

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74088; File No. SR-NYSEArca-2014-117)

January 16, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Remove the Exchange's Quote Mitigation Plan as Provided by Commentary .03 to Exchange Rule 6.86

I. Introduction

On October 2, 2014, NYSE Arca, Inc., (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to remove the Exchange's quote mitigation plan as provided by Commentary .03 to NYSE Arca Rule 6.86. The proposed rule change was published for comment in the Federal Register on October 21, 2014.³ On December 2, 2014, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On January 8, 2015, the Exchange submitted a letter in further support of the proposal.⁶ The Commission received no comments on the proposal. This order

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 73362 (October 15, 2014), 79 FR 62983 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 73720, 79 FR 72747 (December 8, 2014). The Commission designated January 19, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ See Letter from Elizabeth King, Secretary & General Counsel, Exchange, to Kevin O'Neill, Deputy Secretary, Commission, dated January 8, 2015 (“NYSE Arca Letter”)

institutes proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposal.

II. Description of the Proposal

In 2007, the Exchange adopted a quote mitigation plan in connection with the Penny Pilot Program.⁸ According to the Exchange, the quote mitigation plan was designed to reduce the number of quotation messages sent by the Exchange to the Options Price Reporting Authority (“OPRA”) by only submitting quote messages for “active” series.⁹ The Exchange defines active series under the quote mitigation plan in Commentary .03 to Exchange Rule 6.86 as: (i) series that have traded on any options exchange in the previous 14 calendar days; or (ii) series that are solely listed on the Exchange; or (iii) series that have been trading ten days or less, or; (iv) series for which the Exchange has received an order.¹⁰ In addition, under the Exchange’s quote mitigation plan, the Exchange may define a series as active on an intraday basis if: (i) the series trades at any options exchange; (ii) the Exchange receives an order in the series; or (iii) the Exchange receives a request for quote from a customer in that series.¹¹

available at <http://www.sec.gov/comments/sr-nysearca-2014-117/nysearca2014117.shtml>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities and Exchange Release No. 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (Order Granting Approval of SR-NYSEArca-2006-73) (“Quote Mitigation Approval Order”). The Penny Pilot Program permitted certain options classes to be quoted in pennies. See id.

⁹ See Notice, supra note 3, at 62983.

¹⁰ See Exchange Rule 6.86, Commentary .03, and Notice, supra note 3, at 62983.

¹¹ See id.

The Exchange proposes to remove its quote mitigation plan from its rules by deleting Commentary .03 to Exchange Rule 6.86.¹² The Exchange believes that its quote mitigation plan is no longer necessary primarily for three reasons. First, the Exchange states that its incorporation of select provisions of the Options Listing Procedures Plan (“OLPP”)¹³ in Exchange Rule 6.4A serves to reduce the potential for excess quoting because the OLPP limits the number of options series eligible to be listed, which, according to the Exchange, reduces the number of options series a market maker would be obligated to quote.¹⁴ Second, the Exchange states its view that Exchange Rule 6.37B Commentary .01, which removes certain options series from market makers’ continuous quoting obligations, reduces the number of quote message traffic that the Exchange sends to OPRA.¹⁵ The Exchange states that reliance on the OLPP, via Exchange Rule 6.4A, and the refined market maker quoting obligations, pursuant to Commentary .01 to Exchange Rule 6.37B, is sufficient as a quote mitigation plan.¹⁶ Third, the

¹² In addition, the Exchange proposes to amend paragraphs (b)(1) and (b)(2) of Exchange Rule 6.86 to delete references to the “Quote Mitigation Plan,” which refer to the quote mitigation plan set forth in Commentary .03 to Exchange Rule 6.86. See Notice, supra note 3, at 62984.

¹³ See Amendment to Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act available at <http://www.theocc.com/clearing/industry-services/olpp.jsp> (providing for the most current OLPP). See also Securities and Exchange Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (order approving the OLPP).

¹⁴ See Notice, supra note 3, at 62984. See also Securities and Exchange Release No. 61977 (April 23, 2010), 75 FR 22884 (April 30, 2010) (in which the Exchange adopted select provisions of the OLPP into Exchange Rule 6.4A).

¹⁵ Commentary .01 to Exchange Rule 6.37B provides that Exchange market makers continuous quoting obligations do not apply “to adjusted option series, and series with a time to expiration of nine months or greater, for options on equities and Exchange Traded Fund Shares, and series with a time to expiration of twelve months or greater for Index options.” See also Notice, supra note 3, at 62984.

¹⁶ See id. The Exchange states its view that limiting the number of options series listed on the Exchange is preferable to suppressing the quotes of inactive options series, as

Exchange states that both its systems capacity and OPRA's systems capacity are more than sufficient to accommodate any additional increase in quote traffic that might be sent to OPRA as a result of the deletion of the quote mitigation strategy.¹⁷ The Exchange represents that it continually assesses its capacity needs and ensures that the capacity that it requests from OPRA is sufficient and compliant with the requirements established in the OPRA Capacity Guidelines.¹⁸

The Exchange represents that it has in place certain measures that the Exchange believes serve as additional safeguards against excessive quoting.¹⁹ According to the Exchange, these safeguards include monitoring and alerting market makers disseminating an unusual number of quotes, a business plan designed to ensure that new listings are actively traded,²⁰ and a ratio threshold fee designed to encourage the efficient use of orders.²¹

The Exchange proposes to announce the implementation date of the proposed rule change by Trader Update and publish such announcement no later than 60 days following the effective date of this proposal.²²

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2014-117 and Grounds for Disapproval Under Consideration

required under current Exchange Rule 6.86, because all quotes sent by Exchange market makers are actionable even if not displayed. See id.

¹⁷ See Notice, supra note 3, at 62984.

¹⁸ See id.

¹⁹ See id.

²⁰ See id. at n.13 (citing to NYSE Arca Options Listing Policy Statement, available at, <http://www.nyse.com/pdfs/TraderNoticeArcaLOPSChanges092713.pdf>).

²¹ See id. at n.14 (citing to NYSE Arca Options Fee Schedule, available at, https://www.theice.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf).

²² See id. at 62984.

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²³ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²⁴ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to the consistency of the proposed rule change, as supplemented by the NYSE Arca Letter,²⁵ with Section 6(b)(5) of the Act, which require that the rules of a national securities exchange be designed, among other things, 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.²⁶

IV. Procedure: Request for Written Comments

²³ 15 U.S.C. 78s(b)(2)(B).

²⁴ Id. Section 19(b)(2)(B) of the Exchange Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See id. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. See id.

²⁵ See NYSE Arca Letter, supra note 6.

²⁶ 15 U.S.C. 78f(b)(5).

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²⁷ Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

The Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5)²⁸ or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. As described above, the Exchange adopted its quote mitigation plan as provided in Commentary .03 to Exchange Rule 6.86 in connection with its adoption of the Penny Pilot

²⁷ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²⁸ Id.

Program, which permits quoting of certain options series in certain increments.²⁹ The Commission has previously noted that the Penny Pilot Program has contributed to an increase in quotation message traffic from the options markets.³⁰ In approving the extension and expansion of the Penny Pilot Program in 2009, the Commission relied, in part, on the Exchange's representation that it would continue to use quote mitigation strategies that would continue to mitigate quotation traffic sent to OPRA.³¹

As noted above, the Exchange believes that its quote mitigation strategy is no longer necessary because: (1) the Exchange has incorporated select provisions of the OLPP in Exchange Rule 6.4A, which the Exchange believes limits the number of series eligible to be listed; (2) current Exchange Rule 6.37B Commentary .01 removes certain options series from market makers' continuous quoting obligations, which the Exchange believes reduces the number of quote messages that the Exchange sends to OPRA; and (3) both the Exchange's systems capacity and OPRA's systems capacity are more than sufficient to accommodate any additional increase in quote traffic that might be sent to OPRA as a result of the deletion of the

²⁹ See supra note 8 and accompanying text.

³⁰ See Securities and Exchange Release No. 60711 (September 23, 2009), 74 FR 49419, 49422 (September 28, 2009) (Order Granting Partial Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3 thereto, Amending NYSE Arca Rule 6.72 and Expanding the Penny Pilot Program).

³¹ See id. The Commission stated: "While the Commission anticipates that NYSE Arca's proposed expansion of the Pilot Program will contribute to further increases in quotation message traffic, the Commission believes that NYSE Arca's proposal is sufficiently limited such that it is unlikely to increase quotation message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information. NYSE Arca has proposed to roll out the additional 300 classes over time, in groups of 75 classes each quarter beginning on October 26, 2009. The Commission further notes that a June 2, 2009 sustained message traffic peak of 852,350 messages per second reported by OPRA is still well below OPRA's current messages per second capacity limit of 2,050,000. Moreover, NYSE Arca has adopted and will continue to utilize quote mitigation strategies that should continue to mitigate the expected increase in quotation traffic." Id.

quote mitigation strategy.³² Do commenters believe that reliance on the Exchange's current rules and the existing systems capacity of the Exchange and OPRA are sufficient or insufficient means to mitigate quote message traffic from the Exchange to OPRA? Please explain.

2. What are commenters' views on the impact, if any, that might result from the Exchange's proposal to remove its current quote mitigation plan as provided in Commentary .03 to Exchange Rule 6.86? For example, what are commenters' views on the impact the Exchange's proposal would have, if any, on OPRA's system capacity? Please explain. Or, what are commenters' views on the impact the Exchange's proposal would have on market participants using OPRA and/or the Exchange's quotation message feeds? Please explain.

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-2014-117 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-2014-117. 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

³² See supra notes 13- 18 and accompanying text.

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 filings 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-2014-117 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Brent J. Fields
Secretary

³³ 17 CFR 200.30-3(a)(57).