

Offer and disclose any such adjustments in accordance with Rule 13e-4 so that the purchase price is not greater than the NAV per Share on that day.

The request is similar to the Class Relief for unlisted REITs.<sup>4</sup> In particular, the Company represents that the Tender Offer is designed to provide a limited source of liquidity for the Company's shareholders as there is no trading market for the Shares.<sup>5</sup> Furthermore, according to the Company, the terms of the Tender Offer will be fully disclosed because the Tender Offer will be conducted pursuant to the substantive, procedural, and disclosure requirement of Rule 13e-4, thus minimizing potential manipulative effects. Additionally, the Tender Offer price will not be greater than the NAV per Share for any day during the Tender Offer period. Because the price at which the Shares are sold and the price at which the Shares will be purchased in the tender offer are both based on the NAV per Share and the Tender Offer will be adjusted as described above, which will result in the Tender Offer price never being higher than the price at which the Company sells Shares during the Tender Offer, the opportunity to manipulate the price at which the Shares are being offered or repurchased is minimized.

As a condition of the relief, the Company must terminate the Tender Offer should a secondary trading market for the Shares develop. As a result, the exemptive relief granted to the Company for the Tender Offer should not have a manipulative effect on the applicable distribution. Additionally, this exemptive relief is further conditioned on the Tender Offer price not being greater than the NAV per Share for any day during the Tender Offer period. This should help reduce the potential for the Tender Offer having a manipulative effect on the price of such distributions as the purchases should not improve the offering price. Accordingly, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rule 102(a) to permit the Company to engage in the Tender Offer for the Shares during the applicable restricted period.

## Conclusion

*It is hereby ordered*, pursuant to Rule 102(e), that the Company is exempt from Rule 102(a) for the limited purpose

of engaging in the Tender Offer for the Shares during the applicable restricted period, subject to the following conditions:

- The Company shall terminate the Tender Offer if a secondary market for the Shares being tendered develops;
- The Tender Offer price will not be greater than the NAV per Share for any day during the Tender Offer period; and
- The Company will be in compliance with Rule 13e-4 at all times during the Tender Offer period.

This exemption is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended ("Exchange Act"). Furthermore, the exemption is strictly limited to the application of Rule 102 to the Tender Offer as described above. The Tender Offer should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of the facts or representations. In addition, persons relying on this exemption are directed to the antifraud and anti-manipulation provisions of the federal securities laws, particularly Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, such transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72915; File No. SR-NYSEArca-2014-87]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31 To Delete Functionality Permitting Primary Only Orders and Primary Sweep Orders To Be Designated With Intermarket Sweep Order Modifiers

August 26, 2014.

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 August 13, 2014, 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 7.31 to delete functionality permitting Primary Only Orders ("PO Order") and Primary Sweep Orders ("PSO") to be designated with Intermarket Sweep Order ("ISO") modifiers. The text of 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.

<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.

<sup>4</sup> Class Relief, *supra* note 2.

<sup>5</sup> The Company represents that it has no intention to list its shares of common stock for trading on a national securities exchange or other over-the-counter trading market.

<sup>6</sup> 17 CFR 200.30-3(a)(6).

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

1. Purpose

The Exchange is proposing to amend Rules 7.31(x) and (kk) to eliminate the ability of Users to enter PO Orders and PSOs with ISO modifiers. A PO Order is a market or limit order that is routed to the primary market by the Exchange. Currently, Rule 7.31(x)(4) permits a PO Order to be entered with an ISO Modifier and places the responsibility of Regulation NMS compliance on the broker-dealer that designates the PO Order with an ISO Modifier. A PSO is a PO Order that first sweeps the Exchange book and then any unexecuted portion is routed to the primary market. Similar to Rule 7.31(x)(4), Rule 7.31(kk)(2) permits a PSO to be entered with an ISO Modifier and places the responsibility of Regulation NMS compliance on the broker-dealer that designates the PSO with an ISO Modifier.

The Exchange proposes to delete Rules 7.31(x)(4) and 7.31(kk)(2) to no longer permit PO Orders and PSOs to be entered with ISO Modifiers. Instead, if a User were to enter an ISO instruction on a PO Order or PSO, the Exchange will reject such order. To reflect this change, the Exchange proposes to amend Rules 7.31(x) and 7.31(kk) to provide that PO Orders and PSOs may not be designated as an ISO. The Exchange is not proposing any other changes to the use of ISOs.

The Exchange believes it is appropriate to no longer accept PO Orders and PSOs entered with ISO modifiers. While the Exchange has placed the responsibility of Regulation NMS compliance on the originating broker-dealer, the Exchange believes that the proposal would avoid the appearance of the Exchange's routing broker of violating Regulation NMS requirements should the originating broker-dealer not be appropriately marking orders as ISO, even though responsibility rests with the originating broker-dealer. The proposed change would more clearly delineate such Regulation NMS requirements with a single party—the originating broker-dealer. Either the originating broker-dealer will directly enter ISOs at the necessary trading centers to comply with Regulation NMS or submit a routable order to the Exchange and the Exchange will route the order as necessary to ensure compliance with Regulation NMS.

The Exchange will announce the implementation date of the systems

functionality associated with the proposed rule change by Trader Update to be published no later than 30 days following the effective date. The implementation date will be no later than 30 days following the issuance of the Trader Update.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that rejecting PO Orders and PSOs with ISO modifiers will protect investors and the public interest because the proposal will limit the number of ISO orders routed to other market centers for which, at the time of the route, the Exchange is unaware whether the originating broker-dealer has complied with its Regulation NMS obligations. The Exchange believes that the rule proposal might reduce the potential in which an ISO is routed by the Exchange to an away market without the originating broker-dealer complying with Regulation NMS. Additionally, the Exchange does not believe that eliminating the ability to enter PO Orders and PSOs with ISO modifiers will have a detrimental effect on the market because ETP Holders have the option either to enter ISOs directly to the necessary trading centers to comply with Regulation NMS or submit a routable order to the Exchange and the Exchange will route the order as necessary to ensure compliance with Regulation NMS.

*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 Exchange believes the [sic] eliminating the ability to add an ISO modifier to PO Orders and PSOs will not impose any burden on competition because ETP Holders have the option either to enter ISOs directly to the necessary trading centers to comply with Regulation NMS or submit a routable order to the Exchange and the Exchange will route the order as necessary to ensure compliance with Regulation NMS.

<sup>4</sup> 15 U.S.C. 78f(b).

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

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>9</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</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.

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArca–2014–87 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–NYSEArca–2014–87. 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 NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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–2014–87 and should be submitted on or before September 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72923; File No. SR–NYSE–2014–43]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fees for Non-Display Use of NYSE OpenBook, NYSE Trades, and NYSE BBO, and To Establish Fees for Non-Display Use of NYSE Order Imbalances

August 26, 2014.

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 August 13, 2014, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its fees for non-display use of NYSE OpenBook, NYSE Trades, and NYSE BBO, and to establish fees for non-display use of NYSE Order Imbalances, operative on September 1, 2014. The text of 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, on the Commission's Web site at [www.sec.gov](http://www.sec.gov), 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.

<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.

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

##### 1. Purpose

The Exchange proposes to amend its non-display fees for NYSE OpenBook, NYSE Trades, and NYSE BBO, to establish such fees for NYSE Order Imbalances, and to establish managed non-display services fees for NYSE BBO, operative on September 1, 2014.

The Exchange established the current non-display and managed non-display services fees for NYSE OpenBook, NYSE Trades, and NYSE BBO in April 2013.<sup>4</sup> The Exchange now proposes to change those fees and to establish similar fees for NYSE Order Imbalances.

Under the proposal, non-display use would continue to mean accessing, processing, or consuming an NYSE data product delivered via direct and/or Redistributor<sup>5</sup> data feeds for a purpose other than in support of a data recipient's display or further internal or external redistribution (“Non-Display Use”). As is the case today, non-display and managed non-display services fees would apply to the Non-Display Use of the data product as part of automated calculations or algorithms to support trading decision-making processes or the operation of trading platforms.

The Exchange is proposing to expand the types of uses considered Non-Display Use to also include non-trading uses. In addition, the proposal would specify that Non-Display Use would include any trading use, rather than only certain types of trading, such as high frequency or algorithmic trading, as under the current fee structure. Under the proposal, examples of Non-Display Use would include any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management. The Exchange believes that non-trading uses benefit data recipients by allowing users to automate functions, achieving greater speed and accuracy, and in turn, for example, reducing costs of labor to perform the functions manually. This approach would address the difficulties

<sup>4</sup> See Securities Exchange Act Release No. 69278 (April 2, 2013), 78 FR 20973 (April 8, 2013) (SR–NYSE–2013–25) (“2013 Release”).

<sup>5</sup> “Redistributor” means a vendor or any person that provides a real-time NYSE data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.