

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-Phlx-2016-92 and should be submitted on or before November 4, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment Nos. 1, 2 and 3

The Commission finds good cause to approve the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3, prior to the thirtieth day after the date of publication of notice of the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3 in the **Federal Register**. As described above, the Exchange proposes to amend its rules to comply with the Plan. The Commission notes that the Pilot started implementation on October 3, 2016, and accelerated approval of the proposal would ensure that the rules of the Exchange would be in place during implementation. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,⁴⁵ to approve the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3, on an accelerated basis.

VII. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Exchange Act,⁴⁶ that the proposed rule change (SR-Phlx-2016-92), as modified by Partial Amendment Nos. 1, 2 and 3, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁷

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79068; File No. SR-NYSEArca-2016-136]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 7.35P To Provide for Widened Price Collar Thresholds for the Core Open Auction on Volatile Trading Days

October 7, 2016.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 28, 2016, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.35P to provide for widened price collar thresholds for the Core Open Auction on volatile trading days. 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 amend NYSE Arca Equities Rule 7.35P (“Rule 7.35P”) to provide for widened price collar thresholds for the Core Open Auction on volatile trading days. The Exchange believes that widening the Auction Collars for the Core Open Auction during periods of market-wide volatility would assist the Exchange in conducting fair and orderly auctions for its listed securities.

As set forth in Rule 7.35P(a)(10), the price collar thresholds for the Core Open Auction are currently set at 10% for securities with an Auction Reference Price of \$25.00 or less, 5% for securities with an Auction Reference Price greater than \$25.00 but less than or equal to \$50.00, and 3% for securities with an Auction Reference Price greater than \$50.00.⁴

The Exchange proposes to widen the applicable Auction Collars for the Core Open Auction on days with market-wide volatility to 10% for all Auction-Eligible Securities,⁵ regardless of the Auction Reference Price. The Exchange believes that for securities priced greater than \$25.00, the proposed wider price collar threshold would allow for additional price movements during periods of market-wide volatility, while continuing to prevent auctions from occurring at prices significantly away from the applicable Auction Reference Price.⁶ The proposed 10% price collar threshold for the Core Open Auction is the same as currently used by the

⁴ The Auction Reference Price for the Core Open Auction is the midpoint of the Auction NBBO or, if the Auction NBBO is locked, the locked price. If there is no Auction NBBO, the prior trading day’s Official Closing Price. The Auction Reference Price for the Trading Halt Auction is the last consolidated round-lot price of that trading day, and if none, the prior trading day’s Official Closing Price. See NYSE Arca Equities Rule 7.35P(a)(8).

⁵ For the Core Open Auction, Auction-Eligible Securities are all securities for which the Exchange is the primary listing market and UTP Securities designated by the Exchange. See NYSE Arca Equities Rule 7.35P(a)(1)(A).

⁶ On June 24, 2016, the Exchange temporarily widened Auction Collars for the Core Open Auction for all Auction-Eligible Securities to 10% in response to the a temporary basis [sic] referendum vote by the United Kingdom (“UK”) to leave the European Union, which resulted in an extraordinary level of global market activity, including the pricing of the ETPs traded on the Exchange. See Securities Exchange [sic] Release No. 78152 (June 24, 2016), 81 FR 42781 (June 30, 2016) (SR-NYSEArca-2016-90).

⁴⁵ 15 U.S.C. 78s(b)(2).

⁴⁶ *Id.*

⁴⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Nasdaq Stock Market LLC (“Nasdaq”) for its opening crosses.⁷

To determine whether there is market-wide volatility, the Exchange proposes to use the same standard that its affiliated exchange, the New York Stock Exchange LLC (“NYSE”), recently added to determine whether there is market-wide volatility.⁸ As proposed, the Exchange would widen its Auction Collars for the Core Open Auction if, as of 9:00 a.m. Eastern Time, the E-mini S&P 500 Futures are +/- 2% from the prior day’s closing price of the E-mini S&P 500 Futures or the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market. Market-wide volatility applies similar pricing pressure to all eligible securities and, in addition to the empirical measurement of the E-mini S&P 500 Futures, the Exchange proposes that it would have the power to widen the Auction Collars if it determines that it is necessary or appropriate for the maintenance of a fair and orderly market.⁹

The Exchange believes that widening the Auction Collars for the Core Open Auction during periods of market-wide volatility would promote greater efficiency and transparency on such trading days by specifying uniform parameters for how the Core Open Auction would be effectuated for all Auction-Eligible securities on trading days experiencing market-wide volatility.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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, and in

⁷ See Nasdaq Rule 4752(d)(2)(E) and http://www.nasdaqtrader.com/content/productsservices/trading/crosses/openclose_faqs.pdf.

⁸ See NYSE Rules 15(d)(2) and 123D(a)(1)(B)(ii); see also Securities Exchange [sic] Release No. 78228 (July 5, 2016), 81 FR 44907 (July 11, 2016) (SR–NYSE–2016–24) (Approval Order).

⁹ Volatility affecting the Core Open Auction can emanate from many sources, including the previous day’s trading session, overnight trading, trading in the foreign markets before the opening, substantial activity in the futures market before the opening, government actions or announcements, global news and events, and changes to the E-mini S&P Futures after 9:00 a.m. Eastern Time.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

In particular, the Exchange believes that applying the same Auction Collars of 10% to all Eligible Auction Securities during periods of market-wide volatility, regardless of the Auction Reference Price, would remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest, because it would promote fair and orderly auctions during periods when market-wide volatility is causing pricing dislocation across all securities. The Exchange further believes that widening the price collar thresholds for all securities would remove impediments to and perfect the mechanism of a national market system because it is designed to allow for greater price movement, while at the same time preventing auction trades from occurring at prices significantly away from the applicable Auction Reference Price. Accordingly, investors would be protected from executions significantly away from the last sale in a security or other applicable reference price, but natural price fluctuations resulting from the market volatility would be permitted. In addition, the Exchange believes that widening the Auction Collars could reduce the possibility of securities triggering multiple trading pauses under the Regulation NMS Plan to Address Market Volatility.

The Exchange further believes that by specifying the standards for when Auction Collars would be widened, the proposal would advance the efficiency and transparency of the opening process, thereby fostering accurate price discovery at the open of trading. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would 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 competitive issues but rather is designed to ensure a fair and orderly market by widening the price collar thresholds for the Core Open Auction on trading days with market-wide volatility and therefore will not create a burden on competition. The proposed rule change is not intended to address competitive issues but rather promote greater efficiency and transparency at the open of trading on the Exchange.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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–2016–136 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–2016–136. 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-2016-136 and should be submitted on or before November 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32309; File No. 812-14680-01]

The Bank of New York Mellon Trust Company, National Association and The Bank of New York Mellon; Notice of Application

October 7, 2016.

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

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from certain requirements of rule 3a-7(a)(4)(i) under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit an issuer of asset-backed securities ("ABS") that is not registered as an investment company under the Act in reliance on rule 3a-7 under the Act (an "Issuer") to appoint any of the applicants to act as a trustee in connection with the Issuer's ABS when any such applicant is affiliated with an underwriter for the Issuer's ABS.

APPLICANTS: The Bank of New York Mellon Trust Company, National Association and The Bank of New York Mellon.

FILING DATES: The application was filed on August 1, 2016.

HEARING OR NOTIFICATION OF HEARING:

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 31, 2016 and should be accompanied by proof of service on the applicant, 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: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: Lincoln Finkenberg, Esq., Associate General Counsel & Managing Director, The Bank of New York Mellon, 225 Liberty Street, New York, NY 10286.

FOR FURTHER INFORMATION CONTACT:

Laura J. Riegel, Senior Counsel, at (202) 551-3038, 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 for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations:

1. Both applicants are wholly-owned direct subsidiaries of The Bank of New York Mellon Corporation.¹ Each applicant is frequently selected to act as trustee in connection with ABS issued by Issuers.

2. An ABS transaction typically involves the transfer of assets by a seller, usually by a "sponsor," to a bankruptcy remote special purpose corporate or trust entity that is

established for the sole purpose of holding the assets and issuing ABS to investors (an "ABS Transaction"). Payments of interest and principal on the ABS depend primarily on the cash flow generated by the pool of assets owned by the Issuer.

3. The parties to an ABS Transaction enter into several transaction agreements that provide for the holding of the assets by the Issuer and define the rights and responsibilities of the parties to the transaction ("Transaction Documents"). The operative Transaction Document governing the trustee is referred to herein as the "Agreement."

4. The sponsor of an ABS Transaction assembles the pool of assets by purchasing or funding them, describes them in the offering materials, and retains the underwriter to sell interests in the assets to investors. The sponsor determines the structure of the ABS Transaction and drafts the Transaction Documents. The sponsor selects the other parties to the ABS Transaction, including the underwriter, the servicer, and the trustee.

5. The servicer, either directly or through subservicers, manages the assets that the Issuer holds. The servicer typically collects all the income from the assets and remits the income to the trustee. The trustee uses the income, as instructed by the servicer and/or as provided by the Agreement, to pay interest and principal on the ABS, to fund reserve accounts and purchases of additional assets, and to make other payments including fees owed to the trustee and other parties to the ABS Transaction.

6. The sponsor of an ABS Transaction selects the trustee and other participants in the transaction. In selecting a trustee, the sponsor generally seeks to obtain customary trust administrative and related services for the Issuer at minimal cost. In some instances, other parties to an ABS Transaction may provide recommendations to a sponsor about potential trustees. An underwriter for an ABS Transaction also may provide advice to the sponsor about trustee selection based on, among other things, the underwriter's knowledge of the pricing and expertise offered by a particular trustee in light of the contemplated transaction.

7. If an underwriter affiliated with an applicant recommends a trustee to a sponsor, both the underwriter's recommendation and any selection of an applicant by the sponsor will be based upon customary market considerations of pricing and expertise, among other things, and the selection will result from an arms-length negotiation between the sponsor and an applicant. An applicant

¹ Applicants also request that the order apply to an Issuer's future appointment of any other entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with any of the applicants as a trustee in connection with an Issuer's ABS. Applicants represent that any other entity that relies on the order in the future will comply with the terms and conditions of the application. Any existing entity currently intending to rely on the requested order has been named as an applicant.

¹² 17 CFR 200.30-3(a)(12).