sup> Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on the date of filing.<sup>16</sup>

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<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> The Commission recently approved a FINRA proposal to implement an aggregated, anonymous grouped masking methodology for the publication of Appendix B data related to OTC trading activity. See Securities Exchange Release No. 80551, (April 28, 2017), 82 FR 20948 (May 4, 2017). See also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Executive Vice President FINRA, dated April 28, 2017.

<sup>15</sup> The Commission recently granted exemptive relief to the Participants delay the publication of their Appendix B data until August 31, 2017. See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Jennifer Piorko Mitchell, Vice President and Deputy Corporate Secretary, FINRA, dated April 27,

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 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-2017-49 on the subject line.

##### 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-2017-49. This file

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2017. The Commission notes that other Participants have submitted proposed rule changes to delay the publication of Appendix B data until August 31, 2017. See e.g., SR-BatsBYX-2017-10; SR-BatsEDGA-2017-10; SR-BatsEDGX-2017-19; SR-BX-2017-022; SR-CHX-2017-07; SR-FINRA-2017-010; SR-IEX-2017-12; SR-NASDAQ-2017-044; SR-Phlx-2017-33; SR-NYSE-2017-19; SR-NYSEMKT-2017-24.

<sup>16</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).

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-2017-49 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>17</sup>

Eduardo A. Aleman  
Assistant Secretary

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