

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77374; File No. SR-NYSEARCA-2016-42)

March 15, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.33 to Conform the Exchange's Rules to Industry-Wide Standards for Recording the Capacity in which an ETP Holder Executes a Transaction

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 March 4, 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 7.33 to conform the Exchange's rules to industry-wide standards for recording the capacity in which an ETP Holders [sic] executes a transaction. 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 Rule 7.33 (“Rule 7.33”) currently provides that ETP Holders may enter proprietary orders and agency orders for the account of a customer into the NYSE Arca Marketplace<sup>4</sup> and that proprietary orders are subject to the same display and execution processes as agency orders. Rule 7.33 further provides that an ETP Holder entering a proprietary order shall mark the order with the appropriate designator to identify the order as proprietary.

As proposed, Rule 7.33 would be amended to add a clause specifying that ETP Holders must input accurate information into the NYSE Arca Marketplace, including, but not limited to, identifying the capacity in which the ETP Holder entered each order, as follows: principal, agency, or riskless principal.<sup>5</sup> The Exchange would delete the current clause relating to the entry of proprietary orders and agency orders for the account of a customer and the clause providing that ETP Holders entering proprietary orders mark the order with the appropriate designator to identify the order as proprietary as redundant. The Exchange proposes to retain the clause providing that proprietary orders would be subject to the same display and execution processes as agency orders.

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<sup>4</sup> The term “NYSE Arca Marketplace” is defined in NYSE Arca Equities Rule 1.1.

<sup>5</sup> In general, the term “capacity” refers to whether a broker-dealer acts as agent, *i.e.*, directly on behalf of a customer, or whether the broker-dealer acts as principal, *i.e.*, for its own account, in a transaction. A riskless principal transaction is one where a broker-dealer receives a customer order and then immediately executes an identical order in the marketplace, while taking on the role of principal, in order to fill the customer order pursuant to NYSE Arca Equities Rule 5320.

By requiring ETP Holders to identify the capacity in which they enter an order, the Exchange would be harmonizing its order entry requirements with those of other national securities exchanges.<sup>6</sup> The proposed changes would not alter an ETP Holder's obligation to meet order audit trail system requirements, as set forth in the Rule 7400 Series (Order Audit Trail System).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system because it would provide greater harmonization between order entry on the Exchange and other marketplaces, resulting in greater uniformity and more efficient order entry to enable ETP Holders to use the same order-marking conventions across all equities markets. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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<sup>6</sup> See, e.g., BATS Exchange, Inc. ("BATS") Rule 11.21; BATS Y-Exchange, Inc. ("BATS-Y") Rule 11.21; EDGA Exchange, Inc. ("EDGA") Rule 11.5; EDGX Exchange, Inc. Rule 11.5; and NASDAQ Stock Market LLC ("NASDAQ") Rule 4611(a)(6). The Exchange's affiliates New York Stock Exchange LLC ("NYSE") and NYSE MKT LL [sic] ("NYSE MKT") impose the same marking requirements on clearing member organizations. See NYSE Rule 132.30(9) & NYSE MKT Rule 132.30(9).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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 proposed rule change is not intended to address competitive issues, but rather it is designed to provide greater harmonization between the Exchange and other markets in the marking of orders, resulting in more uniform and efficient order entry.

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 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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

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

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

Commission shall institute proceedings 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-2016-42 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-2016-42. 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-2016-42 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>11</sup>

Robert W. Errett  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).