

of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures and controls, as well as to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity.<sup>12</sup> Rule 17Ad-22(b)(1) requires, in relevant part, a registered clearing agency that performs central counterparty services to establish, implement, maintain and enforce written policies and procedures that are reasonably designed to measure the registered clearing agency's credit exposures to its participants at least once daily and limit its exposures to potential losses from participant defaults under normal market conditions.<sup>13</sup> Rule 17Ad-22(b)(2) requires, in relevant part, a registered clearing agency that performs central counterparty services to establish, implement, maintain and enforce written policies and procedures that are reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements.<sup>14</sup> Rule 17Ad-22(e)(6) requires, in relevant part, a covered clearing agency that provides central counterparty services to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers and produces margin levels commensurate with the risks and particular attributes of each relevant product, portfolio and market, and marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily.<sup>15</sup>

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act and the relevant provisions of Rule 17Ad-22 thereunder. The Commission believes that the proposed rule change will reduce the risk that the process for determining spread margin requirements will require excessive time to process in the event that extreme spread curves cause the ISDA Pricer to fail; the proposed rule change thereby will improve LCH SA's operational ability to calculate its margin requirements promptly without sacrificing accuracy. Because it will facilitate the calculation of margin requirements in a timely fashion, the proposed rule change is consistent with the prompt and accurate clearance and

settlement requirement of Section 17A(b)(3)(F) of the Act and with operational risk requirements of Rule 17Ad-22(e)(17).

The Commission also believes that the proposed rule change provides for an approach that takes into consideration relevant risks (including hazard rates and interest rates) in order to provide for appropriate method for calculating CDS prices, and consequently the measurement of LCH SA's credit exposures and margin requirements, in the event that the ISDA Pricer fails. As a result, the proposed rule change is consistent with requirements of Rules 17Ad-22(b)(1) and (2), and Rule 17Ad-22(e)(6).

#### IV. Conclusion

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-LCH SA-2017-004) be, and hereby is, approved.<sup>16</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80851; File No. SR-NYSEARCA-2017-63]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Liquidity Program Until December 31, 2017

June 2, 2017.

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 May 23, 2017, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

<sup>16</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

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

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

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 extend the pilot period for the Exchange's Retail Liquidity Program (the "Retail Liquidity Program" or the "Program"), which is currently scheduled to expire on June 30, 2017, until December 31, 2017. 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 purpose of this filing is to extend the pilot period of the Retail Liquidity Program, currently scheduled to expire on June 30, 2017,<sup>4</sup> until December 31, 2017.

###### Background

In December 2013, the Commission approved the Retail Liquidity Program on a pilot basis.<sup>5</sup> The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, Retail Liquidity Providers ("RLPs") are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer ("PBBO"), called

<sup>4</sup> See Securities Exchange Act Release No. 79495 (December 7, 2016), 81 FR 90033 (December 13, 2016) (SR-NYSEArca-2016-157).

<sup>5</sup> See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107) ("RLP Approval Order").

<sup>12</sup> 17 CFR 240.17Ad-22(e)(17).

<sup>13</sup> 17 CFR 240.17Ad-22(b)(1).

<sup>14</sup> 17 CFR 240.17Ad-22(b)(2).

<sup>15</sup> 17 CFR 240.17Ad-22(e)(6)(i) and (ii).

a Retail Price Improvement Order (“RPI”). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations (“RMOs”) can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Arca Equities Rule 7.44(m), the pilot period for the Program is scheduled to end on June 30, 2017.

#### Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.<sup>6</sup> As such, the Exchange believes that it is appropriate to extend the current operation of the Program.<sup>7</sup> Through this filing, the Exchange seeks to amend NYSE Arca Equities Rule 7.44(m) and extend the current pilot period of the Program until December 31, 2017.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>9</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 a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

#### 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 simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

#### 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>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</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)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>14</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
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2017-63 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-2017-63. 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

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>6</sup> See RLP Approval Order, *supra* n. 5, 78 FR at 79529.

<sup>7</sup> Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. See Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated May 23, 2017.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

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-2017-63, and should be submitted on or before June 29, 2017.

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80854; File No. SR-CBOE-2017-010]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Related to Unusual Market Conditions and the Duty To Systemize Non-Electronic Orders Prior to Representation

June 2, 2017.

#### I. Introduction

On February 15, 2017, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its rules regarding the circumstances in which CBOE Floor Officials may declare a "fast" market and the actions those Floor Officials may take when a fast market is declared, including the ability to suspend the

duty to systemize a non-electronic order prior to representing it in open outcry trading. The proposed rule change was published for comment in the **Federal Register** on March 6, 2017.<sup>3</sup> The Commission received no comments on the proposed rule change. On April 18, 2017, pursuant to Section 19(b)(2) of the Exchange Act,<sup>4</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>5</sup>

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to institute proceedings under Section 19(b)(2)(B) of the Exchange Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change, as discussed in Section III below. The institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as described in Section III below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change in order to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

#### II. Summary of Proposal

Currently, CBOE Rule 6.6(a) permits two Floor Officials to declare a market to be "fast" "because of an influx of orders or other unusual conditions or circumstances" when doing so would be in "the interest of maintaining a fair and orderly market."<sup>7</sup> Once a market is declared "fast," Floor Officials have the authority to take a number of actions.<sup>8</sup>

In its filing, CBOE proposes several changes to Rule 6.6. First, CBOE proposes to amend paragraph (a) of the rule to require that at least one of the two Floor Officials that declares a fast market must be an Exchange employee. Additionally, the Exchange proposes to provide a non-exhaustive list of "unusual conditions or circumstances" that Floor Officials may consider when

determining whether to declare a market to be "fast." Specifically, proposed new language in Rule 6.6(a) would provide that: "[i]t may be in the interest of fair and orderly markets to declare a fast market when one or more of the following conditions have been met: (i) The previous day's closing price of the S&P 500 Index is more than 2% away from the previous day's opening price; (ii) the front-month E-mini S&P 500 Future (symbol ES/1) is trading more than 20 points above or below the previous day's closing values by 8:00 a.m. CT; or (iii) the intraday price of the S&P 500 Index moves more than 1% in any one hour interval during regular trading hours." In the Notice, CBOE acknowledges that some of these conditions occur with some degree of frequency,<sup>9</sup> but nevertheless asserts that these measures could reflect volatile trading conditions.<sup>10</sup> The Exchange asserts that including these guidelines in the rule text would give better notice to market participants as to when it might declare a fast market.<sup>11</sup>

Further, CBOE proposes to allow two Floor Officials to suspend during a fast market the requirement of CBOE Rule 6.24 that non-electronic orders be systematized prior to representation on the trading floor.<sup>12</sup> During such a suspension, Trading Permit Holders ("TPHs") and TPH organizations would be required to follow the procedures described in Rule 6.24(b), which require paper tickets to be used for orders received during a malfunction or disruption of the Exchange's systems.<sup>13</sup> The Exchange also would require that, as soon as it declares an end to a fast market, TPHs would be required immediately to resume systematizing orders prior to representing them and use best efforts to, as soon as possible and no later than the close of business, input electronically into the Exchange's systems all relevant order information received during the time period when the order systematization requirement was suspended.<sup>14</sup>

In justifying its proposal, CBOE highlights that the risk that customers and market participants may experience losses if they miss the market as a result of the time required for TPHs to systematize orders, a risk that CBOE

<sup>3</sup> See Securities Exchange Act Release No. 80123 (February 28, 2017), 82 FR 12667 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 80481, 82 FR 18941 (April 24, 2017). The Commission designated June 4, 2017, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

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

<sup>7</sup> See CBOE Rule 6.6(a).

<sup>8</sup> See CBOE Rule 6.6(b).

<sup>9</sup> See Notice, *supra* note 3, at 12669 (noting that, over a prior eight month period, the intraday price of the S&P 500 Index had moved more than 1% in any one hour interval during regular trading hours on at least 30 days, which the Exchange categorized as a "not . . . infrequent occurrence").

<sup>10</sup> See *id.* at 12668-69.

<sup>11</sup> See *id.*

<sup>12</sup> See proposed Rule 6.6(b).

<sup>13</sup> See proposed Rule 6.6.01.

<sup>14</sup> See *id.*

<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.