

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77520; File No. SR-NYSEArca-2016-51)

April 5, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.16 to Specify that Sell Short Post No Preference Orders and Sell Short PNP Blind Orders Priced At or Below the National Best Bid will be Rejected on Arrival During the Short Sale Period

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on March 24, 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 NYSE Arca Equities Rule 7.16 (“Short Sales”) to specify that Post No Preference (“PNP”) orders and PNP Blind orders priced at or below the national best bid will be rejected on arrival during the Short Sale Period. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

it 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 7.16 ("Rule 7.16") governs the treatment of sell short orders on the Exchange to comply with the requirements of Rule 201 of Regulation SHO.⁴ Currently, 7.16(f)(v)(D)(ii) provides, in part, that PNP Blind Orders will be re-priced and displayed at a Permitted Price⁵ during the Short Sale Period.⁶ The Exchange recently determined that, during a Short Sale Period, if the Exchange's best bid is the national best bid, PNP Blind short sale orders do not re-price to a Permitted Price but rather, the orders execute at the national best bid.

To address this issue, the Exchange is proposing to amend Rule 7.16(f)(v) by adding new subsection (H) to provide that, during a Short Sale Period, the Exchange would reject on arrival

⁴ 17 CFR 242.201.

⁵ Rule 7.16(f)(v)(C) defines the term "Permitted Price" as one minimum price increment above the current national best bid. The Permitted Price for securities for which the national best bid is \$1 or more is \$.01 above the national best bid; the Permitted Price for securities for which the national best bid is below \$1 is \$.0001 above the national best bid.

⁶ A "Short Sale Period" is defined in Rule 7.16(f)(iv) as the period during which the Short Sale Price Test is in effect. A Short Sale Price Test is defined in Rule 7.16(f)(ii) as the period when the Exchange will not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases 10% or more, as determined by the listing market for the security, from the security's closing price on the listing market as of the end of regular trading hours on the prior day. Rule 7.16P, rather than Rule 7.16, governs the treatment of sell short orders for symbols trading on the Exchange's Pillar trading platform.

sell short PNP Orders and sell short PNP Blind Orders priced at or below the national best bid.⁷

The Exchange believes that the proposed change would eliminate the potential for sell short PNP Orders and PNP Blind Orders to execute at the national best bid during a Short Sale Period.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would eliminate the potential for sell short PNP Orders and PNP Blind Orders to trade at the national best bid during a Short Sale Period. The Exchange further believes that the proposed rule change is reasonable and appropriate and designed to prevent fraudulent and manipulative acts because it provides more certainty to members and the investing public of how the Exchange will treat incoming short sale PNP Orders and short sale PNP Blind Orders during a Short Sale Period.

⁷ Due to technology limitations, the Exchange is not able to address this issue without rejecting both sell short PNP Orders and sell short PNP Blind Orders priced at or below the national best bid during the Short Sale Period. As such, the proposed rule text specifies that the Exchange would reject both sell short PNP Orders and sell short PNP Blind Orders, received during the Short Sale period, priced at or below the national best bid.

⁸ 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 change is not designed to address any competitive issue but rather to eliminate the potential for sell short PNP Orders and PNP Blind Orders to trade at the national best bid during a Short Sale Period.

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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to 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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 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.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that the proposed rule change is designed to assure compliance with Rule 201 of Regulation SHO¹³ by assuring that the Exchange will not execute or display a sell short PNP or a sell short PNP Blind order at or below the national best bid during a Short Sale Period. The Exchange further stated that waiver of the operative delay would allow the Exchange to implement the rule change without delay, which would help eliminate potential investor confusion regarding how sell short PNP and PNP Blind Orders will be treated on arrival during a Short Sale Period. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁴

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 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:

¹³ 17 CFR 242.201.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2016-51 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-2016-51. 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 such 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-2016-51, 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

Robert W. Errett
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).