

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71780; File No. SR-NYSEArca-2014-21)

March 24, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.44 to Change the Priority of Displayable Odd Lot Interest Within the Recently Approved Retail Liquidity Program

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 March 10, 2014, 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 7.44 , which governs the Exchange’s recently approved Retail Liquidity Program (“Program”), to provide that odd-lot interest priced between the PBBO will trade together with other undisplayed interest according to price-time priority. 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

¹ 15 U.S.C.78s(b)(1).

² 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

The Exchange is proposing to amend Rule 7.44, which governs the Exchange's recently approved Program,³ to provide that odd-lot interest priced between the PBBO will trade together with other undisplayed interest according to price-time priority. The current rule provides that displayable odd-lot interest priced between the PBBO will be ranked ahead of any Retail Price Improvement Orders ("RPIs") and other non-displayed interest at any given price point. For purposes of this rule, displayable odd lot interest refers to odd lot interest that is not displayed because it is priced better than the best protected bid or offer ("PBBO"), but would be displayed if, when aggregated with other same-priced displayable interest, [sic] equals a round lot or greater.

Background

Under the Program, ETP Holders are able to provide price improvement to Retail Orders, as defined in Rule 7.44(a)(3) and (k), by submitting an RPI, which is non-displayed liquidity in NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that is priced more aggressively than the PBBO by at least \$0.001 per share and that is identified as an RPI in a manner prescribed by the Exchange. RPIs are entered at a single limit price, rather than being pegged to the PBBO; however, RPIs can be designated as a Mid-Point Passive

³ See Securities Exchange Act Release No. 71176 (Dec. 23, 2013), 78 FR 79524 (Dec. 30, 2013) (SR-NYSEArca-2013-107).

Liquidity (“MPL”) Order, in which case the order will re-price as the PBBO changes.⁴ RPIs remain non-displayed and only execute against Retail Orders.

Odd Lot Interest within the Program

According to NYSE Arca Equities Rule 7.44(l), displayable odd-lot interest priced between the PBBO is currently ranked ahead of any RPIs and other non-displayed liquidity at any given price point. The Exchange is proposing to amend Rule 7.44(l) to rank odd-lot interest priced better than the PBBO in price-time priority with RPIs and other non-displayed liquidity. The Exchange believes that ranking undisplayed odd lots priced better than the PBBO in price-time priority with other undisplayed interest is consistent with expectations of market participants entering odd-lot sized interest. Specifically, odd-lot sized interest, standing alone, is not eligible to be part of the displayed quote.⁵ Because odd-lot orders are not displayed, they are not the protected bid or offer of a market and can be traded through. The Exchange therefore believes it is consistent with the expectations of market participants that when odd-lot interest is not displayed, it should be treated similarly to other undisplayed interest. The Exchange does not believe that the proposed rule change would provide a disincentive for market participants to enter odd-lot interest because market participants are already on notice that odd-lot interest does not receive the benefit of displayed interest if it is not part of the displayed quote.

The Exchange believes that the proposed rule change is consistent with Rule 7.38 (Odd and Mixed Lots), which provides that round lot, mixed lot, and odd lot orders are treated in the same manner in the NYSE Arca Marketplace. Specifically, the Exchange believes that consistent with this rule, odd-lot orders that are undisplayed should be treated in the same

⁴ RPIs not designated as MPL Orders would alternatively need to be designated as a Passive Liquidity (“PL”) Order.

⁵ See Rule 604(b)(3) of Regulation NMS (excepting odd-lot orders from the limit order display rule).

manner as round-lot orders that are undisplayed. As such, they should be ranked in price-time priority together. Conversely, if odd-lot interest is included in the displayed quote, then odd-lot interest should be treated the same as other displayed round-lot interest at the same price.

The Exchange further believes that the current rule provides a potential incentive for market participants to game the Program. One of the goals of the Program is to incentivize the provision of price-improving liquidity to retail investors. Because the Exchange publicizes when there is RPI interest available in a symbol,⁶ market participants are on notice when there is resting RPI interest for a symbol. A market participant could use that knowledge to enter odd-lot interest priced better than the PBBO in order to trade ahead of the previously-entered RPI interest. The Exchange believes that allowing odd-lot interest to have priority over such previously-entered RPI interest could create a disincentive for market participants to enter RPI interest, thereby frustrating one of the goals of the Program.

To demonstrate the proposed rule change, consider the following example:⁷

PBBO for security ABC is \$10.00 - \$10.05.

RLP 1 enters a Retail Price Improvement Order to buy ABC at \$10.01 for 500.

RLP 2 then enters a Retail Price Improvement Order to buy ABC at \$10.02 for 500.

RLP 3 then enters a Retail Price Improvement Order to buy ABC at \$10.03 for 500.

LMT 1 then enters an odd lot limit order to buy ABC at \$10.02 for 60.

As proposed, an incoming Type 1-designated Retail Order to sell for 1,000 will execute first against RLP 3's bid for 500 at \$10.03, because it is the best priced bid, then against RLP 2's bid for 500 at \$10.02, because it is the next best priced bid entered earliest in time, at which point the entire size of the Retail Order to sell 1,000 is depleted. As proposed, the odd lot interest entered by LMT 1 would not receive an execution because such odd lot interest is ranked in

⁶ The Exchange disseminates an identifier that reflects the symbol for a particular security and whether it is buy or sell RPI interest. See Rule 7.44(j)

⁷ The Exchange is proposing to amend one of the examples in Rule 7.44(l) to include the updated treatment of odd lot interest within the Program.

price-time priority with RPIs and all other non-displayed interest. Without the rule change, LMT 1 would be able to execute its 60 shares at \$10.02 before RLP 2, even though RLP 2 arrived earlier in time.

Because of the ranking and allocation proposed herein, the Exchange is proposing to delete the provision in Rule 7.44(l) stating that executions within the Program will occur in accordance with NYSE Arca Equities Rule 7.36. Rule 7.36 provides that incoming orders will be executed first in the Display Order Process, and then in the Working Order Process. But within the Program, odd lot interest will now be ranked and allocated in price-time priority with other equally-priced non-displayed interest. As explained above, the Exchange believes this is appropriate since, for purposes of the operation of the Program, there is little difference between undisplayed odd lot interest and other non-displayed liquidity, including that neither are protected from being traded through pursuant to Regulation NMS.

Further, the Exchange is proposing to amend Rule 7.44(l) to provide that, within the Program, PL Orders will be ranked behind all other equally-priced non-displayed interest. Currently, Rule 7.31(h)(4) provides that PL Orders are executed in the Working Order Process after all other Working Orders except undisplayed discretionary orders. Therefore, under the current version of Rule 7.44(l), which provides that executions occur pursuant to Rule 7.36, PL Orders are executed behind all other non-displayed liquidity. Because the Exchange is removing the reference to Rule 7.36 from Rule 7.44(l), some Users might interpret Rule 7.44(l) as stating that it overrides all other provisions in NYSE Arca Equities Rules, and therefore, all non-displayed liquidity is ranked and allocated in price-time priority. However, the Exchange is maintaining the priority rule for PL Orders in the Program, and therefore, the Exchange is

proposing to explicitly state in Rule 7.44(1) that PL Orders will be ranked behind all other equally-priced interest.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, in that it is designed 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 ranking odd lot interest in price-time priority with other RPIs and non-displayed liquidity within the Program will both promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change will ensure that odd-lot interest priced better than the PBBO that is not displayed is not given priority over previously-entered non-displayed liquidity within the Program. The purpose of the Program is to incentivize the provision of price-improving liquidity to retail investors. However, the Exchange believes that this purpose could be frustrated by permitting later-arriving odd-lot interest to have priority over earlier-arriving RPIs and non-displayed liquidity. The Exchange therefore believes that ranking odd-lot interest in strict price-time priority with other undisplayed interest will remove impediments to a free and open market by eliminating the potential for market participants to use odd-lot interest to trade ahead of previously-entered RPI interest. The Exchange further believes that the proposed rule change is consistent with current Exchange rules because it would treat undisplayed odd lot interest in the same manner as undisplayed round lots.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

The Exchange further believes that the proposed treatment of odd lot interest is consistent with the Act and will not create a disincentive to enter odd lot interest because market participants are already on notice that undisplayed odd lot interest priced better than the PBBO is not afforded the same protections as displayed interest.

The Exchange also believes the proposal will protect investors and the public interest because the proposed rule change will promote the incentives for liquidity providers to enter RPIs that improve upon the PBBO. As a result, the proposal will increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. Additionally, the Exchange believes it is appropriate to promote the incentive to bring more retail order flow to a public market.

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 Program is designed to increase competition among executive [sic] venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter. The Exchanges believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market.

Additionally, the Exchange believes the proposed rule change will have a positive effect on competition since it will ensure that the incentives of entering RPIs into the Program are not disrupted. Without the proposed rule change, odd lot interest would have priority over earlier-entered RPI and non-displayed liquidity at a particular price point. Such a priority rule could disrupt the incentives of ETP Holders to enter RPIs, and therefore, decrease the price improving

opportunities for retail investors.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ 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 waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Doing so, the Exchange contends, would correct an element of the Program that could otherwise undermine the Program's purpose. The Commission believes that waiving the 30-day

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 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 Exchange has satisfied this requirement.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

operative delay is consistent with the protection of investors and the public interest because this waiver would allow the Exchange to implement the Program, which has already been subject to notice and comment, without further delay. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.¹⁴

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend this 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-2014-21 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-2014-21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

¹⁴ 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).

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 this 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-2014-21 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).