

Therefore, the Exchange believes the identification of an Official Bats One Opening Price or Closing Price in the Bats One Feed would not impose any burden on competition not deemed necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, 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>18</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>19</sup> the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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.

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-BatsBZX-2016-27 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-BatsBZX-2016-27. 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 such filing will also 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-BatsBZX-2016-27 and should be submitted on or before July 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-78181; File No. SR-NYSEArca-2016-44]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Add a New Discretionary Pegged Order**

June 28, 2016.

**I. Introduction**

On March 11, 2016, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Arca Equities Rule 7.31P(h) to add a new Discretionary Pegged Order. The proposed rule change was published for comment in the **Federal Register** on March 30, 2016.<sup>3</sup> The Commission received two comment letters on the proposed rule change<sup>4</sup> and a response letter from the Exchange.<sup>5</sup> On May 12, 2016, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>7</sup> On June 23, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>8</sup> The Commission is publishing

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 77441 (March 24, 2016), 81 FR 17749 ("Notice").

<sup>4</sup> See Letter from Sophia Lee, General Counsel, IEX Group, Inc. ("IEX"), to Brent J. Fields, Secretary, Commission, dated April 15, 2016 ("IEX Letter"); Letter from John C. Nagel, Esq., Managing Director and Sr. Deputy General Counsel, Citadel LLC ("Citadel"), to Brent J. Fields, Secretary, Commission, dated April 20, 2016 ("Citadel Letter").

<sup>5</sup> See Letter from Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, to Brent J. Fields, Secretary, Commission, dated April 27, 2016 ("Response Letter").

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See Securities Exchange Act Release No. 77820, 81 FR 31272 (May 18, 2016). The Commission designated June 28, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>8</sup> In Amendment No. 1, the Exchange: (1) Added subsection (E) to proposed Rule 7.31P(h)(3), which would provide that if the PBBO (as defined below) is locked or crossed, both an arriving and resting Discretionary Pegged Order would wait for a PBBO that is not locked or crossed before the working price (as defined below) is adjusted and the order

Continued

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4.

<sup>20</sup> 17 CFR 200.30-3(a)(12).

this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31P(h) to add a new Discretionary Pegged Order for its Pillar trading platform. According to the Exchange, the proposed Discretionary Pegged Order is based on the Discretionary Peg Order (“D-Peg Order”) proposed by IEX in its Form 1 application seeking registration as a national securities exchange.<sup>9</sup>

Proposed Rule 7.31P(h)(3) would provide that a Discretionary Pegged Order would be a Pegged Order<sup>10</sup> to buy (sell) that upon entry to the NYSE Arca Marketplace<sup>11</sup> would be assigned a

becomes eligible to trade; (2) provided additional responses to the comment letters; and (3) provided more information regarding the implementation date for the proposed rule change. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2016-44/nysearca201644-4.pdf>.

<sup>9</sup> See Notice, *supra* note 3, at 17749. On June 17, 2016, the Commission granted IEX’s application for registration as a national securities exchange. See Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (“IEX Order”). In its proposal, the Exchange identifies the substantive differences between the proposed Discretionary Pegged Order and IEX’s D-Peg Order. First, the proposed Discretionary Pegged Order must have a limit price, whereas IEX’s D-Peg Order is not required to have a limit price. See Notice, *supra* note 3, at 17749. Second, the proposed Discretionary Pegged Order must be Day time-in-force, whereas IEX’s D-Peg order is also permitted to have certain other times-in-force. See *id.* Third, if the PBBO is locked or crossed, both an arriving and resting Discretionary Pegged Order would wait for a PBBO that is not locked or crossed before the working price is adjusted and the order becomes eligible to trade, whereas IEX’s D-Peg Order can be priced and traded if the market is locked or crossed. See Amendment No. 1 at 3–4. In the proposal, the Exchange also states that, unlike IEX’s D-Peg Order, the proposed Discretionary Pegged Order would be based on the PBBO rather than the NBBO. See Notice, *supra* note 3, at 17749. According to the Exchange, the PBBO is the reference price that it uses for its Pegged Orders under Rule 7.31P(h). The Commission notes that, in an amendment to IEX’s exchange application, IEX clarified that its D-Peg Order is based on the Protected NBBO. See Investors’ Exchange LLC—Form 1 Application and Exhibits, Addendum B–1 Comparison to Amendment No. 1, available at <https://www.sec.gov/rules/other/2016/iex/iex-form-1-addendum-b-1-amendments-redline.pdf>.

<sup>10</sup> The term “Pegged Order” is defined in Exchange Rule 7.31P(h) as a Limit Order that does not route with a working price that is pegged to a dynamic reference price. If the designated reference price is higher (lower) than the limit price of a Pegged Order to buy (sell), the working price will be the limit price of the order.

<sup>11</sup> The term “NYSE Arca Marketplace” is defined in Exchange Rule 1.1(e) as the electronic securities communications and trading facility designated by the Board of Directors through which orders of Users are consolidated for execution and/or display.

working price<sup>12</sup> equal to the lower (higher) of the midpoint of the PBBO<sup>13</sup> (“Midpoint Price”) or the limit price of the order. Any untraded shares of such order would be assigned a working price equal to the lower (higher) of the PBB (PBO) or the order’s limit price and would automatically be adjusted in response to changes to the PBB (PBO) for buy (sell) orders up (down) to the order’s limit price. In order to trade with contra-side orders on the NYSE Arca Book, a Discretionary Pegged Order to buy (sell) would exercise the least amount of price discretion necessary from its working price to its discretionary price (defined as the lower (higher) of the Midpoint Price or the Discretionary Pegged Order’s limit price), except during periods of quote instability, as defined in proposed Rule 7.31P(h)(3)(D).

Proposed Rule 7.31P(h)(3)(A) would provide that Discretionary Pegged Orders would not be displayed, must be designated Day, and would be eligible to be designated for the Core Trading Session only. Discretionary Pegged Orders that include a designation for the Early Trading Session or Late Trading Session would be rejected.

Proposed Rule 7.31P(h)(3)(B) would provide that when exercising discretion, Discretionary Pegged Orders would maintain their time priority at their working price as Priority 3—Non-Display Orders and would be prioritized behind Priority 3—Non-Display Orders with a working price equal to the discretionary price of a Discretionary Pegged Order at the time of execution. If multiple Discretionary Pegged Orders are exercising price discretion during the same book processing action, they would maintain their relative time priority at the discretionary price.

Proposed Rule 7.31P(h)(3)(C) would provide that a Discretionary Pegged Order would be eligible to exercise price discretion to its discretionary price, except during periods of quote instability. If the Corporation<sup>14</sup> determines the PBB for a particular security to be an unstable quote, it would restrict buy Discretionary Pegged

<sup>12</sup> The term “working price” is defined in Exchange Rule 7.36P(a)(3) as the price at which an order is eligible to trade at any given time, which may be different from the limit price or display price of the order. The term “limit price” is defined in Exchange Rule 7.36P(a)(2) as the highest (lowest) specified price at which a Limit Order to buy (sell) is eligible to trade.

<sup>13</sup> The term “PBBO” is defined in Exchange Rule 1.1(dd) as the highest Protected Bid and the lowest Protected Offer.

<sup>14</sup> The term “Corporation” is defined in Exchange Rule 1.1(k) to mean NYSE Arca Equities, Inc., as described in NYSE Arca Equities, Inc.’s Certificate of Incorporation and Bylaws.

Orders in that security from exercising price discretion to trade against interest above the PBB. If the Corporation determines the PBO for a particular security to be an unstable quote, it would restrict sell Discretionary Pegged Orders in that security from exercising price discretion to trade against interest below the PBO.

Proposed Rule 7.31P(h)(3)(D) would set forth how the Exchange would determine the quote instability factor (*i.e.*, the probability of an imminent change of the current PBB to a lower price or the current PBO to a higher price). When the quoting activity meets predefined criteria and the quote instability factor is greater than a defined threshold (“quote instability threshold”), the Corporation would treat the quote as not stable (“quote instability” or “crumbling quote”). When the Corporation determines either the PBB or the PBO is unstable, the determination would remain in effect at that price level for ten milliseconds. The Corporation would only treat one side of the PBBO as unstable in a particular security at any given time.

The Corporation would determine that there is quote instability or a crumbling quote when the following occur: The PBB and PBO are the same as the PBB and PBO one millisecond ago; and the PBBO spread is less than or equal to the thirty-day median PBBO spread during the Core Trading Session; and there are more protected quotations on the far side; and the quote instability factor is greater than the defined quote instability threshold.

The quote stability calculation used to determine the current quote instability factor would be defined by the following formula:

$$\frac{1}{(1 + e^{- (C_0 + C_1 * N + C_2 * F + C_3 * N - 1 + C_4 * F - 1)})}$$

The Exchange proposes to use the following quote stability coefficients: C<sub>0</sub> = -2.39515; C<sub>1</sub> = -0.76504; C<sub>2</sub> = 0.07599; C<sub>3</sub> = 0.38374; and C<sub>4</sub> = 0.14466. The Exchange proposes to use the following quote stability variables: N = the number of protected quotations on the near side of the market; F = the number of protected quotations on the far side of the market; N - 1 = the number of protected quotations on the near side of the market one millisecond ago; and F - 1 = the number of protected quotations on the far side of the market one millisecond ago. The Exchange proposes to use a quote instability threshold of 0.32.

Pursuant to proposed Rule 7.31P(h)(3)(D)(i)(D)(3), the Exchange reserves the right to modify the quote stability coefficients or quote instability

threshold at any time, subject to the filing of a proposed rule change with the Commission.

Proposed Rule 7.31P(h)(3)(E) would provide that if the PBBO is locked or crossed, both an arriving and a resting Discretionary Pegged Order would wait for a PBBO that is not locked or crossed before the working price is adjusted and the order becomes eligible to trade.

The Exchange anticipates that it will announce the implementation date of the proposed rule change by the fourth quarter of 2016.<sup>15</sup>

### III. Summary of Comments and Response to Comments

The Commission received two comment letters opposing the proposed rule change and a response letter and an amendment from the Exchange.<sup>16</sup>

One commenter points out that, as noted by the Exchange, the proposed Discretionary Pegged Order is a copy of the D-Peg Order that the commenter created, which has been offered since November 2014 by the IEX Alternative Trading System.<sup>17</sup> This commenter states its belief that the D-Peg Order is a useful order type that can protect investors, if implemented properly.<sup>18</sup> However, this commenter questions the effectiveness of the proposed Discretionary Pegged Order, and states that it should not be approved unless the Exchange amends the proposal and provides additional justifications to show that the order type would work as purported.<sup>19</sup> Specifically, this commenter states that the Exchange would not be in a position to deliver the benefits as claimed if it continues to offer co-location and microwave services to fast market participants because the Exchange would not be able to effectively update the order during a crumbling quote faster than the market participant trying to pick off the order.<sup>20</sup> This commenter also questions whether the Exchange understands the use of the proposed order type and expresses concern that the implementation of order types that are not well thought-through can increase systemic risk and may have adverse impacts on investor protection.<sup>21</sup> According to the commenter, the D-Peg formula was calculated based on the location of its systems in Weehawken, NJ, and its unique latency profile, and it makes little sense to apply the same formula to

orders on the Exchange located in Mahwah, NJ.<sup>22</sup> Finally, this commenter argues that the Exchange should adopt a different name for the proposed order type to avoid confusion and misrepresentation regarding the nature of the order type.<sup>23</sup>

Another commenter also opposes the proposed rule change. According to this commenter, Commission approval of exchanges' use of predictive order types such as the proposed Discretionary Pegged Order would result in rapidly increasing order type complexity, which would reduce market resilience and make markets more opaque for all investors.<sup>24</sup> The commenter states its belief that the utility of these order types is marginal and does not outweigh the additional complexity that these order types would impose on the market.<sup>25</sup> This commenter also expresses concerns regarding how the Commission could or would effectively review and police additional predictive order types as they emerge and evolve, and whether the Commission would propose guidance or limitations on how predictive order types may operate.<sup>26</sup> Finally, this commenter states that predictive order types encroach on the traditional role of broker-dealers by using inherent competitive advantages that exchanges have over broker-dealers.<sup>27</sup>

In response to comments, the Exchange indicates that the proposed Discretionary Pegged Order is a competitive response to IEX's D-Peg Order.<sup>28</sup> The Exchange states that the

<sup>22</sup> See *id.*, at 2.

<sup>23</sup> See *id.*, at 3. In its letter, the commenter also responds to the Exchange's comments on the D-Peg Order, which were set forth in the Notice. See *id.*, at 2. As noted above, the Commission granted IEX's application for registration as a national securities exchange, which included the D-Peg Order. See *supra* note 9. This order does not address comments and responses related to IEX's D-Peg Order.

<sup>24</sup> See Citadel Letter at 1. This commenter notes that the proposed Discretionary Pegged Order is virtually identical to IEX's D-Peg Order. See *id.* The commenter notes that it explained its concerns in more detail in its comment letter on IEX's exchange application. See Letter from John C. Nagel, Esq., Managing Director and Sr. Deputy General Counsel, Citadel LLC, to Brent J. Fields, Secretary, Commission, dated April 14, 2016.

<sup>25</sup> See Citadel Letter at 2.

<sup>26</sup> See *id.*

<sup>27</sup> See *id.* In the context of IEX's D-Peg Order and the proposed Discretionary Pegged Order, the Exchange also requests that the Commission articulate the boundaries of when an exchange may or may not offer services that are otherwise performed by broker-dealers and when it would be appropriate for an exchange to monitor the quality of the prices in a market to determine how to price an order, and raises the issue of whether these order types are consistent with the Commission's previous disapproval of Nasdaq's benchmark orders. See Response Letter at 2-4. See also Notice, *supra* note 3, at 1775.1.

<sup>28</sup> See Response Letter at 3-4.

proposed calculation to determine whether a quote is unstable is a straightforward determination that does not require inbound order flow to be intentionally delayed to be effective.<sup>29</sup> According to the Exchange, while an intentionally-delayed market may prevent arriving interest from interacting with pegged orders immediately, it does not believe that processing market data updates and inbound orders out of phase (as with IEX) or simultaneously (as proposed by the Exchange) would materially alter the effectiveness of the proposed functionality.<sup>30</sup> The Exchange also states its belief that the benefits of the proposed functionality would be the same regardless of the relative speed.<sup>31</sup> Moreover, according to the Exchange, the proposed Discretionary Pegged Order would be an optional order type, and if market participants do not believe that the quote instability formula appropriately predicts market movement, they do not have to use the order type.<sup>32</sup> The Exchange states that, over time and based on client feedback, it would consider changes to the specific formula used to assess the quality of the market or would consider offering additional types of Discretionary Pegged Orders to serve the trading needs of different market participants, subject to filing separate proposed rule changes with the Commission.<sup>33</sup> Finally, the Exchange states that it does not anticipate that the proposed order type would have any disruptive effects on the overall market.<sup>34</sup>

### IV. Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>35</sup> In particular, the

<sup>29</sup> See Amendment No. 1 at 4.

<sup>30</sup> See *id.*

<sup>31</sup> See *id.*

<sup>32</sup> See Response Letter at 4-5 and Amendment No. 1 at 4. The Exchange states its belief that the effectiveness of a particular order type in serving the trading needs of market participants should be market-driven. See Response Letter at 4.

<sup>33</sup> See Response Letter at 4. In its response letter, the Exchange also provides additional comments on IEX's exchange application. As noted above, the Commission granted IEX's exchange application, and this order does not address comments and responses related to IEX's D-Peg Order. See *supra* note 9.

<sup>34</sup> See Amendment No. 1 at 4.

<sup>35</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</sup> See Amendment No. 1 at 5.

<sup>16</sup> See *supra* notes 4, 5, and 8.

<sup>17</sup> See IEX Letter at 1.

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*, at 1-3.

<sup>20</sup> See *id.*, at 2.

<sup>21</sup> See *id.*, at 2-3.

Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>36</sup> which requires, among other things, that the rules of a national securities exchange be 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.

As noted above, the proposed Discretionary Pegged Order is based on IEX's D-Peg Order, although there are some differences between the two orders.<sup>37</sup> First, unlike IEX's D-Peg Order, the proposed Discretionary Pegged Order must have a limit price.<sup>38</sup> The Commission notes that this is not a novel aspect for this type of order because IEX's D-Peg Order is also permitted to have a limit price, although it is not required to have one.<sup>39</sup> Second, unlike IEX's D-Peg Order, the proposed Discretionary Pegged Order must have a Day time-in-force.<sup>40</sup> The Commission similarly notes that this is not a novel aspect for this type of order because IEX's D-Peg Order is also permitted to have the Day time-in-force, although it is permitted to have certain other times-in-force as well.<sup>41</sup> Third, if the PBBO is locked or crossed, an arriving or resting Discretionary Pegged Order would wait for a PBBO that is not locked or crossed before the working price is adjusted and the order becomes eligible to trade,<sup>42</sup> whereas IEX's D-Peg Order can be priced and traded if the market is locked or crossed.<sup>43</sup> The Commission notes that the proposed treatment of Discretionary Pegged Orders when the market is locked or crossed is consistent with Exchange Rule 7.31P(h)(1)(B), which governs the treatment of other non-displayed pegged orders on the Exchange (*i.e.*, Market Pegged Orders) when the market is locked or crossed.

The Commission notes that, according to the Exchange, the proposed Discretionary Pegged Order would assist ETP Holders in obtaining best execution for their customers by limiting executions at the Midpoint Price when the PBBO is not stable, and by reducing the potential to execute at a stale price.<sup>44</sup> Moreover, the Commission

notes that, in response to the comments, the Exchange acknowledges that an intentionally-delayed market may prevent arriving interest from interacting with pegged orders immediately, but states its belief that the proposed Discretionary Pegged Order would be effective, notwithstanding the differences in speed between the Exchange and IEX.<sup>45</sup>

With respect to questions regarding whether the proposed Discretionary Pegged Order would perform a function that is typically performed by broker-dealers, and whether approval of the proposed Discretionary Pegged Order would be inconsistent with the Commission's prior disapproval of Nasdaq's "benchmark orders," the Commission notes that, as with IEX's rules governing the D-Peg Order, proposed Rule 7.31P(h)(3) would delineate the specific conditions under which a Discretionary Pegged Order would or would not be eligible to execute up (down) to the Midpoint Price by setting forth the formula that the Exchange would use to determine quote stability. Also, as with IEX's D-Peg Order, the Exchange would encode in its rule the totality of the discretionary feature of the proposed Discretionary Pegged Order. As the Exchange notes in the proposal, the manner by which it would monitor the quality of the quotes would be objective and transparent, as set forth in the proposed rule.<sup>46</sup> As with IEX's D-Peg Order, the Commission does not believe that the hardcoded conditionality of the proposed order type would provide the Exchange with actual discretion or the ability to exercise individualized judgment when executing an order. The Commission also notes that the Exchange would be required to submit a proposed rule change pursuant to Section 19(b) of the Act prior to implementing any changes to the proposed order. Moreover, as with IEX's D-Peg Order, the Commission believes that the proposed Discretionary Pegged Order is distinguishable from Nasdaq's benchmark orders and does not implicate the same issues.<sup>47</sup>

With respect to a commenter's concern that approval of the proposed Discretionary Pegged Order would lead to the proliferation of complex predictive order types, the Commission notes that new exchange proposed order types are subject to the rule filing process of Section 19(b) of the Act and

Rule 19b-4 under the Act, and the standards in Section 6(b) of the Act, among other provisions.<sup>48</sup>

With respect to a commenter's request that the Exchange use a different name for the proposed order in order to avoid confusion and misrepresentation regarding the nature of the order,<sup>49</sup> the Commission notes that the functionality of the proposed Discretionary Pegged Order is specifically delineated in proposed Rule 7.31P(h)(3). Moreover, the Commission notes that, currently, order types on different exchanges with nearly identical names may function differently.<sup>50</sup> As a result, the Commission does not believe the Exchange's use of the name "Discretionary Pegged Order" raises regulatory concerns.

Finally, the Commission notes that existing exchanges offer both discretion and pegging functionalities, including the combination of both of those functionalities in a single order type.<sup>51</sup> As with IEX's D-Peg Order, the proposed discretion functionality would be turned "on" or "off" depending on the Exchange's quote stability determination. Because the Exchange has encoded in its rule the totality of the discretionary feature of the proposed Discretionary Pegged Order, the Commission believes the proposed order type is a close variant of the discretion and pegging functionality that currently exist on other exchanges.

Based on the foregoing and the Exchange's representations, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

## V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be

<sup>48</sup> See also Form 19b-4, General Instructions.

<sup>49</sup> In its comment letter, this commenter references its "Patent-Pending 'DYNAMIC PEG ORDERS IN AN ELECTRONIC TRADING SYSTEM'" in the U.S. patent application number 14/799,975, priority to August 22, 2014." However, this commenter states that its comment letter "speaks to deficiencies in NYSE's application in light of current market structure and is not intended to address, comment on or waive our property rights in the D-peg invention or related subject matter." See IEX Letter at note 2. In issuing this order, the Commission expresses no view with respect to these matters.

<sup>50</sup> See, e.g., Exchange Rule 7.31P(h)(2) (describing the Exchange's "Primary Pegged Order") and IEX Rules 11.190(a)(3) and (b)(8) (describing IEX's "primary peg order").

<sup>51</sup> See, e.g., Nasdaq Rule 4703(g).

<sup>36</sup> 15 U.S.C. 78f(b)(5).

<sup>37</sup> See *supra* note 9.

<sup>38</sup> See Notice, *supra* note 3, at 17749.

<sup>39</sup> See IEX Rule 11.190(b)(10)(E).

<sup>40</sup> See Notice, *supra* note 3, at 17749.

<sup>41</sup> See IEX Rule 11.190(b)(10)(B).

<sup>42</sup> See Amendment No. 1 at 3-4.

<sup>43</sup> See IEX Rule 11.190(h)(3).

<sup>44</sup> See Notice, *supra* note 3, at 17751.

<sup>45</sup> See *supra* notes 29-34 and accompanying text (discussing in more detail the Exchange's response to comments).

<sup>46</sup> See Notice, *supra* note 3, at 17751.

<sup>47</sup> See IEX Order, *supra* note 9, at 41153 (discussing in more detail the differences between IEX's D-Peg Order and Nasdaq's benchmark orders).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-44 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-2016-44. 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-2016-44 and should be submitted on or before July 22, 2016.

#### VI. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange added subsection (E) to proposed Rule 7.31P(h)(3), which would provide that if the PBBO is locked or crossed, both an

arriving and resting Discretionary Pegged Order would wait for a PBBO that is not locked or crossed before the working price is adjusted and the order becomes eligible to trade. As noted above, this aspect of the proposed Discretionary Pegged Order is consistent with Exchange Rule 7.31P(h)(1)(B), which governs the treatment of other non-displayed pegged orders on the Exchange (*i.e.*, Market Pegged Orders) when the market is locked or crossed. In Amendment No. 1, the Exchange also provided additional responses to the comment letters and provided more information regarding the implementation date for the proposed rule change. These two changes do not alter the substance of the proposed rule change. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>52</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>53</sup> that the proposed rule change (SR-NYSEArca-2016-44), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>54</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-15718 Filed 6-30-16; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC-32163; File No. 812-14523]

#### MainStay Funds Trust, *et al.*; Notice of Application

June 27, 2016.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(j) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule

17d-1 under the Act to permit certain joint arrangements and transactions.

#### Summary of the Application:

Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

**Applicants:** MainStay Funds Trust, The MainStay Funds and MainStay VP Funds Trust (each a "Trust" and collectively the "Trusts") and New York Life Investment Management LLC ("New York Life Investments").

**Filing Dates:** The application was filed on July 30, 2015, and amended on September 28, 2015, January 19, 2016, May 12, 2016, and June 20, 2016.

**Hearing or Notification of Hearing:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2016 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: New York Life Investment Management LLC, 51 Madison Avenue, New York, NY 10010.

**FOR FURTHER INFORMATION CONTACT:** Robert Shapiro, Senior Counsel, at (202) 551-7758 or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### Applicants' Representations

1. Each Trust is organized as a Massachusetts business trust or a Delaware statutory trust and is registered under the Act as an open-end

<sup>52</sup> 15 U.S.C. 78s(b)(2).

<sup>53</sup> *Id.*

<sup>54</sup> 17 CFR 200.30-3(a)(12).