

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79363; File No. SR-NYSEArca-2016-148)

November 21, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rules 7.1 and 7.2, and NYSE Arca Equities Rules 7.1 and 7.2

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 November 10, 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 Rule 7.1 (Trading Sessions) to permit the Chief Executive Officer of the Exchange or his or her designee to take certain actions in connection with the trading of securities on the Exchange; (b) NYSE Arca Equities Rule 7.1 (Hours of Business) to permit the President of NYSE Arca Equities or his or her designee to take certain actions in connection with the trading of securities on the NYSE Arca Equities marketplace; and (c) NYSE Arca Rule 7.2 (Holidays) and NYSE Arca Equities Rule 7.2 (Holidays) to remove a reference to presidential election days. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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

The Exchange proposes to amend (a) NYSE Arca Rule 7.1 (Trading Sessions) to permit the Chief Executive Officer ("CEO") of the Exchange or his or her designee to take certain actions in connection with the trading of securities on the Exchange; (b) NYSE Arca Equities Rule 7.1 (Hours of Business) to permit the President of NYSE Arca Equities or his or her designee to take certain actions in connection with the trading of securities on the NYSE Arca Equities marketplace; and (c) NYSE Arca Rule 7.2 (Holidays) and NYSE Arca Equities Rule 7.2 (Holidays) to remove a reference to presidential election days.

The Exchange believes the proposed changes to NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 would make such rules more reflective of the organizational structure of the Exchange and NYSE Arca Equities. At the same time, the proposed rule changes would ensure that the Boards of Directors of NYSE Arca and of NYSE Arca Equities (each, a "Board") continue to have the authority to take action they deem necessary or appropriate in particular situations.

NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1

Proposed Changes to NYSE Arca Rule 7.1

The first paragraph of NYSE Arca Rule 7.1 provides that, unless otherwise ruled by the Board of the Exchange or its designee, the Exchange shall be open for the transaction of business daily except on Saturdays and Sundays, and that the hours at which trading sessions shall open and close shall be established by the Board or its designee. Commentary .01 to Rule 7.1 notes that, except under unusual conditions as may be determined by the Board or its designee, hours during which transactions in options on individual securities may be made on the Exchange shall correspond to the normal hours for business set forth in the rules of the primary exchange listing the securities underlying the options.

The Exchange proposes to amend the first paragraph of NYSE Arca Rule 7.1 to provide that, except as may be otherwise determined by the Board as to particular days, the Exchange shall be open for the transaction of business on every business day. The Exchange proposes to remove the current exclusion of Saturdays and Sundays because Saturdays and Sundays are not business days and therefore no exclusion is needed. Finally, the amended paragraph would provide that the hours at which trading sessions shall open and close may be specified by Exchange rule, as well as by the Board. The two paragraphs of the present rule would become paragraphs (a) and (b). These proposed rule changes are based in part on New York Stock Exchange LLC (“NYSE”) Rule 51(a) and NYSE MKT LLC (“NYSE MKT”) Rule 51(a) – Equities.⁴

⁴ NYSE LLC and NYSE MKT are affiliates of the Exchange. See Securities Exchange Act Release Nos. 45433 (February 12, 2002), 67 FR 7441 (February 19, 2002) (SR–NYSE–2001–55), and 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63). NYSE MKT LLC is submitting substantially the same proposed rule change for NYSE MKT Rule 901NY, applicable to the trading of options contracts on NYSE Amex Options LLC. See SR-NYSEMKT-2016-106.

The Exchange proposes to add new paragraphs (c), (d), and (e) to NYSE Arca Rule 7.1. These proposed changes are based on NYSE Rule 51(b) and (c) and NYSE MKT Rule 51(b)–(d) – Equities. New paragraph (c) would provide that, except as may be otherwise determined by the NYSE Arca Board, the CEO of the Exchange or his or her designee may halt or suspend trading in some or all securities traded on the Exchange; extend the hours for the transaction of business on the Exchange; close some or all Exchange facilities; determine the duration of any such halt, suspension or closing undertaken; or determine to trade securities on the Exchange’s disaster recovery facility.⁵

New paragraph (d) would provide that the CEO or his or her designee shall take any of the actions described in new paragraph (c) only when he or she deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances such as:

- actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange,
- a request by a governmental agency or official, or
- a period of mourning or recognition for a person or event.

⁵ As part of its business continuity and disaster recovery plans, the Exchange maintains a disaster recovery facility, which is a secondary data center located in a geographically diverse location, as required by Regulation SCI. See 14 CFR 242.1001(a)(2)(v) (requiring policies and procedures for business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption).

New paragraph (e) would require that the CEO or his or her designee notify the NYSE Arca Board of actions taken pursuant to the rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.⁶

The Exchange proposes that the commentary to NYSE Arca Rule 7.1 be amended by deleting “under unusual conditions” and a reference to the Board’s designee, and by adding a reference to the authority of the CEO or his or her designee under new subparagraph (c).

Finally, the Exchange proposes to change the name of NYSE Arca Rule 7.1 from “Trading Sessions” to “Hours of Business,” which would make it consistent with NYSE Arca Equities Rule 7.1.

Proposed Changes to NYSE Arca Equities Rule 7.1

The first paragraph of NYSE Arca Equities Rule 7.1 provides that, unless otherwise ruled by the NYSE Arca Equities Board, the Corporation shall be open for the transaction of business daily except on Saturdays and Sundays, and the hours at which trading sessions shall open and close shall be established by the NYSE Arca Equities Board. NYSE Arca Equities Rule 7.1 does not provide for a Board designee.

The Exchange proposes to amend the first paragraph of NYSE Arca Equities Rule 7.1 to provide that, except as may be otherwise determined by the NYSE Arca Equities Board as to particular days, the Corporation shall be open for the transaction of business on every business day. The Exchange proposes to remove the current exclusion of Saturdays and Sundays because Saturdays and Sundays are not business days and therefore no exclusion is needed. Finally, the amended paragraph would provide that the hours at which trading sessions shall open and close may be specified by Exchange rule, as well as by the Board. The two paragraphs of the present

⁶ For example, the Exchange may close on a national day of mourning for a former president of the United States.

rule would become paragraphs (a) and (b). These proposed rule changes are based in part on NYSE Rule 51(a) and NYSE MKT Rule 51(a) – Equities.

The Exchange proposes to add a new subparagraph (c) to provide that, except as may be otherwise determined by the NYSE Arca Equities Board, the President of the Corporation or his or her designee may halt or suspend trading in some or all securities traded on the Corporation; extend the hours for the transaction of business on the Corporation; close some or all Corporation facilities; determine the duration of any such halt, suspension or closing; or determine to trade securities on the Exchange’s disaster recovery facility. These proposed changes are based on NYSE Rule 51(b) and NYSE MKT Rule 51(b)–Equities.

New subparagraphs (d) and (e) would subject the President or his or her designee to the same limitations and reporting requirements as in proposed NYSE Arca Rule 7.1(d) and (e), which are based on NYSE Rule 51(b) and (c) and NYSE MKT Rule 51(b)–(d)–Equities.

Discussion

Currently, NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 require Board action if extraordinary circumstances arise. However, the Boards may not be able to convene and act quickly, thereby delaying any potential response. Pursuant to their respective bylaws, at least half of the directors on the NYSE Arca and NYSE Arca Equities Boards are Public Directors.⁷

Therefore, as a practical matter, they are unlikely to be at or near the Exchange if extraordinary

⁷ See NYSE Arca, Inc. Bylaws, Article III, Sec. 3.02(a) and NYSE Arca Equities, Inc. Bylaws, Art. III, Sec. 3.02(a). “Public Directors” are directors that are persons from the public who are not, or are not affiliated with, a broker-dealer in securities and, in the case of the Exchange Board, are not employed by, or involved in any material business relationship with, the Exchange or its affiliates.

circumstances arise, making it harder to convene quickly. Further, if communication systems are severely compromised in an emergency, the Boards may not be able to convene at all.⁸

Current NYSE Arca Rule 7.1 partially addresses this concern by allowing the NYSE Arca Board to name designees. However, use of a designee requires that the Board make the delegation before any unusual conditions arise. Further, NYSE Arca Rule 7.1 does not set any limits on when designees may act under the rule, unlike proposed paragraphs (c) and (d). Accordingly, the Exchange proposes to delete the references to a Board designee in the first paragraph of NYSE Arca Rule 7.1 and commentary thereto. Such proposed deletions would make NYSE Arca Rule 7.1 consistent with NYSE Arca Equities Rule 7.1, NYSE Rule 51(a) and NYSE MKT Rule 51(a) – Equities, none of which contemplate the Board appointing a designee to set the hours for business.

The Exchange believes designating by rule that the CEO of the Exchange, President of NYSE Arca Equities, or their designees may take certain actions in extraordinary circumstances would make NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 more reflective of the organizational structure of the Exchange and NYSE Arca Equities. As described above, the CEO, President, or their designees would be able to take such action only when they deem it to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

The proposed amendments would ensure that the NYSE Arca and NYSE Arca Equities Boards continue to have the authority to take action they deem necessary or appropriate in particular situations. In addition, as proposed, the amended rules would ensure that the Boards

⁸ For both Boards, the presence of a majority of directors is necessary to constitute a quorum. See NYSE Arca, Inc. Bylaws, Article III, Sec. 3.07 and NYSE Arca Equities, Inc. Bylaws, Art. III, Sec. 3.09.

would remain informed, by requiring the CEO or President to notify the relevant Board of actions taken pursuant to the authority granted under the rule, with the exception of a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

The proposed changes would have the additional benefit of bringing NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 into greater conformity with the rules of the NYSE and NYSE MKT.⁹

The Exchange notes that the trading rules of Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGX Exchange, Inc., and Bats EDGA Exchange, Inc. also provide that the CEO of the relevant exchange may halt, suspend trading in any and all securities traded on the exchange, close some or all exchange facilities, and determine the duration of any such halt, suspension, or closing, when he deems such action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest. The lists of special circumstances set out in such trading rules are substantially similar to those in NYSE Rule 51 and NYSE MKT Rule 51-Equities.¹⁰

NYSE Arca Rule 7.2 and NYSE Arca Equities Rule 7.2

The last sentence in the first paragraph of NYSE Arca Rule 7.2 provides that the Board will determine whether to open the Exchange on presidential election days. Similarly, the last sentence in the first paragraph of NYSE Arca Equities Rule 7.2 provides that the Board will

⁹ NYSE Rule 51(a) and NYSE MKT Rule 51(a)-Equities do not state that the CEO can name a designee. However, pursuant to NYSE Rule 1 and NYSE MKT Rule 1-Equities, the CEO of the relevant exchange may designate one or more qualified employees to act in his or her place in the event that the CEO is not available. See NYSE Rule 1 and NYSE MKT Rule 1-Equities. See also Securities Exchange Act Release No. 61810 (March 31, 2010), 75 FR 17816 (April 7, 2010) (SR-NYSE-2010-26).

¹⁰ See Bats BZX Exchange, Inc. Rule 11.1(c); Bats BYX Exchange, Inc. Rule 11.1(c); Bats EDGX Exchange, Inc. Rule 11.1(c); and Bats EDGA Exchange, Inc. Rule 11.1(c).

determine whether to open NYSE Arca Equities on presidential election days. The Exchange proposes to delete both sentences.

The existing sentences are worded as if the Exchange and NYSE Arca Equities will be closed on presidential election days unless the Board determines otherwise. The Exchange believes the wording is potentially confusing to investors, because the Exchange and NYSE Arca Equities are generally open on presidential election days. Accordingly, the Exchange proposes to delete the language. The proposed edits will not affect the Board's ability to close the Exchange or NYSE Arca Equities for a presidential election day, as it would continue to have authority to do so under Rule 7.1.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,¹¹ in general, and further the objectives of Section 6(b)(5) of the Act,¹² in particular, because they are 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because they are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(1) of the Act,¹³ in that they enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(1).

enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed changes to NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because they would make NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 more reflective of the organizational structure of the Exchange and NYSE Arca Equities. In this manner, they would strengthen the ability of the Exchange and NYSE Arca Equities to respond appropriately and in a timely fashion to extraordinary circumstances, even if the relevant Board is unable to convene. However, unlike present NYSE Arca Rule 7.1, which puts no limits on when the Board's designees may act, the proposed amended rules would ensure that the CEO, President, or their designees, as applicable, would be able to take action only when he or she deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

The Exchange believes that the proposed changes to NYSE Arca Rule 7.2 and NYSE Arca Equities Rule 7.2 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because they would remove sentences that are worded as if the Exchange and NYSE Arca Equities will be closed on presidential election days unless the Board

determines otherwise. The Exchange believes the wording is potentially confusing to investors, because the Exchange and NYSE Arca Equities are generally open on presidential election days. Accordingly, the Exchange proposes to delete the language.

In addition, the Exchange believes that the proposed rule changes to [sic] would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because they would ensure that the NYSE Arca and NYSE Arca Equities Boards continue to have the authority to take action they deem necessary or appropriate in particular situations. In addition, as proposed, the proposed amended NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 would ensure that the Boards would remain informed, by requiring the CEO or President to notify the relevant Board of actions taken pursuant to the authority granted under the rule, with the exception of a period of mourning or recognition for a person or event, as soon thereafter as is feasible. The proposed changes to NYSE Arca Rule 7.2 and NYSE Arca Equities Rule 7.2 will not affect the Board's ability to close the Exchange or NYSE Arca Equities for a presidential election day, as it would continue to have authority to do so under Rule 7.1.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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 Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange and its subsidiary NYSE Arca Equities.

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 Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁶ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁷ 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 waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would immediately strengthen the ability of the Exchange and NYSE Arca Equities to respond appropriately and in a timely fashion to extraordinary circumstances. The Exchange further states that waiving the 30-day operative delay would not affect the authority of the NYSE Arca and NYSE Arca Equities Boards to take action they deem necessary or appropriate in particular situations. Moreover, the Exchange states

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 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.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

that waiver of the 30-day operative delay would allow the Exchange to align its rules with those of its affiliated exchanges without delay. 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.¹⁸

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:

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-2016-148 on the subject line.

¹⁸ 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).

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-2016-148. 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-2016-148, 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.¹⁹

Robert W. Errett
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).