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 under Section 19(b)(2)(B) of the Act 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);
• Send an email to rule-comments@sec.gov. Please include File Number SR–NYSEArca–2016–83 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–2016–83. This file number should be included on the subject line if email 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 Web site (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 Web site 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–2016–83 and should be submitted on or before June 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.19

Brent J. Fields,
Secretary.

[FR Doc. 2016–13212 Filed 6–3–16; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing the Quoting and Trading Provisions of the Plan To Implement a Tick Size Pilot Program Submitted to the Commission Pursuant to Rule 608 of Regulation NMS Under the Act

May 31, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b–4 thereunder,3 notice is hereby given that, on May 20, 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, II, and III 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 implement the quoting and trading provisions of the Plan to Implement a Tick Size Pilot Program submitted to the Commission pursuant to Rule 608 of Regulation NMS under the Act (the “Plan”). The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission by New York Stock Exchange LLC to adopt NYSE Rules 67(a) and 67(c)–(e), which also implemented the quoting and trading provisions of the Plan.5 Therefore, the Exchange has designated this proposal as “non-controversial” and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.6 The proposed rule change is available on the Exchange’s Web site 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 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 establish rules to require its ETP Holders 7 to comply with the requirements of the Plan to Implement a Tick Size Pilot Program (the “Plan”),8 which is designed to study and assess the impact of liquidity and trading of the common stocks of small capitalization companies.
companies. The Exchange proposes changes to its rules for a two-year pilot period that coincides with the pilot period for the Plan, which is currently scheduled as a two year pilot to begin on October 3, 2016.

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, the Exchange and NYSE MKT LLC (collectively “Participants”), filed with the Commission, pursuant to Section 11A of the Act9 and Rule 608 of Regulation NMS thereunder, the Plan to Implement a Tick Size Pilot Program.10 The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the “June 2014 Order”).11 The Plan was published for comment in the Federal Register on November 7, 2014,12 and approved by the Commission, as modified, on May 6, 2015.13

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Commission plans to use the Tick Size Pilot Program to assess whether wider tick sizes enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its ETP Holders, as applicable, with the provisions of the Plan.

On October 9, 2015, the Operating Committee approved the Exchange’s proposed rules as model Participant rules that would require compliance by a Participant’s members with the provisions of the Plan, as applicable, and would establish written policies and procedures reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.15 As described more fully below, the proposed rules would require ETP Holders to comply with the Plan and to enforce the widening of quoting and trading increments for Pilot Securities, consistent with the Plan.

The Tick Size Pilot Program will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Tick Pilot Program will consist of a control group of approximately 1,400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.16 During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group (“Test Group One”) will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.17 Pilot Securities in the second test group (“Test Group Two”) will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.18 Pilot Securities in the third test group (“Test Group Three”) will be subject to the same terms as Test Group Two and also will be subject to the “Trade-at” requirement to prevent price matching by a person not displaying at a price of a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.19 In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS20 will apply to the Trade-at requirement.

The Tick Pilot Program also contains requirements for the collection and transmission of data to the Commission and the public. A variety of data generated during the Tick Pilot Program will be released publicly on an aggregated basis to assist in analyzing the impact of wider tick sizes on smaller capitalization stocks.21

Proposed NYSE Arca Equities Rule 7.46 ("Rule 7.46")

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.22 Accordingly, the Exchange is proposing new Rule 7.46 to require its ETP Holders to comply with the quoting and trading provisions of the Plan. The proposed Rule is also designed to ensure the Exchange’s compliance with the Plan.

Proposed paragraph (a)(1) of new Rule 7.46 would establish the following defined terms:

- “Plan” means the Tick Size Pilot Plan submitted to the Commission pursuant to Rule 608(a)(3) of Regulation NMS under the Act;
- “Pilot Test Groups” means the three test groups established under the Plan, consisting of 400 Pilot Securities each, which satisfy the respective criteria established by the Plan for each such test group;
- “Retail Investor Order” would mean an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a retail ETP Holder, provided that no change is made to the terms of the order with respect to price or size of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Investor Order may be an odd lot, round lot, or partial round lot.23

10 See Letter from Brendan J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.
12 Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.
15 The Operating Committee is required under Section III(C)(2) of the Plan to “monitor the procedures established pursuant to the Plan and advise Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate.” The Operating Committee is also required to “establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan.”
16 See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.
17 See Section VIII of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.
18 See Section VIII of the Plan.
19 See Section VIII of the Plan.
20 17 CFR 242.611.
21 See Section VII of the Plan.
22 The Exchange was also required by the Plan to develop appropriate policies and procedures that provide for data collection and reporting to the Commission of data described in Appendices B and C of the Plan. See, Securities Exchange Act Release No. 77484 (March 31, 2016), 81 FR 20024 (April 6, 2016) (SR–NYSEArca–2016–52).
23 This definition is the approved definition for “Retail Investor Order” as contemplated by the Plan. It is also the same definition as given to “Retail Orders” pursuant to the approved rules of other national securities exchanges. See, NYSE Arca Equities Rule 7.44(a)(3). See, also NYSE MKT Rule 107C(a)(3), NYSE Rule 107C(a)(3), BATS Y-Exchange, Inc. Rule 11.24(a)(2) and NASDAQ Stock Market LLC Rule 4780(a)(2). The Retail Investor Order may be an odd lot, round lot, or partial round lot.
Proposed Paragraph (a)(2) would state that the Exchange is a Participant in, and subject to the applicable requirements of, the Plan; proposed Paragraph (a)(3) would require ETP Holders to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable requirements of the Plan, which would allow the Exchange to enforce compliance by its ETP Holders with the provisions of the Plan, as required pursuant to Section III(B) of the Plan.

In addition, Paragraph (a)(4) would provide that Exchange systems would not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this proposed rule, unless such quotation or transaction is specifically exempted under the Plan.25

The Exchange also proposes to add Rule 7.46(a)(5) to provide for the treatment of Pilot Securities that drop below a $1.00 value during the Pilot Period.26 The Exchange proposes that if the price of a Pilot Security drops below $1.00 during regular trading on any given business day, such Pilot Security would continue to be subject to the Plan and the requirements described below, that necessitate ETP Holders to comply with the specific quoting and trading obligations for each respective Pilot Test Group under the Plan, and would continue to trade in accordance with the proposed rules below as if the price of the Pilot Security had not dropped below $1.00. However, if the Closing Price of a Pilot Security on any given business day is below $1.00, such Pilot Security would be moved out of its respective Pilot Test Group into the control group (which consists of Pilot Securities not placed into a Pilot Test Group), and may then be quoted and traded at any price increment that is currently permitted by Exchange rules for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, the Exchange proposes that, at all times during the Pilot Period, Pilot Securities (whether in the control group or any Pilot Test Group) would continue to be subject to the data collection rules, which are enumerated in Rule 7.46(b).

The Exchange proposes Rules 7.46(c)–(e), which would require ETP Holders to comply with the specific quoting and trading obligations for each Pilot Test Group under the Plan. With regard to Pilot Securities in Test Group One, proposed Rule 7.46(c) would provide that ETP Holders may execute or display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than $0.05. However, orders priced to trade at the midpoint of the National Best Bid and National Best Offer ("NBBO") or Best Protected Bid and Best Protect Offer ("PBBO") and orders entered in the Exchange’s Retail Liquidity Program as Retail Price Improvement Orders ("Retail Price Improvement Order")27 may be ranked and may be accepted in increments of less than $0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by NYSE Arca Equities Rule 7.6.

With regard to Pilot Securities in Test Group Two, proposed Rule 7.46(d)(1) would provide that such Pilot Securities would be subject to all of the same quoting requirements as described above for Pilot Securities in Test Group One, along with the applicable quoting exceptions. In addition, proposed Rule 7.46(d)(2) would provide that, absent one of the listed exceptions in proposed Rule 7.46(d)(3) enumerated below, no ETP Holder may execute orders in any Pilot Security in Test Group Two in

25 The Exchange is still evaluating its internal policies and procedures to ensure compliance with the Plan, and plans to separately propose rules that would address violations of the Plan.

26 New York Stock Exchange LLC, on behalf of the NYSE Arca Equities Rule 7.6 describes the requirements of Regulation NMS under the Act, and Exchange rules, as applicable.

27 A Retail Price Improvement Order consists of non-displayed interest in NYSE Arca, Inc.-listed securities that is priced better than the National Best Bid or Best Protected Offer, as such terms are defined in Regulation NMS Rule 600(b)(57), by at least $0.001 and that is identified as such. See NYSE Arca Equities Rule 7.44(a)(4).

28 NYSE Arca Equities Rule 7.6 describes the minimum price variation for quoting and entry of orders in equity securities admitted to dealings on the Exchange.
price increments other than $0.05. The $0.05 trading increment would apply to all trades, including Brokered Cross Trades.

Paragraph (d)(3) would set forth further requirements for Pilot Securities in Test Group Two. Specifically, ETP Holders trading Pilot Securities in Test Group Two would be allowed to trade in increments less than $0.05 under the following circumstances:

(A) Trading may occur at the midpoint between the NBBO or PBBO; (B) Orders instead of orders may be provided with price improvement that is at least $0.005 better than the Best Protected Bid or the Best Protected Offer; (C) Negotiated Trades may trade in increments less than $0.05; and (D) Execution of a customer order to comply with NYSE Arca Equities Rule 5320.29 following the execution of a proprietary trade by the ETP Holder at an increment other than $0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

Paragraph (e)(1)–(e)(3) would set forth the requirements for Pilot Securities in Test Group Three. ETP Holders quoting or trading such Pilot Securities would be subject to all of the same quoting and trading requirements as described above for Pilot Securities in Test Group Two, including the quoting and trading exceptions applicable to Test Group Two Pilot Securities. In addition, proposed Paragraph (e)(4) would provide for an additional prohibition on Pilot Securities in Test Group Three referred to as the “Trade-at-Prohibition.” 31 Paragraph (e)(4)(B) would provide that, absent one of the listed exceptions in proposed Rule 7.46(e)(4)(C) enumerated below, no ETP Holder may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.

Proposed Rule 7.46(e)(4)(C) would allow ETP Holders to execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:

(i) The order is executed as agent or riskless principal by an independent trading unit, as defined under Rule 200(f) of Regulation SHO,32 of a Trading Center within an ETP Holder that has a displayed quotation as agent or riskless principal, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received,33 but only up to the full displayed size of that independent trading unit’s previously displayed quote; 34

(ii) The order is executed by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within an ETP Holder that has a displayed quotation for the account of that Trading Center on a principal (excluding riskless principal 35) basis, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent unit’s previously displayed quote; 36

(iii) The order is of Block Size 37 at the time of origin and may not be:

A. an aggregation of non-block orders;
B. broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or
C. executed on multiple Trading Centers; 38

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39 NYSE Arca Equities Rule 5320 is the Exchange’s Prohibition Against Trading Ahead of Customer Orders rule and states:

(a) Except as provided herein, an ETP Holder that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account.

(b) An ETP Holder must have a written methodology in place governing the execution and priority of all pending orders that is consistent with the requirements of this Rule and NASD Rule 3320. An ETP Holder also must ensure that this methodology is consistently applied.

The Exchange proposes to add this exemption to permit ETP Holders to fill a customer order in a Pilot Security at a non-nickel increment to comply with NYSE Arca Equities Rule 5320 under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the ETP Holder at an increment other than $0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to NYSE Arca Equities Rule 5320, where the triggering proprietary trade was permissible pursuant to an exception under the Plan. The Commission granted New York Stock Exchange’s request for Exchange Rule 608(c) related to this provision. See, the Exemption Letter, supra note 26. The Exchange is seeking the same exceptions as requested in the Exemption Request Letters. The Exchange believes such an exception best facilitates the ability of ETP Holders to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan.

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39 As described above, proposed Rule 7.46(e)(4)(C)(i) would establish the circumstances in which a Trading Center could execute a fill pursuant to NYSE Arca Equities Rule 532029 following the execution of a proprietary trade by the ETP Holder at an increment other than $0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.30

Paragraph (e)(1)–(e)(3) would set forth the requirements for Pilot Securities in Test Group Two. ETP Holders quoting or trading such Pilot Securities would be subject to all of the same quoting and trading requirements as described above for Pilot Securities in Test Group Two, including the quoting and trading exceptions applicable to Test Group Two Pilot Securities. In addition, proposed Paragraph (e)(4) would provide for an additional prohibition on Pilot Securities in Test Group Three referred to as the “Trade-at-Prohibition.” 31 Paragraph (e)(4)(B) would provide that, absent one of the listed exceptions in proposed Rule 7.46(e)(4)(C) enumerated below, no ETP Holder may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.

Proposed Rule 7.46(e)(4)(C) would allow ETP Holders to execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:

(i) The order is executed as agent or riskless principal by an independent trading unit, as defined under Rule 200(f) of Regulation SHO,32 of a Trading Center within an ETP Holder that has a displayed quotation as agent or riskless principal, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received,33 but only up to the full displayed size of that independent trading unit’s previously displayed quote; 34

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35 As described above, proposed Rule 7.46(e)(4)(C)(i) would establish the circumstances in which a Trading Center could execute a fill pursuant to NYSE Arca Equities Rule 5320 following the execution of a proprietary trade by the ETP Holder at an increment other than $0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.30

The Exchange proposes that, for proposed Rules 7.46(e)(4)(C)(ii) and (iii) would not permit a broker-dealer to trade on the basis of interest it is not responsible for displaying. In particular, a broker-dealer that is displaying, as principal, via either a processor or an SRO Quotation Feed, a buy order at the price of a Protected Bid of 3,000 shares, with 2,000 shares in an increment other than $0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.30

The display exceptions to Trade-at set forth in proposed Rules 7.46(e)(4)(C)(ii) and (iii) would not permit a broker-dealer to trade on the basis of interest it is not responsible for displaying. In particular, a broker-dealer that is displaying, as principal, via either a processor or an SRO Quotation Feed, a buy order at the price of a Protected Bid of 3,000 shares, with 2,000 shares in an increment other than $0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.30

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The display exceptions to Trade-at set forth in proposed Rules 7.46(e)(4)(C)(ii) and (iii) would not permit a broker-dealer to trade on the basis of interest it is not responsible for displaying. In particular, a broker-dealer that is displaying, as principal, via either a processor or an SRO Quotation Feed, a buy order at the price of a Protected Bid of 3,000 shares, with 2,000 shares in an increment other than $0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.30

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37 “Block Size” is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000.

On a Block Size order or portion of such Block Size order is routed from one Trading Center to another Trading Center in compliance with Rule 611 of Regulation NMS, the Block Size order would lose the Trade-at exemption provided under proposed Rule 7.46(e)(4)(C)(iii), unless the Block Size remaining after the first route and execution meets the Block Size definition under the Plan (see footnote 36). For example, if an exchange has a Protected Bid of 3,000 shares, with 2,000 shares in reserve, and receives a 5,000 share order to sell, the exchange would be able to execute the entire 5,000 share order without having to route to an away market at any other Protected Bid at the same price. If, however, that exchange only has 1,000 shares in reserve, the entire order would not be able to be executed on that exchange, and the exchange would be able to execute the 1,000 shares at the protected bid, and route the rest to away markets at other Protected Bids at the same price, before executing the 1,000 shares in reserve. The same analysis would hold true at the next price point, if the size of the incoming order
(iv) The order is a Retail Investor Order executed with at least $0.005 price improvement;

(v) The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;

(vi) The order is executed as part of a single-priced opening, reopening, or closing transaction on the Exchange;

(vii) The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security in Test Group Three;

(ix) The order is identified as a Trade-at Intermarket Sweep Order; 39

(x) The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at;

(xi) The order is executed as part of a Negotiated Trade;

(xii) The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as would exceed all available shares at the first price, and the remaining shares to be executed would be 5,000 shares or more.

39 In connection with the definition of a Trade-at ISO proposed in Rule 7.46(a)(1)(D), this exception refers to the ISO that is received by a Trading Center.

The Exchange proposed an exemption to the Trade-at Prohibition for Trade-at ISOS to clarify that an ISO that is received by a Trading Center (and which could include the basis of an execution at the price of a Protected Quotation pursuant to Section V(D)(8) of the Plan), is identified as a Trade-at ISO. Depending on whether Rule 611 of Regulation NMS or the Trade-at requirement applies, an ISO may mean that the sender of the ISO has swept better-priced Protected Quotations, so that the recipient of that ISO may trade through the price of the Protected Quotation (Rule 611 of Regulation NMS), or it could mean that the sender of the ISO has swept better-priced Protected Quotations, so that the recipient of that ISO may trade through the price of the Protected Quotation, as long as such full size of displayed quotations at that price, e.g., the recipient of that ISO could permissibly trade at the price of the Protected Quotation.

40 In connection with the definition of a Trade-at ISO proposed in Rule 7.46(a)(1)(D), this exception refers to the Trading Center that routed the ISO.

applicable, for the Pilot Security in Test Group Three with a price that was inferior to the price of the Trade-at transaction;

(xiii) The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a “stopped order”), where:

A. The stopped order was for the account of a customer;

B. The customer agreed to the specified price on an order-by-order basis; and

C. The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security in Test Group Three at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security in Test Group Three at the time of execution, as long as such order is priced at an acceptable increment; 41

(xiv) The order is for a fractional share of a Pilot Security in Test Group Three, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security in Test Group Three into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan; or

(xv) The order is to correct a bona fide error, which is recorded by the Trading Center in its error account. 42 A bond fide error is defined as:

A. The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;

B. The unauthorized or unintended purchase, sale, or allocation of

41 The stopped order exemption in Rule 611 of Regulation NMS applies where “[t]he price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution” (see, 17 CFR 242.611(b)(9)). The Trade-at stopped order exception applies where “the price of the Trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution” (see, Plan, Section V(D)(12)). To illustrate the application of the stopped order exemption as it currently operates under Rule 611 of Regulation NMS and as it is currently proposed for Trade-at, assume the National Best Bid is $10.00 and another proposed trade-at price is $9.95. Under Rule 611 of Regulation NMS, a stopped order to buy can be filled at $9.95 and the firm does not have to send an ISO to access the protected quote at $10.00 since the price of the stopped order must be lower than the National Best Bid. For the stopped order to also be executed at $9.95 and satisfy the Trade-at requirements, the Trade-at exception would have to be revised to allow an order to execute at the price of a protected quote which, in this case, could be $9.95.

Based on the fact that a stopped order would be treated differently under the Rule 611 of Regulation NMS exception than under the Trade-at exception in the Plan, the Exchange believes that it is appropriate to amend the Trade-at stopped order exemption in the Plan to ensure that the application of this exception would produce a consistent result under both Regulation NMS and the Plan. Therefore, the Exchange proposes in this proposed rule 7.46(e)(4)(CL)(xiii) to allow a transaction to satisfy the Trade-at requirement if the stopped order price, for a stopped buy order, is equal to or less than the National Best Bid, and for a stopped sell order, is equal to or greater than the National Best Offer, as long as such order is priced at an acceptable increment.

42 The exceptions to the Trade-at requirement set forth in the Plan and in the Exchange’s proposed Rule 7.46(e)(4)(C) are, in part, based on the exceptions to the trade-through requirement set forth in Rule 611 of Regulation NMS, including exceptions for an order that is executed as part of a transaction that was not a “regular way” contract, and an order that is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center (see, 17 CFR 242.611(b)(2) and (b)(3)). Following the adoption of Rule 611 of Regulation NMS and its exceptions, the Commission issued exemptive relief that created exceptions from Rule 611 of Regulation NMS for certain error correction transactions. See, Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007); Securities Exchange Act Release No. 55883 (June 8, 2007), 72 FR 32927 (June 14, 2007). The Exchange has determined that it is appropriate to incorporate exceptions to the Trade-at Exception to the Trade-at Prohibition, as this exception is equally applicable in the Trade-at context. Accordingly, the Exchange is proposing to exempt certain transactions to correct bona fide errors in the execution of an ISO in the Trade-at Prohibition, subject to the conditions set forth by the SEC’s order exempting these transactions from Rule 611 of Regulation NMS. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. See, the Exemption Letter, supra note 26. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters. As with the corresponding exception under Rule 611 of Regulation NMS, the bona fide error would have to be evidenced by objective facts and circumstances, the Trading Center would have to maintain documentation of such facts and circumstances and record the transaction in its error account. To avail itself of the exemption, the Trading Center would have to establish, maintain and enforce written policies and procedures reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct errors and take prompt action to remedy deficiencies in such policies and procedures. See, Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).
securities, or the failure to follow specific client instructions;

C. The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

D. A delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.

Finally, Proposed Rule 7.46(e)(4)(D) would prevent ETP Holders from breaking an order into smaller orders or otherwise effecting or executing an order to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,43 in general, and furthers the objectives of Section 6(b)(5) of the Act,44 in particular, in that it is designed 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. The Exchange believes that the proposed rule change is consistent with the Act because it ensures that the Exchange and its ETP Holders would be in compliance with a Plan approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act.45 Such approved Plan gives the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

Furthermore, the Exchange is a Participant under the Plan and subject, itself, to the provisions of the Plan. The proposed rule change ensures that the Exchange’s systems would not display or execute trading interests outside the requirements specified in such Plan. The proposal would also help allow market participants to continue to trade NMS Stocks within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

Because the Plan supports further examination and analysis on the impact of tick sizes on the trading and liquidity of the securities of small capitalization companies, and the Commission believes that altering tick sizes could result in significant market-wide benefits and improvements to liquidity and capital formation, adopting rules that enforce compliance by its ETP Holders with the provisions of the Plan would help promote liquidity in the marketplace and perfect the mechanism of a free and open market and national market system.

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 changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

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 Act46 and Rule 19b–4(f)(6) thereunder.47 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)48 normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),49 the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)50 of the Act 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 email to rule-comments@sec.gov. Please include File Number SR–NYSEARCA–2016–76 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.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing the Quoting and Trading Provisions of the Plan To Implement a Tick Size Pilot Program Submitted to the Commission Pursuant to Rule 608 of Regulation NMS Under the Act

May 31, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b–4 thereunder, notice is hereby given that on May 20, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 implement the quoting and trading provisions of the Plan to Implement a Tick Size Pilot Program submitted to the Commission pursuant to Rule 608 of Regulation NMS under the Act (the “Plan”). The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission by New York Stock Exchange LLC to adopt NYSE Rules 67(a) and 67(c)–(e), which also implemented the quoting and trading provisions of the Plan. Therefore, the Exchange has designated this proposal as “non-controversial” and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act. The proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange,

May 31, 2016.

On April 22, 2016, NYSE MKT LLC (“Exchange” or “NYSE MKT”) filed

with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) and Rule 19b–4 thereunder, a proposed rule change to amend its rules relating to pre-opening indications and opening procedures. The proposed rule change was published for comment in the Federal Register on May 3, 2016. The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 17, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act, designates August 1, 2016, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEMKT–2016–49).

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

Brent J. Fields, Secretary.

[FR Doc. 2016–13211 Filed 6–3–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE ARCA–2016–76 and should be submitted on or before June 27, 2016.

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

Brent J. Fields, Secretary.

[FR Doc. 2016–13208 Filed 6–3–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Trading Rules Proposal.

Amendments No. 1 and No. 2 to the Quoting & Trading Program submitted to the Commission on May 3, 2016.3 The

Federal Register / Vol. 81, No. 108 / Monday, June 6, 2016 / Notices 36367

4 17 CFR 242.608.

May 31, 2016.

On April 22, 2016, NYSE MKT LLC (“Exchange” or “NYSE MKT”) filed


4 17 CFR 242.608.