

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-NASDAQ-2016-096 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-NASDAQ-2016-096. 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-NASDAQ-2016-096, and should be submitted on or before August 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-78357; File No. SR-NYSEArca-2016-94]**

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 1.1 To Establish an Official Closing Price for Exchange-Listed Securities if the Exchange Is Unable To Conduct a Closing Auction**

July 19, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on July 6, 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 the Substance of the Proposed Rule Change**

The Exchange proposes to amend NYSE Arca Equities Rule 1.1(ggP) to establish an Official Closing Price for Exchange-listed securities if the Exchange is unable to conduct a Closing Auction. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange is proposing to amend its rules to specify back-up procedures for determining an Official Closing Price for Exchange-listed securities if it is unable to conduct a Closing Auction in one or more securities due to a systems or technical issue.<sup>4</sup> Specifically, the Exchange proposes to amend NYSE Arca Equities Rule 1.1(ggP) ("Rule 1.1(ggP)") to establish an Official Closing Price for Exchange-listed securities if the Exchange is impaired.

The proposed changes are based on approved rules of the New York Stock Exchange, LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT").<sup>5</sup> Those markets, together with the Exchange and the NASDAQ Stock Market LLC ("Nasdaq"), developed the back-up procedures after taking into consideration feedback from discussions with industry participants, including

<sup>4</sup> See New York Stock Exchange press release dated July 22, 2015, available here: <http://ir.theice.com/press-and-publications/press-releases/all-categories/2015/07-22-2015.aspx>.

<sup>5</sup> See Securities Exchange Act Release No. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR-NYSE-2016-18) and (SR-NYSEMKT-2016-31) ("OCP Approval Order").

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

meeting the following key goals important to market participants:

- Providing a pre-determined, consistent solution that would result in a closing print to the applicable securities information processor (“SIP”) within a reasonable time frame from the normal closing time;
- Minimizing the need for industry participants to modify their processing of data from the SIPs; and
- Providing advance notification of the applicable closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue’s closing auction.

The Exchange also proposes to amend Rule 1.1(ggP) to specify that, for a UTP Security,<sup>6</sup> the Exchange would use the official closing price as disseminated by the primary listing exchange to determine the Trading Collar<sup>7</sup> for such security if there is no consolidated last sale price on the same trading day, or the Auction Reference Price<sup>8</sup> for such security.

#### Background

Current Rule 1.1(ggP) describes how the Exchange establishes the “Official Closing Price,” which is the reference price to determine the closing price in a security for purposes of Rule 7 Equities Trading. Rule 1.1(ggP) provides that the Official Closing Price is determined as follows:

- As provided for in Rule 1.1(ggP)(1), for securities listed on the Exchange, the Official Closing Price is the price established in a Closing Auction of one round lot or more on a trading day. If there is no Closing Auction or if a Closing Auction trade is less than a round lot on a trading day, the Official Closing Price is the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. If there were no consolidated last sale eligible trades during Core Trading Hours on that trading day, the Official Closing Price will be the prior trading day’s Official Closing Price.
- As provided for in Rule 1.1(ggP)(2), for securities listed on an exchange other than the Exchange, the Official Closing Price is the official closing price disseminated by the primary listing market for that security via a public data feed on a trading day. If the primary listing market does not disseminate an

official closing price on a trading day, the Official Closing Price is the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. If there were no consolidated last sale eligible trades during Core Trading Hours on that trading day, the Official Closing Price will be the prior trading day’s Official Closing Price.

The rule further provides that an Official Closing Price may be adjusted to reflect corporate actions or a correction to a closing price, as disseminated by the primary listing market for the security.

In Rule 7, the Exchange uses the Official Closing Price for three purposes: (1) To determine the Auction Reference Price for a security, as provided for in Rule 7.35P(a)(8)(A); (2) to determine the Trading Collar for a security if there is no consolidated last sale price on the same trading day, as provided for in Rule 7.31P(a)(1)(B)(i); and (3) for securities listed on the Exchange only, for purposes of determining whether to trigger a Short Sale Price Test, as defined under Rule 7.16P(f)(2).<sup>9</sup>

#### Proposed Amendments

The Exchange proposes to amend Rule 1.1(ggP) to establish how the Exchange would determine an Official Closing Price if the Exchange is unable to conduct a Closing Auction in an NYSE Arca-listed security or securities due to a systems or technical issue. To reflect this change, the Exchange proposes to add new rule text as proposed Rules 1.1(ggP)(2)–(4) and re-number current Rule 1.1(ggP)(2) as proposed Rule 1.1ggP(5), as described in greater detail below.

Proposed Rules 1.1(ggP)(2)–(4) are based on NYSE Rules 123C(1)(e)(ii)–(iv) and NYSE MKT Rules 123C(1)(e)(ii)–(iv)—Equities with non-substantive differences to use NYSE Arca Equities terminology instead of NYSE terminology, as follows: “Corporation” or “NYSE Arca Marketplace” instead of “Exchange,” “Closing Auction” instead of “closing transaction,” “Core Trading Hours” instead of “regular trading hours,” and “ETP Holder” instead of “member organization.”<sup>10</sup> In addition,

<sup>9</sup> The Exchange disseminates to the SIP the Official Closing Price as an “M” value. For a description of all sale conditions that are reportable to the SIP for Exchange-listed securities, including the “M” value, see the Consolidated Tape System Participant Communications Interface Specification, dated November 16, 2015, at 86, available here: [https://www.ctaplans.com/publicdocs/ctaplans/notifications/trader-update/cts\\_input\\_spec.pdf](https://www.ctaplans.com/publicdocs/ctaplans/notifications/trader-update/cts_input_spec.pdf).

<sup>10</sup> See NYSE Arca Equities Rules 1.1(k) (defining the term “Corporation”); 1.1(e) (defining the term “NYSE Arca Marketplace”); 7.35P(d) (defining the

as under the NYSE and NYSE MKT rules, the Exchange proposes that the back-up procedures specified in proposed Rules 1.1(ggP)(2)–(4) would be applicable to Exchange-listed securities only.

As proposed, Rule 1.1(ggP)(2) would provide that if the Exchange determines at or before 3:00 p.m. Eastern Time that it is unable to conduct a Closing Auction in one or more NYSE Arca-listed securities due to a systems or technical issue, the Exchange would designate an alternate exchange for such security or securities. The Exchange would publicly announce the exchange designated as the alternate exchange via Trader Update. In such case, the Official Closing Price of each security would be determined on the following hierarchy:

- Proposed Rule 1.1(ggP)(2)(A) would provide that the Official Closing Price would be the official closing price for such security under the rules of the designated alternate exchange. For example, if the Exchange designates Nasdaq as the alternate exchange, the Official Closing Price would be based on Nasdaq Rule 4754, which defines how Nasdaq establishes an official closing price.

The proposed 3:00 p.m. cut off time was selected in part based on discussions with market participants regarding their capability to re-direct closing-only interest in Exchange-listed securities in time to participate in the closing auction of an alternate venue. By designating an alternate exchange before 3:00 p.m. Eastern Time, the Exchange believes that market participants would be more likely to have sufficient notice to direct any closing-only interest in Exchange-listed securities to the designated alternate exchange. By providing market participants sufficient time, when possible, to route closing-only interest to an alternate venue for participation in that exchange’s closing auction process, that alternate exchange’s closing auction would be more likely to result in a closing price that reflects market value for such security.

If there were insufficient interest for a closing auction on the designated alternate exchange, the Exchange believes that the rules of Nasdaq provide for an appropriate hierarchy of which price to use to determine the Official Closing Price.

- Proposed Rule 1.1(ggP)(2)(B) would provide if the designated alternate exchange does not have an official closing price in a security, the Official

term “Closing Auction”); 1.1(j) (defining the term “Core Trading Hours”); and 1.1(n) (defining the term “ETP Holder”).

<sup>6</sup> As defined in NYSE Arca Equities Rule 1.1(ii), the term “UTP Security” means a security that is listed on a national securities exchange other than the Exchange and that trades on the NYSE Arca Marketplace pursuant to unlisted trading privileges.

<sup>7</sup> See NYSE Arca Equities Rule 7.31P(a)(1)(B)(i).

<sup>8</sup> See NYSE Arca Equities Rule 7.35P(a)(8)(A).

Closing Price would be the volume-weighted average price (“VWAP”) of the consolidated last-sale eligible prices of the last five minutes of trading during Core Trading Hours up to the time that the VWAP is processed. The VWAP would include any closing transactions on an exchange and would take into account any trade breaks or corrections up to the time the VWAP is processed. Because the VWAP would include any last-sale eligible trades, busts, or corrections that were reported up to the time that the SIP calculates the VWAP, the Exchange believes that the VWAP price would reflect any pricing adjustments that may be reported after 4:00 p.m. ET.

As discussed above, the manner by which exchanges calculate their respective official closing prices provide for an official closing price in the absence of a closing transaction. Accordingly, the Exchange believes that in circumstances when the Exchange designates an alternate exchange, the VWAP calculation would rarely be used to determine the Official Closing Price for an Exchange-listed security.

- Proposed Rule 1.1(ggP)(2)(C) would provide that if the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades in the last five minutes of trading during Core Trading Hours in such security, the Official Closing Price would be the last consolidated last-sale eligible trade during Core Trading Hours on that trading day.

- Proposed Rule 1.1(ggP)(2)(D) would provide that if the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades in a security on a trading day in such security, the Official Closing Price would be the prior day’s Official Closing Price.

- Finally, proposed [sic] 1.1(ggP)(2)(E) would provide that if an Official Closing Price for a security cannot be determined under (A), (B), or (C) of proposed Rule 1.1(ggP)(2) and there is no prior day’s Official Closing Price, the Exchange would not publish an Official Closing Price for such security.

The Exchange would use the hierarchy set forth in proposed Rule 1.1(ggP)(2)(B)–(E) only if the designated alternate exchange did not disseminate an official closing price in a security. In addition, the Exchange proposes to add as paragraph (E) of Rule 1.1(ggP)(2) what would happen if there were no Official Closing Price published on the prior trading day (*i.e.*, the Exchange would not publish an Official Closing Price).

The Exchange believes not publishing an Official Closing Price would be a rare occurrence, and is most likely to occur for a thinly-traded security, such as a when issued security, right, or warrant, that has been listed for trading but does not have any consolidated last-sale eligible trades.

If the Corporation determines that it is impaired at or before 3:00 p.m. and the Official Closing Price for an Exchange-listed security is determined pursuant to proposed Rule 1.1(ggP)(2), the SIP would publish the Official Closing Price for such security no differently than how the SIP publishes the Official Closing Price for an Exchange-listed security pursuant to Rule 1.1(ggP)(1).<sup>11</sup> Accordingly, if the Official Closing Price is determined pursuant to proposed Rule 1.1(ggP)(2), recipients of SIP data would not have to make any changes to their systems because the SIP would publish the “M” last sale condition as an Exchange Official Closing Price for any impacted Exchange-listed securities.

As further proposed, Rule 1.1(ggP)(3) would describe how the Corporation would determine the Official Closing Price for a security if the Corporation determines after 3:00 p.m. Eastern Time that it is unable to conduct a Closing Auction in one or more NYSE Arca-listed securities due to a systems or technical issue. Based on input from market participants, the Exchange believes that, if the Exchange were to announce after 3:00 p.m. Eastern Time that it is impaired and unable to conduct a Closing Auction, market participants would not have sufficient time to re-direct closing-only orders to an alternate venue. Accordingly, in such scenario, the Exchange proposes to use the following hierarchy for determining the Official Closing Price for a security:

- Proposed Rule 1.1(ggP)(3)(A) would provide that the Official Closing Price would be the VWAP of the consolidated last-sale eligible prices of the last five minutes of trading during Core Trading Hours up to the time that the VWAP is processed, including any closing transactions on an exchange. The VWAP would take into account any trade breaks or corrections up to the time of [sic] the VWAP is processed. This

VWAP would be calculated in the same manner as set forth in proposed in Rule 1.1(ggP)(2)(B), described above. However, if the Exchange’s determination that it is unable to conduct a Closing Auction is after 3:00 p.m. ET, the proposed VWAP calculation would be the primary means for determining the Official Closing Price for a security. In such case, the Exchange believes that the VWAP would appropriately reflect the pricing of a security because it would include, in a volume-weighted manner, the price and volume of closing transactions on other exchanges if market participants are able to route closing interest in Exchange-listed securities to an alternate venue for participation in a closing auction.

- Proposed Rule 1.1(ggP)(3)(B) would provide that if there were no consolidated last-sale eligible trades in the last five minutes of trading during Core Trading Hours in such security, the Official Closing Price would be the last consolidated last-sale eligible trades [sic] during Core Trading Hours on that trading day. This proposed rule text is the same as proposed Rule 1.1(ggP)(2)(C).

- Proposed Rule 1.1(ggP)(3)(C) would provide that if there were no consolidated last-sale eligible trades in such security on a trading day, the Official Closing Price would be the prior day’s Official Closing Price. This proposed rule text is the same as proposed Rule 1.1(ggP)(2)(D).

- Finally, proposed Rule 1.1(ggP)(3)(D) would provide that if an Official Closing Price for a security cannot be determined under (A), (B), or (C) of proposed Rule 1.1(ggP)(3) and there is no prior day’s Official Closing Price, the Exchange would not publish an Official Closing Price for such security. This proposed rule text is based on proposed Rule 1.1(ggP)(2)(E).

Similar to how the Official Closing Price would be published under proposed Rule 1.1(ggP)(2), if the Exchange determines that it is impaired after 3:00 p.m. and the Official Closing Price is determined pursuant to proposed Rule 1.1(ggP)(3), the SIP would publish the Official Closing Price for such security no differently than how the SIP publishes the Official Closing Price for an Exchange-listed security pursuant to Rule 1.1(ggP)(1). Accordingly, if the Official Closing Price is determined pursuant to proposed Rule 1.1(ggP)(3), recipients of SIP data would not have to make any changes to their systems because the SIP would publish the “M” last sale condition as an Exchange Official Closing Price for

<sup>11</sup> The Operating Committees of the CTA Plan, CQ Plan, and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis approved the Impaired Market Contingency Plan under which the SIPs would print an impaired primary listing exchange’s contingency Official Closing Price as the Official Closing Price of that primary listing exchange as provided for in the rules of respective primary listing exchanges.

any impacted Exchange-listed securities.

For purposes of Rule 7.16P(f)(2) and determining whether to trigger a Short Sale Price Test under that rule, the Official Closing Price for Exchange-listed securities would still be determined based on Rule 1.1(ggP)(1). If the Exchange is impaired and cannot conduct a Closing Auction, similar to NYSE and NYSE MKT, the Official Closing Price as defined in proposed Rules 1.1(ggP)(2) and (3) would be used for purposes of determining whether a Short Sale Price Test is triggered under Rule 7.16P(f)(2) in an Exchange-listed security the next trading day.

Proposed Rule 1.1(ggP)(4) would provide that if the Exchange determines the Official Closing Price under paragraphs (2) or (3) of proposed Rule 1.1(ggP), the Exchange would publicly announce the manner by which it would determine its Official Closing Price and the designated alternate exchange, if applicable, and all open interest designated for the Exchange close residing in the NYSE Arca Marketplace would be deemed cancelled to give ETP Holders the opportunity to route their closing interest to alternate execution venues. This proposed rule would make clear that any determination that the Exchange would make under proposed Rules 1.1(ggP)(2) or (3) would be publicly announced so that market participants would have an opportunity to route their closing interest accordingly. In addition, the proposed rule change would make clear that any interest designated for the Exchange close, *i.e.*, MOC Orders and LOC Orders, would be cancelled by the Exchange so ETP Holders may route such interest to alternate execution venues.

To reflect that the Exchange could be designated as an alternate exchange by another primary listing market, the Exchange proposes to amend Rule 1.1(ggP)(1) to specify that the rule would be applicable to Auction-Eligible Securities, as defined in Rule 7.35P(a)(1), rather than only be applicable for securities listed on NYSE Arca. With this proposed change, if NYSE, NYSE MKT, or Nasdaq designate the Exchange as its designated alternate exchange under their respective back-up rules, Rule 1.1(ggP)(1) would govern how the Exchange would determine the Official Closing Price for Auction-Eligible Securities.

The Exchange also proposes to amend Rule 1.1(ggP)(1) to specify how the Exchange would determine the Official Closing Price for a security that has transferred its listing to the Exchange or is a new listing and does not have any

consolidated last-sale eligible trades on its first day of trading on the Exchange. This proposed rule change is based on NYSE Rule 123C(1)(e)(i) and NYSE MKT Rule 123C(1)(e)(i)—Equities. As proposed, for a security that has transferred its listing to the Exchange and does not have any consolidated last-sale eligible trades on its first trading day, the Official Closing Price would be the prior day's closing price disseminated by the primary listing market that previously listed such security. In addition, for a security that is a new listing and does not have any consolidated last-sale eligible trades on its first trading day, the Official Closing Price would be based on a derived last sale associated with the price of such security before it begins trading on the Exchange. The Exchange believes the proposed rule text would provide transparency in Exchange rules of how the Exchange would determine the Official Closing Price for a security that has transferred its listing to the Exchange, and thus did not have a prior day's Official Closing Price on the Exchange, or is a new listing that did not have any trades on its first trading day.

Finally, the Exchange proposes to amend proposed Rule 1.1(ggP)(5) (which is current Rule 1.1(ggP)(2)) to clarify that this rule text would continue to specify how the Exchange would determine the Official Closing Price for UTP Securities for purposes of establishing Trading Collars if there is no consolidated last sale price on the same trading day, or Auction Reference Prices. For these purposes only, the Exchange would continue to use the official closing price as disseminated by the primary listing market for that security via a public data feed on a trading day for these purposes. The proposed change to the rule text is designed to make clear that the Exchange would continue to use the official closing price of the primary listing market as the Official Closing Price for UTP Securities for these specific purposes, while at the same time, providing for the Exchange to publish a "M" value for Auction-Eligible Securities based on an Official Closing Price determined pursuant to 1.1(ggP)(1), as proposed. In addition, if another primary listing market designates the Exchange as its designated alternate exchange under its official closing price rules, any Official Closing Price published by the Exchange in such securities would be published by the SIP as the official closing price of the primary listing exchange. Accordingly, proposed Rule

1.1(ggP)(5) would use that Official Closing Price as well.

To effect this amendment, the Exchange proposes to delete the phrase "For securities listed on an exchange other than NYSE Arca," and replace it with "For purposes of Rules 7.31P(a)(1)(B)(i) and 7.35P(a)(8)(A) for UTP Securities only". The remaining text of the rule would be unchanged. The Exchange believes that for UTP Securities, the official closing price as disseminated by the primary listing market would be a better price to use to determine the next day's Trading Collars or Auction Reference Price rather than using the Exchange-determined Official Closing Price under Rule 1.1(ggP)(1).

Because of the technology changes associated with this proposed rule change, the Exchange will implement the proposed back-up procedures for determining an Official Closing Price no later than 120 days after the operative date of this proposed rule change and will announce the implementation date via Trader Update.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency in how the Exchange would determine the Official Closing Price in Exchange-listed securities when the Exchange is unable to conduct a Closing Auction due to a systems or technical issue. The Exchange believes that the proposed amendments would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed determination of an Official Closing Price was crafted in response to input from industry participants and would:

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

- Provide a pre-determined, consistent solution that would result in a closing print to the SIP within a reasonable time frame from the normal closing time;

- minimize the need for industry participants to modify their processing of data from the SIP; and
- provide advance notification of the applicable closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction

More specifically, the Exchange believes the proposed hierarchy for determining the Official Closing Price if the Exchange determines that it is impaired at or before 3:00 p.m. Eastern Time would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal, which is based on input from market participants and the approved rules of NYSE and NYSE MKT, would provide sufficient time for market participants to direct closing-only interest to a designated alternate exchange in time for such interest to participate in a closing auction on such alternate venue in a meaningful manner. The Exchange further believes that relying on the official closing price of a designated alternate exchange would provide for an established hierarchy for determining an Official Closing Price for an Exchange-listed security if there is insufficient interest to conduct a closing auction on the alternate exchange. In such case, the rules of Nasdaq already provide a mechanism for determining an official closing price for securities that trade on that market.

The Exchange further believes that if the Exchange determines after 3:00 p.m. that it is impaired and unable to conduct a Closing Auction, the proposed VWAP calculation would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a mechanism to determine the value of an affected security for purposes of determining an Official Closing Price. By using a volume-weighted calculation that would include the closing transactions on an affected security on alternate exchanges as well as any busts or corrections that were reported up to the time that the SIP calculates the value, the Exchange believes that the proposed calculation would reflect the correct price of a security. In addition, by using a VWAP calculation rather than the last consolidated last-sale eligible price as of the end of Core Trading Hours, the Exchange would reduce the potential for

an anomalous trade that may not reflect the true price of a security from being set as the Official Closing Price for a security.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal would have minimal impact on market participants. As proposed, from the perspective of market participants, even if the Exchange were impaired, the SIP would publish an Official Closing Price for Exchange-listed securities on behalf of the Exchange in a manner that would be no different than if the Exchange were not impaired. If the Exchange determines that it is impaired after 3:00 p.m., market participants would not have to make any system changes. If the Exchange determines that it is impaired before 3:00 p.m. Eastern Time and designates an alternate exchange, market participants may have to do systems work to re-direct closing-only orders to the alternate exchange. However, the Exchange understands, based on input from market participants, that such changes would be feasible based on the amount of advance notice. In addition, the Exchange believes that designating an alternate exchange when there is sufficient time to do so would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow for the price-discovery mechanism of a closing auction to be available for impacted Exchange-listed securities.

In addition, the Exchange believes that the proposed amendments to Rule 1.1(ggP)(1) would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule change would enable the Exchange to serve as a designated alternate exchange under the respective rules of NYSE, NYSE MKT, or Nasdaq. Specifically, by expanding the reach of Rule 1.1(ggP)(1) to all Auction-Eligible Securities on the Exchange, and not just Exchange-listed securities, the hierarchy for determining an Official Closing Price specified in Rule 1.1(ggP) would be available to all securities that trade on the Exchange. Because the Exchange would be determining an Official Closing Price for UTP Securities under the proposed amendments to Rule 1.1(ggP)(1) for purposes of disseminating an "M" value to the SIPs, the Exchange further believes that the proposed amendments to Rule 1.1(ggP)(5) would be consistent with the protection of investors and the

public interest by using the official closing price as determined by the primary listing market for UTP Securities for purposes of determining the next day's first Trading Collar (in the absence of a consolidated last sale price) or Auction Reference Price.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather to provide for how the Exchange would determine an Official Closing Price for Exchange-listed securities if it is impaired and cannot conduct a closing transaction due to a systems or technical issue. The proposal has been crafted with input from market participants, Nasdaq, and the SIPs, and is designed to reduce the burden on competition by having similar back-up procedures across all primary listing exchanges if such exchange is impaired and cannot conduct a closing auction.

#### *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 foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

<sup>14</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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-NYSEArca-2016-94 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-2016-94. 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 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-2016-94, and should be submitted on or before August 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

[FR Doc. 2016-17444 Filed 7-22-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78358; File No. SR-DTC-2016-004]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Establish a Link With Euroclear

July 19, 2016.

On June 3, 2016, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2016-004 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> to establish a link ("EB Link") between DTC and Euroclear Bank SA/NV ("EB"). The proposed rule change was published for comment in the **Federal Register** on June 16, 2016.<sup>3</sup> The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### I. Description of the Proposed Rule Change

The following is a description of the proposed rule change, as provided primarily by DTC:

The proposed rule change consists of amendments to the Rules, By-Laws and Organization Certificate of The Depository Trust Company (the "Rules")<sup>4</sup> in order to add new Rule 34 (EB Link) to establish EB Link between DTC and EB for DTC Participants that are also EB participants ("CP Participants") to use Securities held at DTC for EB Collateral Transactions (as defined below). The proposed Rule 34 specifies the Accounts, Free Deliveries, and the terms and conditions that together comprise collateral positioning ("Collateral Positioning" or "CP") for CP Participants. The proposed rule

change will: (i) Allow CP Participants to designate a sub-account for Collateral Positioning (a "CP Sub-Account") of Securities selected by the CP Participant (the "CP Securities") to Deliver to EB; and (ii) establish the Securities Account of EB (the "EB Account") on the books of DTC to receive and hold such CP Securities. DTC understands that EB will then credit such CP Securities to an account it maintains on its books for such CP Participant for use in transfers on the books of EB ("EB Collateral Transactions") in connection with EB's collateral management services ("EB CMS"), as described below.<sup>5</sup>

#### (i) Background

(a) New Regulations Require Better Access to and Management of Securities Collateral

New and enhanced regulatory requirements are leading derivative and financing counterparties to seek increased efficiency in the availability and deployment of collateral and streamlined margin processing. More specifically, the phase-in period of the Basel III liquidity rules,<sup>6</sup> as well as recent regulatory changes by the Commodity Futures Trading Commission,<sup>7</sup> the U.S. prudential regulators,<sup>8</sup> European Market Infrastructure Regulation,<sup>9</sup> and the Basel

<sup>5</sup> On May 9, 2016, EB filed an application with the Commission on Form CA-1, seeking to amend its existing exemption from clearing agency registration by expanding its existing exemption to authorize EB to offer EB CMS to its U.S. participants for U.S. equities (the "EB CA-1 Amendment"). DTC understands that the EB CA-1 Amendment is necessary for EB to offer EB CMS, and consequently, the DTCC Euroclear Global Collateral Ltd. ("DEGCL") Inventory Management Service ("DEGCL IMS"), to U.S. participants for U.S. equities. Commission approval of this proposed rule change to add new Rule 34 (EB Link) will have no effect on the authority of EB pursuant to the EB CA-1 Amendment. In addition, this proposed rule change provides that it will not be implemented until the EB CA-1 Amendment is approved by the Commission.

<sup>6</sup> Basel Committee on Banking Supervision, Basel III: A global framework for more resilient banks and the banking system, December 2010 and revised June 2011; Basel Committee on Banking Supervision, Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools, January 2013; Basel Committee on Banking Supervision, Basel III: The net stable funding ratio, October 2014, available at [www.bis.org/bcbs/basel3.htm](http://www.bis.org/bcbs/basel3.htm).

<sup>7</sup> Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 635 (January 6, 2016); 17 CFR parts 23 and 140.

<sup>8</sup> Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (November 30, 2015); 12 CFR parts 45, 237, 349, 624 and 1221. The U.S. prudential regulators include: Office of the Comptroller of the Currency—Treasury, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, and the Federal Housing Finance Agency.

<sup>9</sup> European Supervisory Authorities' (ESAs) Final Draft Regulatory Technical Standards on risk-

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<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. 78031 (June 10, 2016), 81 FR 39303 (June 16, 2016) (SR-DTC-2016-004).

<sup>4</sup> Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.