

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80929; File No. SR-NYSEArca-2017-40]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change in Connection With the Proposed Merger of Its Wholly Owned Subsidiary NYSE Arca Equities, Inc. With and Into the Exchange

June 14, 2017.

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 June 2, 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 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

In connection with the proposed merger of its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”) with and into the Exchange, the Exchange proposes to amend (1) Article III, Sections 3.01, 2.02 and 4.02 of the Amended and Restated NYSE Arca, Inc. Bylaws (“Bylaws”); (2) certain Rules of the Exchange to facilitate the integration of NYSE Arca Equities and create a single rulebook; (3) the NYSE Arca Options Fee Schedule (the “Options Fee Schedule”); and (4) the Schedule of Fees and Charges for Exchange Services (the “Listing Fee Schedule”). In addition, the Exchange proposes to remove the NYSE Arca Equities organizational documents, rules of NYSE Arca Equities, and NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (“Equities Fee Schedule”) from the Exchange rules and adopt a new fee schedule for the Exchange equity market (“NYSE Arca Equities Fee Schedule”). 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

In connection with the proposed merger of its wholly owned subsidiary NYSE Arca Equities with and into the Exchange (“Merger”), the Exchange proposes to amend (1) Article III, Sections 3.01, 2.02 [sic] and 4.02 of the Bylaws; (2) certain Rules of the Exchange to facilitate the integration of NYSE Arca Equities and create a single rulebook; (3) the Options Fee Schedule; and (4) the Listing Fee Schedule. In addition, the Exchange proposes to remove the NYSE Arca Equities organizational documents, rules of NYSE Arca Equities, and Equities Fee Schedule from the Exchange rules and adopt a new NYSE Arca Equities Fee Schedule in connection with the proposed merger.

Presently, the Exchange has delegated certain responsibilities to its subsidiary NYSE Arca Equities to operate its equities market. The Exchange also has two rulebooks, the NYSE Arca rules for the options market and the NYSE Arca Equities rules for the equities market. Following the Merger, the Exchange will be the surviving entity, and it will directly operate both the Exchange’s options and equities markets, with one rulebook. The Exchange is proposing amendments in order to reflect that change.

More specifically, the proposed amendments would allow the Exchange to directly operate both markets by:

1. Terminating the existing delegation to NYSE Arca Equities;
2. amending the Exchange’s corporate governance structure to (a) integrate Equities Trading Permit holders (“ETP Holders”)⁴ into the process for appointing members of the Board of

⁴ An Equities Trading Permit is referred to as an “ETP.”

Directors (“Board”), (b) provide that the holding member, NYSE Group, Inc. (“NYSE Group”) determines the size of the Board; (c) integrate ETP Holders into the Board and Permit Holder Committees; and (d) add the existing NYSE Arca Equities Business Conduct Committee to the Exchange rules;

3. integrating the current NYSE Arca Equities rules into the NYSE Arca rules, so that the Exchange has a single rulebook; and

4. adopting the proposed NYSE Arca Equities Fee Schedule for the Exchange equity market and amending the Options Fee Schedule and Listing Fee Schedule.

The Exchange addresses each item in turn below.

The Exchange proposes that the rule change proposed herein would become operative upon the completion of the Merger. The Exchange would complete the Merger following approval of this rule filing, on a date determined by its Board.

I. Termination of Delegation

The Exchange has delegated certain responsibilities to its subsidiary NYSE Arca Equities to operate its equities market. However, the Exchange retains ultimate responsibility for its equities market, including the responsibility to ensure the fulfillment of statutory and self-regulatory obligations.⁵ NYSE Arca Equities is not a national securities exchange.

The Exchange proposes to terminate the delegation of functions to NYSE Arca Equities (“Delegation”) currently set forth in NYSE Arca Equities Rule 14.2 (NYSE Arca Equities Inc. (“NYSE Arca Equities”)). NYSE Arca Equities Rule 14.1 (NYSE Arca, Inc.), which sets forth the authority and functions retained by the Exchange, would become obsolete as a result. Accordingly, neither would be carried over into the Exchange rules.

In connection with the termination of the Delegation, the NYSE Arca Equities Certificate of Incorporation and Bylaws, rules of NYSE Arca Equities and Equities Fee Schedule would be removed from the Exchange rules.

⁵ See NYSE Arca Equities Rule 3.4 (stating that NYSE Arca, “as a self-regulatory organization registered with the Securities and Exchange Commission pursuant to Section 6 of the Exchange Act, shall have ultimate responsibility in the administration and enforcement of rules governing the operation of its subsidiary, NYSE Arca Equities, Inc.”). See also NYSE Arca Equities Rule 14.1.

II. Proposed Changes to the Exchange's Corporate Governance

A. Composition of the Board and Appointment of Non-Affiliated Directors of the Post-Merger Entity

Pursuant to the Merger, the Exchange proposes to incorporate the ETP Holders into the process for selecting Exchange Board members. In addition, it proposes to implement certain other changes regarding the composition of the Board that would make the provisions regarding the Exchange's Board more consistent with the governing documents of the Exchange's national securities exchange affiliates, New York Stock Exchange LLC ("NYSE LLC"), NYSE MKT LLC ("NYSE MKT"), and NYSE National, Inc. ("NYSE National") and collectively, the "SRO Affiliates").

Because the relevant provisions are found in both the Bylaws and the Rules of the Exchange, in order to implement the proposed governance changes the Exchange would amend Bylaws Article III, Sections 3.01(b) (Powers) and 3.02(a) (Number; Election; Qualification; Term; Nomination) and Rule 3.2(b)(2) (Exchange Committees). These proposed changes are described below.

Bylaws Article III, Section 3.01(b)

The Exchange proposes to amend Bylaws Article III, Section 3.01(b) to add definitions of ETP Holders, Options Trading Permit Holders ("OTP Holders")⁶ and Permit Holders. The changes would also incorporate the ETP Holders in the statement of the authority of the Board. Accordingly, the Exchange proposes to make the following changes to Section 3.01(b) (new text italicized; deleted text bracketed):

(b) The Board of Directors shall exercise all such powers of the Exchange and do all such lawful acts and things as are not by law, the Certificate, these Bylaws or the Rules directed or required to be exercised, done or approved by the Holding Member, [or] the options trading permit holders who are permitted to trade on the Exchange's facilities for the trading of options that are securities as covered by the Exchange Act (collectively, "*Options Trading Permit Holders*") or the equities trading permit holders who are permitted to trade on the Exchange's facilities for the trading of equities that are securities as covered by the Exchange Act (collectively, "*Equities Trading Permit Holders*") and, together with the *Options Trading Permit Holders*, the "*Permit Holders*").

Bylaws Article III, Section 3.02(a)

The Exchange proposes to make several amendments to Bylaws Article III, Section 3.02(a), which sets forth the Board composition requirements.

⁶ An Options Trading Permit is referred to as an "OTP."

First, the Exchange proposes to remove the requirement that the Board consist of between eight and 12 directors, with the number to be determined by the Board itself. The revised provision would provide that the number of directors shall be determined from time to time by the holding member, NYSE Group, provided that the Board meets the composition requirements set forth in the provision. To clarify what specific composition requirements must be met, the Exchange proposes to move the third and fourth sentences of Section 3.02(a), which set forth the requirements, to clauses (1) and (2) of the first sentence. In the new clause (2), the Exchange proposes to add the defined term "Non-Affiliated Directors" for directors nominated by the permit holders, which must make up at least 20 percent of the members of the Board.

The proposed changes would make the revised first sentence of Section 3.02(a) consistent with the board composition provisions in the governing documents of the SRO Affiliates. Like the proposed changes, the governing documents of the SRO Affiliates provide that NYSE Group (as the sole member or sole shareholder, as applicable) determines the number of board members, set forth the relevant board's compensation requirements in numbered clauses, and require that at least 20 percent of the board shall be non-affiliated directors.⁷

Currently, at least one Exchange Non-Affiliated Director is nominated by the OTP Holders and at least one is nominated by the ETP Holders. Proposed clause (2) of the revised first sentence would instead provide that the "Permit Holders"—including both the OTP Holders and ETP Holders—nominate the Non-Affiliated Directors.

The Exchange believes that the proposed change would be consistent with the process for nominating non-affiliated directors of NYSE MKT. Similar to the structure of NYSE Arca and NYSE Arca Equities, NYSE MKT operates the NYSE MKT equity market, and NYSE MKT's facility NYSE Amex Options LLC ("NYSE Amex Options")

⁷ See Article III, Section 3.2(a) of the Fourth Amended and Restated By-laws of NYSE National, Inc. ("NYSE National By-laws"); Section 2.03(a)(i) of the Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC ("NYSE LLC Operating Agreement"); and Section 2.03(a)(i) of the Tenth Amended and Restated Operating Agreement of NYSE MKT LLC ("NYSE MKT Operating Agreement"). See also Securities Exchange Act Release Nos. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16) and 80523 (April 25, 2017), 82 FR 20399 (May 1, 2017) (SR-CBOE-2017-017).

operates its options market.⁸ Under the NYSE MKT Operating Agreement, all member organizations participate in the process for nominating non-affiliated directors.⁹ Because both options trading permit holders ("ATP Holders") and equity member organizations are member organizations, as that term is defined in the NYSE MKT Operating Agreement, non-affiliated directors are nominated by both types of member organizations in a single process.¹⁰

The Exchange believes that the proposed change also would be consistent with the governing documents of The NASDAQ Stock Market LLC ("Nasdaq LLC"), which is the sole member of The NASDAQ Options Market LLC ("NOM"). NOM, which operates the options trading facility of Nasdaq LLC, does not have its own board of directors.¹¹ Under the bylaws of Nasdaq LLC, each "member representative director" is nominated by a member nominating committee. If the election is contested, the Nasdaq LLC members vote on the nomination in a single process.¹² The options participants and other members do not vote separately.

The Exchange believes that the proposed change would also be consistent with the governing documents of Nasdaq BX, Inc. ("Nasdaq BX"). Nasdaq BX's controlled subsidiary, Nasdaq OMX BX Equities LLC, operates the equities trading facility of Nasdaq BX and, like NOM, does not have its own board of

⁸ See Amended and Restated Limited Liability Company Agreement of NYSE Amex Options LLC, Section 3.1(b). NYSE MKT is the only SRO Affiliate with both an equities and an options market.

⁹ See NYSE MKT Operating Agreement, Article II, Section 2.03(a) (iii)-(v). Under the NYSE MKT Operating Agreement, the nominating committee recommends candidates for the non-affiliate directors, and announces them to the member organizations. If a petition candidate receives sufficient member organization signatures, the recommended candidates and petition candidates are submitted to the member organizations for a vote.

¹⁰ See NYSE MKT Operating Agreement, Article II Section 2.02 (defining "member organization" to include members and member organizations of NYSE MKT); and NYSE MKT Rule 900.2NY(5) ("references to 'member', 'member organization' and '86 Trinity Permit Holder' as those terms are used in the Rules of the Exchange should be deemed to be references to ATP Holders"); see also NYSE MKT Rule 2—Equities (setting forth the definitions of member and member organization).

¹¹ See Limited Liability Company Agreement of The Nasdaq Options Market LLC, Section 9(a) (providing that the "management of the Company shall be vested in the Member").

¹² See By-laws of The NASDAQ Stock Market LLC, Article I (q) and Article II, Section 1 and 2. A Nasdaq LLC member is defined as "any registered broker or dealer that has been admitted to membership in the national securities exchange operated by" Nasdaq LLC. *Id.*, Article I(f).

directors.¹³ As with Nasdaq LLC, each “member representative director” of its board of directors is nominated by a member nominating committee. If the election is contested, the exchange members vote on the nomination in a single process.¹⁴

The Exchange proposes to add a new fifth sentence to Section 3.02(a) stating that, if 20 percent of the directors is not a whole number, the number of directors to be nominated and selected by the Permit Holders will be rounded up to the next whole number. As a result, the current fifth sentence, which provides that the Board shall determine the exact number of each category of directors on the Board, would no longer be needed. The proposed change would be consistent with the governing documents of the SRO Affiliates, each of which have a similar provision for calculating the minimum number of non-affiliated directors, and do not authorize the SRO Affiliate’s board of directors to determine the number of directors in each category.¹⁵

The revised Section 3.02(a) would be as follows (new text italicized; deleted text bracketed):

The Board of Directors shall consist of [not less than eight (8) or more than twelve (12) directors, with the Board of Directors to consist initially of ten (10) directors, including the Chief Executive Officer of the Holding Member. The authorized] *a* number of directors (“*Directors*”) [shall be] as determined from time to time by the [Board of Directors. A] *Holding Member; provided that (1)* at least fifty percent (50%) of the directors will be persons from the public and will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates (“*Public Directors*”)[. A]; *and (2)* at least twenty percent (20%) of the directors shall consist of individuals nominated by the [trading permit holders, with at least one director nominated by the Equities Trading Permit Holders of NYSE Arca Equities, Inc., and with at least one director nominated by the] Permit Holders of the Exchange (“*Non-Affiliated Directors*”). *For purposes of calculation of the minimum number of Non-Affiliated Directors, if 20 percent of the Directors is not a whole number, such number of Directors to be nominated and*

¹³ See NASDAQ OMX BX Equities LLC Fifth Amended and Restated Operating Agreement Article 3, Section 3.1; Article 4, Section 4.1; Delegation Agreement between Nasdaq BX and Nasdaq OMX BX Equities LLC.

¹⁴ See By-laws of NASDAQ BX, Inc., Article IV, Section 4.4.

¹⁵ See Section 2.03(a)(i) of the NYSE LLC Operating Agreement; Section 2.03(a)(i) of the NYSE MKT Operating Agreement; and Article III, Section 3.2(a) of the NYSE National By-Laws. The Exchange notes that the term “Permit Holder Directors,” would be deleted in the proposed change. Such term is not used elsewhere in the By-laws.

selected by the Permit Holders will be rounded up to the next whole number. [The exact number of Public Directors and Permit Holder Directors shall be determined from time to time by the Board of Directors, subject to the percentage restrictions described in this Section 3.02(a).] The term of office of a director shall not be affected by any decrease in the authorized number of directors.

Rule 3.2(b)(2)

Current Rule 3.2(b)(2) sets forth the membership requirements for the nominating committee (“Nominating Committee”), which nominates the OTP Holder member of the Board, and sets forth the nominating committee and petition processes.¹⁶ The Exchange proposes to revise Rule 3.2(b)(2) to incorporate the proposed changes to Bylaws Section 3.02(a).

Pursuant to Rule 3.2(b)(2)(A), the Nominating Committee is made up of six OTP Holders or allied persons or associated persons of an OTP Firm. The Exchange proposes to incorporate the ETP Holders into the membership of the committee by amending Rule 3.2(b)(2)(A) to reduce the number of OTP-related members to three, and adding the requirement that the Nominating Committee include three ETP Holders or allied persons or associated persons of an ETP Holder.¹⁷

Current Rule 3.2(b)(2)(C)(ii) sets forth the nominating committee and petition processes. In order to incorporate the ETP Holders into the nominating and petition processes and integrate the proposed changes to Bylaws Section 3.02(a), the Exchange proposes to make the following changes:

- To include ETP Holders, “OTP Holder” and “OTP Holders” would be replaced with “Permit Holder” and “Permit Holders,” respectively.
- The first sentence of the provision states that the Nominating Committee shall publish the name of one OTP Holder or allied person or associated person of an OTP Firm as its nominee for the Exchange Board. The sentence would be revised to (a) allow ETP Holders or Allied Persons or Associated Persons of an ETP Holder to be nominees; and (b) provide the option to nominate more than one Non-Affiliated Director.
- The second sentence sets forth how, if the Board has more than 10 members, the determination will be made whether the additional permit holder representative should be an OTP or an ETP Holder. In continuation, the next

¹⁶ Current Rule 3.2(b)(2) would be renumbered as proposed Rule 3.2(b)(3). For ease of reference, the current rule numbering is used.

¹⁷ The rules regarding the Equities Market do not have ETP Firms.

sentence begins with “If it is determined that the additional representative is an OTP Holder.” The Exchange proposes to delete the second sentence and the cited text from the third sentence. The proposed changes to the Bylaws would no longer provide for two separate categories of permit holder directors, and so no determination would be required.

- The third sentence would be amended to clarify that the Nominating Committee would be required to name sufficient nominees so that at least 20 percent of the directors were Non-Affiliated Directors, by replacing “nominate additional” with “name sufficient.” The generic reference to “individuals nominated by trading permit holders” would be replaced with the more specific “Non-Affiliated Directors.”

- In the current fifth sentence, the definition of “Permit Holders” would be added, and “OTP Holder position” would be replaced with “Non-Affiliated Director position.”

- The current sixth sentence sets forth the limits on what percentages of signatories to a petition can be from a given OTP Holder, OTP Firm or associated OTP Holders and Firms. In order to incorporate ETP Holders in the limitation, the Exchange would add a new clause (z), based on NYSE Arca Equities Rule 3.2(b)(2)(C)(i), including ETP Holders who are deemed affiliates of the relevant Permit Holder. Finally, “an OTP Holder’s position” would be replaced with “Non-Affiliated Director position(s).”

The revised provision would be as follows (new text italicized; deleted text bracketed):

The Nominating Committee shall publish the name of one (1) *or more* OTP Holder or Allied Person or Associated Person of an OTP Firm *or ETP Holder or Allied Person or Associated Persons of an ETP Holder* as its nominee(s) *for Non-Affiliated Directors of the Board of Directors of the NYSE Arca, Inc.* [Should the Board of Directors be made up of more than 10 individuals, as set forth in Section 3.02 of the Bylaws, then the Public Directors, after consulting with the CEO, shall determine whether the additional permit holder representative is an OTP Holder or an Equity Trading Permit Holder of NYSE Arca Equities, Inc. If it is determined that the additional representative is an OTP Holder, then t]The Nominating Committee shall *name sufficient/nominate additional* nominees so that at least twenty percent (20%) of the Directors consist of [individuals nominated by trading permit holders]*Non-Affiliated Directors*. The names of the nominees shall be published on a date in each year (the “Announcement Date”) sufficient to accommodate the process described in this Rule 3.2(b)(2)(C). After the name of proposed nominee(s) is published,

OTP Holders and ETP Holders (together, “Permit Holders”) in good standing may submit a petition to the Exchange in writing to nominate additional eligible candidate(s) to fill the [OTP Holder] *Non-Affiliated Director* position(s) during the next term. If a written petition of at least 10 percent of [OTP] *Permit* Holders in good standing is submitted to the Nominating Committee within two weeks after the Announcement Date, such person(s) shall also be nominated by the Nominating Committee; provided, however, that no [OTP] *Permit* Holder, either alone or together with (x) other OTP Holders associated with the same OTP Firm that such [OTP] *Permit* Holder is associated with, [and] (y) OTP Holders associated with OTP Firms that are affiliated with the OTP Firm that such [OTP] *Permit* Holder is associated with, and (z) other ETP Holders who are deemed its affiliates, may account for more than 50% of the signatories to the petition endorsing a particular petition nominee for the [OTP Holder’s] *Non-Affiliated Director* position(s) on the Board of Directors of the NYSE Arca, Inc. Each petition for a petition candidate must include a completed questionnaire used to gather information concerning director candidates (the Exchange shall provide the form of questionnaire upon the request of any [OTP] *Permit* Holder). Notwithstanding anything to the contrary, the Nominating Committee shall determine whether any petition candidate is eligible to serve on the Board of Directors (including whether such person is free of any statutory disqualification (as defined in section 3(a)(39) of the Exchange Act)), and such determination shall be final and conclusive.

Current Rule 3.2(b)(2)(C)(iii) sets forth the process for selecting a nominee when the number of nominees exceeds the number of available seats. To integrate the ETP Holders into the process, the Exchange proposes to make the following changes:

- “OTP Holder” and “OTP Holders” would be replaced with “Permit Holder” and “Permit Holders,” respectively, and “OTP Holder’s position” would be replaced with “Non-Affiliated Director position(s).”
- The third sentence sets forth the limits on what percentages of votes can be from a given OTP Holder, OTP Firm or associated OTP Holders and Firms. In order to incorporate ETP Holders in the limitation, the Exchange would add a new clause (z), based on NYSE Arca Equities Rule 3.2(b)(2)(C)(ii), including ETP Holders who are deemed affiliates of the relevant Permit Holder.

The revised provision would be as follows (new text italicized; deleted text bracketed): In the event that the number of nominees exceeds the number of available seats, the Nominating Committee shall submit the contested nomination to the [OTP] *Permit* Holders for selection. [OTP] *Permit* Holders shall be afforded a confidential voting procedure and shall be given no less

than 20 calendar days to submit their votes. Each [OTP] *Permit* Holder in good standing may select one nominee for the contested seat on the Board of Directors; provided, however that no [OTP] *Permit* Holder, either alone or together with (x) other OTP Holders associated with the same OTP Firm that such [OTP] *Permit* Holder is associated with, [and] (y) OTP Holders associated with OTP Firms that are affiliated with the OTP Firm that such [OTP] *Permit* Holder is associated with, and (z) other ETP Holders who are deemed its affiliates, may account for more than 20% of the votes cast for a particular nominee for the [OTP Holder’s] *Non-Affiliated Director* position(s) on the Board of Directors of NYSE Arca, Inc. With respect to [the] *any* contested position, the nominee for the Board of Directors receiving the most votes of [OTP] *Permit* Holders shall be submitted by the Nominating Committee to the Board of Directors of the NYSE Arca, Inc. Tie votes shall be decided by the Board of Directors at its first meeting following the election.

Finally, Rule 3.2(b)(2)(C)(i) sets forth the membership of the initial board of directors of the Exchange. The Exchange proposes to replace the obsolete provision with “Reserved.”

Rule 3.3(a)(2)

Rule 3.3 sets forth the provisions regarding Board Committees. In accordance with the proposed changes to the Board composition, the Exchange proposes to amend Rule 3.3(a)(2), regarding the Committee for Review (“CFR”). Specifically, in Rule 3.3(a)(2)(A) “NYSE Arca Equities” would be replaced with “the Exchange” and the text “OTP Director(s), the ETP Director(s) and the Public Directors of both NYSE Arca and NYSE Arca Equities” would be amended to state “Non-Affiliated Director(s) and the Public Directors of the Exchange.” In Rule 3.3(a)(2)(B), the text “Director that is an OTP Holder or Allied Person or Associated Person of an OTP Firm” would be amended to state “Non-Affiliated Director.”

B. Board and Permit Holder Committees

In order to integrate the ETP Holders and the NYSE Arca Equities committees into the Exchange committee structure, the Exchange proposes to amend Bylaws Article IV, Section 4.02 (“Permit Holder Committees”), Rule 3.1 (Overview), Rule 3.2 (Options Committees), and Rule 3.3 (Board Committees).

Article IV, Section 4.02

Bylaws Article IV, Section 4.02 lists the Exchange committees. The Exchange

proposes to add the Exchange disciplinary committee, called the “Ethics and Business Conduct Committee” (“EBCC”) ¹⁸ to the list in the first sentence of Section 4.02 and to the defined term for “Permit Holder Committees” in the second sentence. The NYSE Arca Equities disciplinary committee, the “Business Conduct Committee” (“BCC”) ¹⁹ is already listed in Section 4.02.

In addition, the Exchange proposes to remove two obsolete references to the Permit Holder Advisory Committee. There are no other references to a Permit Holder Advisory Committee in the Bylaws or rules of the Exchange. The Exchange believes that the references were meant to refer to the OTP Advisory Committee, which no longer exists, as its functions were assumed by the Committee for Review.²⁰

Rules 3.1, 3.2 and 3.3

Rule 3.1 sets forth the Board’s authority to establish committees that consist partly or entirely of directors of the Exchange (each, a “Board Committee”) and committees consisting of people other than directors of the Exchange (each, an “Options Committee”). Rule 3.2 sets forth the provisions governing Options Committees, including the Ethics and Business Conduct Committee and Nominating Committee.

The Exchange proposes to revise Rules 3.1 and 3.2 to integrate the ETP Holders. Specifically, the Exchange proposes to make the following changes:

- In Rules 3.1 and 3.2, the Exchange proposes to replace “Options Committee” and “Options Committees” with “Exchange Committee” and “Exchange Committees,” respectively.
- In Rule 3.2(a)(8), which governs the eligibility for, and appointment to, Options Committees, the Exchange proposes to add ETP Holders to the list of persons eligible for appointment, by adding “or ETP Holder” after “Any OTP Holder” and adding “or of an ETP Holder” after “OTP Firm” in the first sentence, and “, ETP Holders,” after “OTP Holders” and “or of an ETP Holder” after “OTP Firm” in the third sentence.
- In Rule 3.2(a)(9), which governs naming alternate members, the Exchange proposes to add “ETP Holders,” after “OTP Holders.”

¹⁸ See NYSE Arca Rule 3.2(b)(1) (Options Committees) (setting forth the composition, functions and authority of the EBCC).

¹⁹ See NYSE Arca Equities Rule 3.2(b)(1) (Equity Committees) (setting forth the composition, functions and authority of the BCC).

²⁰ See Securities Exchange Release No. 77898 (May 24, 2016), 81 FR 34404 (May 31, 2016) (SR–NYSEArca–2016–11).

The Exchange proposes to add the current NYSE Arca Equities BCC to the Exchange Rules as an Exchange Committee in new Rule 3.2(b)(2). The proposed text would be the same as the language in current NYSE Arca Equities Rule 3.2(b)(1), except that:

- The references to NYSE Arca Equities Rules 4, 10 and 11.9 would be updated to references to Rules 4–E, 10 and 13.9, respectively.
- References to the “Board,” which in the present rule means the board of directors of NYSE Arca Equities, would become references to the Board of the Exchange.

Pursuant to proposed Rule 3.2(b)(1) and (2), disciplinary proceedings of NYSE Arca involving OTP Holders, OTP Firms, and associated persons would continue to be heard by the EBCC, while disciplinary proceedings of NYSE Arca Equities involving ETP Holders and associated persons would continue to be heard by the BCC.

Conforming Changes in Rule 3

The Exchange proposes to make conforming changes in other provisions of Rule 3. Specifically, in Rules 3.7 (Dues, Fees and Charges), 3.8 (Liability for Payment), and 3.10 (Certain Relationships), the Exchange proposes to add “ETP Holders,” before “OTP Holders” and “ETP Holder” before “OTP Holder,” respectively. In Rule 3.10(b), the Exchange propose to add “ETP Holder or” before “OTP Firm.”

C. Proposed Rule 3.12

The Exchange proposes to add new Rule 3.12 (NYSE Arca, L.L.C. and Archipelago Securities, L.L.C.), which would address the access to and status of the books, records, premises, officers, directors, agents and employees of NYSE Arca, L.L.C. and Archipelago Securities, L.L.C. Proposed Rule 3.12 would be substantially the same as current NYSE Arca Equities Rule 14.3 (NYSE Arca, L.L.C. and Archipelago Securities, L.L.C.), with the following exceptions:

- In proposed Rule 3.12(a), the text “the Exchange” would replace “NYSE Arca Equities”; “NYSE Arca and NYSE Arca Equities”; and “the NYSE Arca, NYSE Arca Equities.”
- In proposed Rule 3.12(f), the text “, NYSE Arca Equities” would be deleted.

III. Integration of NYSE Arca Equities Rules Into the NYSE Arca Rules

A. Organization of the Proposed Revised NYSE Arca Rulebook

Presently, the Exchange has two rulebooks: the NYSE Arca rules for the options market and the NYSE Arca

Equities rules for the equities market. In connection with the Merger and the termination of the Delegation, the Exchange proposes to integrate the two sets of rules into a single rulebook. The resulting rulebook would have three types of rules: rules that apply to both markets; rules that apply only to the options market, indicated by an “–O” at the end of the rule number; and rules that apply only to the equities market, indicated by an “–E” at the end of the rule number. More specifically:

- The following amended rules would apply to both markets and would be grouped under the heading “General Rules”: NYSE Arca Rules 0 (Regulation of the Exchange, OTP Holders, OTP Firms and ETP Holders); 1 (Definitions); 2 (Trading Permits); and 3 (Organization and Administration).

- The following amended rules would apply to only to [sic] the options market, and would be grouped under the heading “Options Rules”: NYSE Arca Rules 4–O (Capital Requirements, Financial Reports, Margins—Options); 5–O (Options Contracts Traded on the Exchange); 6–O (Options Trading); 7–O (General Options Trading Rules); 8–O (Reserved) and 9–O (Conducting Business with the Public—Options) (collectively, the “Options Rules”).

- The following amended rules would apply to only to [sic] the equities market, and would be grouped under the heading “Equities Rules”: NYSE Arca Rules 4–E (Capital Requirements, Financial Reports, Margins—Equities); 5–E (Equities Listings); 6–E (Order Audit Trail System); 7–E (Equities Trading); 8–E (Trading of Certain Equity Derivatives); and 9–E (Conducting Business with the Public—Equities) (collectively, the “Equities Rules”).

- The following amended rules would apply to both markets and would be grouped under the heading “Disciplinary and Miscellaneous Rules”: 10 (Disciplinary Proceedings, Other Hearings and Appeals); 11 (Business Conduct); 12 (Arbitration); 13 (Cancellation, Suspension and Reinstatement); and 14 (Liability of Directors and Exchange).

The Exchange’s organization of its rules would be similar to that of its affiliate NYSE MKT, which has rules of general application and rules specific to its equity and options markets.²¹

Except as otherwise stated below, the proposed changes are not intended to change the substance of the NYSE Arca

or NYSE Arca Equities rules, but are organizational in nature.²²

Proposed Changes Applicable to Entire Rulebook

The following proposed changes would apply to the entire set of Exchange rules. To avoid needless repetition, when discussing specific Rules, the Exchange does not repeat the description of these global changes.

Throughout the rules, all cross references to the Options Rules would be updated to reflect the addition of “–O” to the rule numbers. Similarly, all cross references to the Equities Rules would be amended to reflect the addition of “–E” to the rule numbers and to delete “Equities” from “NYSE Arca Equities Rule.” For example, a cross reference “NYSE Arca Equities Rule 5.2(j)(6)” would be amended to “NYSE Arca Rule 5.2–E(j)(6).”

Throughout the rules, cross references would be updated as needed, including cross references within a renumbered rule to the rule itself. For example, the Exchange proposes to add Commentary .01 from NYSE Arca Equities Rule 2.17 to Rule 2.18. The references to “Rule 2.17” within the Commentary would be updated to “Rule 2.18” accordingly.

The NYSE Arca Equities rules refer to NYSE Arca Equities, Inc., as the “Corporation.”²³ The term will be obsolete subsequent to the Merger, as NYSE Arca Equities will cease to exist. Accordingly, in all proposed rule text based on the NYSE Arca Equities rules, the Exchange proposes to replace “Corporation” and “Corporation’s” with “Exchange” and “Exchange’s,” respectively. Similarly, “a Corporation” would be changed to “an Exchange.”²⁴

B. General Rules

Proposed revised Rules 0, 1, 2, and 3, which would apply to both the equities and options markets, would incorporate changes based on NYSE Arca Equities Rules 0 (Regulation of the Exchange and Exchange Trading Permit Holders); 1 (Definitions); 2 (Equity Trading Permits); and 3 (Organization and Administration), respectively. The proposed changes to Rules 0, 1 and 2 are addressed below. The proposed changes to Rule 3 are addressed in Part II, above.

²² The Exchange will amend the present filing to reflect any amendments to Exchange rules before the date of approval.

²³ See NYSE Arca Equities Rule 1(k).

²⁴ See e.g., NYSE Arca Equities Rules 2.21(f) (“a Corporation employee”) and 5.4(a) (“a Corporation listing standard”).

²¹ See, e.g. NYSE MKT Office Rules, Rules 300–590; NYSE MKT Section 900NY (Rules Principally Applicable to Trading of Option Contracts); and NYSE MKT Rule 0–Equities through Rule 6140–Equities.

Rule 0 (Regulation of the Exchange, OTP Holders, and OTP Firms)

The text of Rule 0 and NYSE Arca Equities Rule 0 is the same. Accordingly, in order to incorporate the equities market, the sole change to Rule 0 would be to change its title to “Regulation of the Exchange, OTP Holders, OTP Firms and ETP Holders.”

Rule 1 (Definitions)

The Exchange proposes to integrate Rule 1 and NYSE Arca Equities Rule 1 (Definitions) by (a) incorporating the text of definitions that are unique to NYSE Arca Equities Rule 1.1, and (b) amending definitions that the two rules have in common, as needed. The Exchange also proposes to delete definitions marked “Reserved,” put the definitions in alphabetical order, and renumber the definitions to reflect the changes.

Proposed New Definitions

The Exchange proposes to add the following definitions from NYSE Arca Equities Rule 1.1: Authorized Trader; Away Market; BBO; Core Trading Hours; Derivative Securities Product and UTP Derivative Securities Product; Effective National Market System Plan, Regular Trading Hours; Eligible Security; ETP; ETP Holder; FINRA; General Authorized Trader; Lead Market Maker; Marketable; Market Maker; Market Maker Authorized Trader; Market Participant; Nasdaq; NBBO, Best Protected Bid, Best Protected Offer, Protected Best Bid and Offer (PBBO); NMS Stock; Notice of Consent; Official Closing Price; Protected Bid, Protected Offer, Protected Quotation; Routing Agreement; Sponsored Participant; Sponsoring ETP Holder; Sponsorship Provisions; Stockholder Associate; Trade-Through; Trading Center; User; User Agreement; UTP Listing Market; and UTP Regulatory Halt.

The phrase “[w]ith respect to equities traded on the Exchange” would be added to the start of all the added definitions except the definitions for Eligible Security, ETP, ETP Holder, FINRA, Nasdaq, and NMS Stock.

The current definition of ETP Holder in NYSE Arca Equities Rule 1.1 provides that an ETP Holder would “have limited voting rights to nominate two directors to the Exchange’s Board of Directors and one Governor to the Board of Governors of the NYSE Arca Parent.” The Exchange believes that such statement is not relevant to the definition and would be adequately addressed in proposed Bylaw 3.02 and Rule 3.2. Accordingly, when integrating the definition of ETP Holder, the

Exchange proposes not to include the cited sentence, as well as to change “NYSE Arca Parent” to “Exchange.”

Proposed Amendments to Rule 1

To incorporate NYSE Arca Equities Rule 1.1, the Exchange proposes to make the following amendments to the current definitions in Rule 1.1:

- In definitions that would apply to both OTPs and ETPs, the Exchange proposes to add references to ETPs and ETP Holders. Accordingly, “ETP Holder” and/or “ETP Holders”²⁵ would be added to the definitions of Allied Person; Approved Person; Associated Person; Good Standing; Participant; Registered Employee; and Trading Facilities. A reference to “ETP” would be added to the definition of Good Standing.

- Both “Board” and “Board of Directors” are used in the Rules to refer to the Board of Directors of NYSE Arca, but only “Board” is defined in Rule 1.1.²⁶ Accordingly, the Exchange proposes to expand the definition of “Board” so that both “Board” and “Board of Directors” are defined to mean the Board of Directors of NYSE Arca.

- The definitions of OTP Holder and OTP Firm provide that the OTP Holder or OTP Firm, as applicable, “will have limited voting rights to nominate an OTP Holder to the Exchange’s Board of Directors pursuant to Rule 3.2(b)(2)(C).” As with the definition of ETP Holder, the Exchange believes that such statements are not relevant to the definitions and are addressed in Bylaw 3.02 and Rule 3.2. Accordingly it proposes to delete the cited sentences.²⁷

- The definition of NYSE Arca Marketplace in the two rulebooks differs. However, while the term is used multiple times in the NYSE Arca Equities Rules, it is not used in the Exchange Rules other than in the definition itself. Accordingly, the Exchange proposes to delete the

²⁵ Throughout the rules, when adding “ETP,” “ETPs,” “ETP Holder” or “ETP Holders” to a rule, the Exchange would utilize a comma, “and” or “or” as necessary to integrate it into the text.

²⁶ See, e.g., Rules 2.3 (Qualifications of Firm Applicants), 2.14 (Allied Persons and Approved Persons), and 4.2(g) (Voting Agreement).

²⁷ The Exchange believes that the proposed changes to the definitions of ETP Holder, OTP Holder and OTP Firm would be consistent with the definitions of “Member” and “Member Firm” in the governing documents of NYSE and NYSE MKT, which do not refer to voting for non-affiliated directors. See NYSE Rule 2 and NYSE MKT Rule 2—Equities. See also Nasdaq Stock Market Equity Rule 0129(f) (definition of “Member” or “Nasdaq Member”) and Options Rule 1(40) (definition of “Options Participant” or “Participant”) and Seventh Amended and Restated Bylaws of Chicago Board Options Exchange, Inc., Article I, Section 1.1(f) (definition of “Trading Permit Holder”).

definition of NYSE Arca Marketplace in Rule 1.1(dd) and replace it with the definition in NYSE Arca Equities Rule 1(e), as well as to move it to conform to alphabetical order.

- In the definition of Security, the text “, provided, however, that for purposes of Rule 7–E such term means any NMS stock” would be added at the end of the definition, consistent with NYSE Arca Equities Rule 1(rr).

- In the definition of Trading Facilities, “equities,” would be added after “trading of.”

Rule 2 (Options Trading Permits)

The Exchange proposes to revise Rule 2 to incorporate NYSE Arca Equities Rule 2 (Equity Trading Permits), which sets forth the equivalent requirements for ETPs. To implement the change, the Exchange proposes to amend the title of Rule 2 from “Options Trading Permits” to “Trading Permits,” add two new rules, and amend the existing rules.

Proposed New Rules

The first new rule would be proposed Rule 2.24 (Registration—Employees of ETP Holders), which would be the same as current NYSE Arca Equities Rule 2.21 (Employees of ETP Holders Registration), with the exception of a revised title and updated rule references. Current Rules 2.24 through 2.26 would be renumbered as Rules 2.25 through 2.27 to reflect the addition of proposed Rule 2.24.

The second new rule would be proposed Rule 2.28 (Books and Records), which would be the same as current Rule 9.17 (Books and Records), with the addition of “ETP Holder,” “ETP Holders,” and “, as applicable.”²⁸ To incorporate the provisions of current NYSE Arca Equities Rule 2.24 (ETP Books and Records), the Exchange proposes to add “ETP Holders” and “ETP Holder” before the terms “OTP Holders and OTP Firms” and “OTP Holder or OTP Firm,” respectively.²⁹

Proposed Amendments to Rule 2

The Exchange proposes the following revisions to the titles of rules in Rule 2:

- In rules that would only apply to OTPs, the Exchange proposes to add “OTP” in the title. Accordingly, the title of Rule 2.2 (Qualifications and Application of Individual Applicants) would be revised to “Qualifications and Application of Individual OTP

²⁸ The Exchange proposes to replace the current text of Rule 9.17 with “reserved.” See proposed Rule 9.17.

²⁹ Rule 11.16 (Books and Records) would only apply to OTP Holders and OTP Firms, as there is no equivalent provision in the NYSE Arca Equities rules.

Applicants” and the title of Rule 2.23 (Registration) would be revised to “Registration—OTPs.”

- To indicate that the revised rule applies to both OTPs and ETPs, the Exchange proposes to (a) replace “OTPs” and “OTP” with “Trading Permits” in the titles of Rules 2.5 (Denial of or Conditions to OTPs) and 2.11 (Sole Proprietors and Individual OTP Holders), respectively; (b) add “ETP Holder,” to the titles of Rules 2.9 (Exchange Not Bound by OTP Holder and OTP Firm Agreements) and 2.17 (Amendments to OTP Firm or OTP Holder Documents); (c) add “ETP Holders,” to the title of Rule 2.12 (OTP Holders and OTP Firms); (d) delete “OTP” from the title of Rule 2.16 (Responsibilities of Non-Resident OTP Firms); (e) delete “OTP Firm or OTP Holder” from the title of Rule 2.19 (Exemption from OTP Firm or OTP Holder Registration Requirements); and (f) add “ETP or” to the title of Rules 2.21 (Limited Transferability of an OTP) and 2.22 (Termination of an OTP).

- To make the title more reflective of the Rule, the Exchange proposes to change the title of Rule 2.10 (Only OTP Firms and OTP Holders to Trade Under) to “Carrying Accounts for Customers and Conducting Business Under a Firm Name.”

- To indicate that the proposed heading applies to both OTPs and ETPs, the Exchange proposes to add “ETP or” to the heading “Requirements of Holding an OTP,” which appears before Rule 2.7, and to the heading “Obtaining an OTP,” which appears before Rule 2.20. It also proposes to add “and ETP Holders” at the end of the heading “Employees of OTP Firms,” which appears before Rule 2.23.

The Exchange proposes the following revisions to the text of rules in Rule 2:

- In rules that would apply to both OTPs and ETP Holders, the Exchange proposes to add references to ETP Holders. Accordingly, “ETP Holder” and/or “ETP Holders” would be added to Rules 2.1 (Securities Business), 2.4(d) and (e) (Application Procedures), 2.5, 2.7 (Requirements Applicable Generally Revocable Privilege) through 2.9, 2.12 through 2.17, 2.18(a) and (b) (Activity Assessment Fees), 2.19, 2.21(b), 2.22, and proposed Rules 2.26 (Electronic Mail Address) and 2.27 (Exchange Backup Systems and Mandatory Testing). In addition, the Exchange proposes to add “, as applicable” after “OTP Firm” in Rules 2.4(e) and 2.14(f).

- Similarly, the Exchange proposes to add “ETP or” before “OTP” in Rules 2.3(a), 2.4(d), (e) and (g), 2.5(a), (b) and (f), 2.7, 2.8 (No Liability for Using Facilities), 2.17(b), 2.21, and 2.22. In

addition, the Exchange proposes to add “, as applicable” after “OTP” in Rules 2.4(d) and (e), 2.8, 2.17(b) and 2.22(b).

- In Rules 2.1(b)(1) and 2.8, the Exchange proposes to add “Certificate of Incorporation,” before “Bylaws” consistent with NYSE Arca Equities Rule 2.1(b) (Securities Business) and 2.7 (No Liability for Using Trading Facilities), respectively.

Rule 2.4 sets forth the application procedures for OTPs. To add the procedures for ETPs, consistent with NYSE Arca Equities Rule 2.3 (Application Procedures), the Exchange proposes to make the following changes:

- Unlike Rule 2.4, NYSE Arca Equities Rule 2.3(a) provides that application fees are not transferable. Accordingly, the Exchange proposes to add a sentence to the end of Rule 2.4(a) stating that application fees for ETPs are not transferrable. In addition, in the first sentence of (a), the Exchange proposes to add the text “person applying to become an ETP Holder, every” after “Every.” In the second sentence of (a), it proposes to add the text “person seeking to become an ETP Holder, every” after “Every” and update the obsolete reference to “the NASD” to “FINRA’s.”

- In the second sentence of Rule 2.4(d), the Exchange proposes to add “for OTPs, sole proprietor applicants for ETPs,” after “Individual applicants” consistent with NYSE Arca Equities Rule 2.3(d), which references “sole proprietor applicants” but not individual applicants for ETPs.

- Rule 2.4(g) states that a petition for review of the denial of a trading permit must be filed within thirty calendar days of the date on which the Corporation’s decision was mailed. The Exchange believes that the reference to the “Corporation” in Rule 2.4(g) is erroneous and should be to the “Exchange’s” decision, as “Corporation” is not a defined term in Exchange rules. Accordingly, the Exchange proposes to make the corresponding change.

- Rule 2.4(h) states that the approval shall be withdrawn if an approved application is not activated within six months, but NYSE Arca Equities Rule 2.3 does not have a similar provision. Accordingly, the Exchange proposes to clarify that the provision only applies to OTPs by adding “for an OTP” after “application.”

- Rule 2.4(i) states that an ETP Holder may use an expedited process to become an OTP Holder. Consistent with NYSE Arca Equities Rule 2.3(b), the Exchange proposes to add a new second sentence stating that an OTP Holder may use an expedited process to become an ETP

Holder. Consistent with the change, the Exchange proposes to add, in the current second sentence, the text “and Short Form ETP Holder Application” after “Short Form OTP Holder Application” and the text “or OTP Holder, as applicable,” after “ETP Holder.”

Rule 2.5 provides that the Exchange may deny or may condition trading privileges under an OTP. Consistent with NYSE Arca Equities Rule 2.4 (Denial of or Conditions to ETPs), the Exchange proposes to make the following changes:

- In Rule 2.5(b)(10), the Exchange proposes to add the heading “Series 7 Requirement” and corresponding text from NYSE Arca Equities Rule 2.4(b)(10).

- The first sentence of Rule 2.5(c) requires that applicants complete an Exchange Orientation Program prior to admission to the trading floor or participation on a trading system. NYSE Arca Equities Rule 2.4 does not have a similar provision. Accordingly, the Exchange proposes to change the term “all applicants” to “all OTP applicants.”

- In Rule 2.5(f), the Exchange proposes to add a second sentence providing that the BCC “may take action against an ETP Holder under Rule 10 when any of the above reasons for denying or conditioning issuance of an ETP come into existence after an application has been approved and an ETP has been issued,” corresponding to NYSE Arca Equities Rule 2.4(f).

Rule 2.10 addresses carrying accounts for customers and conducting business under a firm name. The Exchange proposes to add a second paragraph to Rule 2.10, with the text from NYSE Arca Equities Rule 2.09 (Only ETP Holder Organizations May Carry Customer Accounts).

Rule 2.11 addresses sole proprietors. The Exchange proposes to update the title by replacing “OTP” with “Trading Permit” and to add a new section (e) to the Rule, with the text from NYSE Arca Equities Rule 2.10(b) (Sole Proprietors).

Rule 2.14 sets forth provisions relating to allied persons and approved persons. Consistent with NYSE Arca Equities Rule 2.13 (Allied Persons and Approved Persons), the Exchange proposes to make the following changes:

- The Exchange proposes to add the text from NYSE Arca Equities Rule 2.13(c), (d), (g) and (i) to the end of Rule 2.14(c), (d), (g) and (i), respectively.

- Rule 2.14(f) states that the Exchange may require certain applicants to pass an examination. NYSE Arca Equities Rule 2.13(f) includes limited liability company member in its equivalent list.

Accordingly, the Exchange proposes to add the text “, or a limited liability company member of any ETP Holder,” after “OTP Firm.”

Rule 2.17 addresses amendments to trading permit holder documents. Consistent with NYSE Arca Equities Rule 2.16(c), the Exchange proposes to amend the first sentence of Rule 2.17(c) by revising “termination of an OTP” to state “a person associated with that ETP Holder or an OTP, as applicable.”

Rule 2.18 states that activity assessment fees will be collected through the Options Clearing Corporation on behalf of the Exchange.

- Consistent with NYSE Arca Equities Rule 2.17 (Activity Assessment Fees), the Exchange proposes to add text to Rule 2.18(a) stating that “Activity Assessment Fees shall be due and payable from ETP Holders at such times and intervals as prescribed by the Exchange.”

- NYSE Arca Equities Rule 2.17(b) provides that the Corporation may fix and impose certain other charges or fees to be paid by ETP Holders, without specifying to whom they are paid. Rule 2.18(b), however, states that the Board of Directors sets the charges or fees, and that they are to be paid to the Exchange or its subsidiaries. The Exchange does not propose to amend this aspect of Rule 2.18(b), however, as it believes that the provisions are substantially similar in intent.

- The Exchange proposes to add commentary .01 from NYSE Arca Equities Rule 2.17 to Rule 2.18.

Rule 2.19(a) sets forth the registration requirements for permit holders. The Exchange proposes to amend the references to “member” and “member organization” to include both terms, to incorporate NYSE Arca Equities Rule 2.18(a).

Rule 2.21 sets forth the provisions on transfer of trading permits. Consistent with NYSE Arca Equities Rule 2.20 (Limited Transferability), the Exchange proposes to add the following text to the end of the first sentence in Rule 2.21(a): “, and ETPs may not be purchased (other than from the Exchange), sold or leased.” In addition, the Exchange proposes to add “(other than from the Exchange)” after “purported purchase” in the second sentence.

C. Options Rules

The Options Rules would be substantially the same as current NYSE Arca Rules 4, 5, 6, 7, 8, and 9, with the following changes:

- The word “—Options” would be added at the end of the headings for proposed Rules 4–O and 9–O, which would be called “Capital Requirements,

Financial Reports, Margins—Options” and “Conducting Business with the Public—Options,” respectively. Similarly, the word “Options” would be added to the heading of proposed Rule 7–O, so that it becomes “General Options Trading Rules.”

- “Corporation” would be replaced with “Exchange” in proposed Rules 4.1–O (Minimum Net Capital) and 9.26–O (Registration of Options Principals), and in the title of Rule 9.1–O(a) (Register with the Corporation). The Exchange believes that the references should be to the Exchange, as “Corporation” is not a defined term in the NYSE Arca rules.

- The text of Rule 9.17 (Books and Records) would be replaced with “Reserved” and the requirements of Rule 9.17 would be integrated with proposed Rule 2.28 (Books and Records), as discussed above.³⁰

- A cross reference to Rule 6.1(a)(24) in Rule 4.16(d)(9)(G) (Other Provisions) would be corrected to reference subsection (b)(24), as the Exchange believes that the current reference is incorrect.³¹

D. Equities Rules

The proposed new Equities Rules would be the same as current NYSE Arca Equities Rules 4, 5, 7, 8, 9, the Conduct Rules, and the Order Audit Trail System, subject to the following changes.

Organizational Changes

The Exchange proposes to make the following organizational changes throughout the Equities Rules:

- The Exchange proposes to add the word “—Equities” to the end of the titles of proposed Rules 4–E and 9–E, which would be called “Capital Requirements, Financial Reports, Margins—Equities” and “Conducting Business with the Public—Equities,” respectively. “Equities” would be added to the start of Rule 5–E, which would become “Equities Listings.”

- The Conduct Rules, which are currently NYSE Arca Equities Rules 2010 through 5320, would be moved to the end of proposed Rule 9–E, becoming Rules 9.2010–E through 9.5320–E, with the exception of NYSE Arca Equities Rule 5220 (Disruptive Quoting and Trading Activity Prohibited), which would be integrated into Rule 11.21

³⁰ See discussion accompanying notes 28 and 29, *supra*.

³¹ See Exhibit A, Rule 4, to SR-PCX-2004-08 (February 10, 2004), available at https://www.sec.gov/rules/sro/pcx/34-49451_a4.pdf. See also Securities Exchange Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004).

(Disruptive Quoting and Trading Activity Prohibited).

- The Order Audit Trail System Rules, which are currently NYSE Arca Equities Rules 7410 through 7470, would be moved to Rule 6–E, becoming Rules 6.7410–E through 6.7470–E.³²

Proposed Amendments

Several of the NYSE Arca Equities rules refer to the Delegation or reference the relationship between NYSE Arca Equities and the Exchange through the use of the term “NYSE Arca Parent.”³³ After the Merger, such references would be obsolete. Accordingly, to reflect the Merger, the Exchange proposes to make the following changes when incorporating NYSE Arca Equities rules into the Exchange rules:

- The second sentence of NYSE Arca Equities Rule 5.1(a)(1) (General Provisions and Unlisted Trading Privileges) states that “[f]or the purposes of the Securities Exchange Act of 1934 (‘Exchange Act’), securities traded on the Corporation shall be admitted to unlisted trading privileges or listed on the NYSE Arca Parent, subject to the NYSE Arca Parent’s delegation of the responsibility for the administration and enforcement of the unlisted trading privileges and listing requirements to the Corporation.” The Exchange proposes not to include the sentence when incorporating the provision into Rule 5.1–E(a)(1) (General Provisions and Unlisted Trading Privileges).

- The Exchange proposes not to include the statement that “‘NYSE Arca Equities, Inc.’ (the ‘Corporation’) is a wholly owned subsidiary of ICE” in NYSE Arca Equities Rule 5.1(c)(a)(3) (Listing of an Affiliate or Entity that Operates and/or Owns a Trading System or Facility of the Corporation) when incorporating the provision into proposed Rule 5.1–E(c)(a)(3) (Listing of an Affiliate or Entity that Operates and/or Owns a Trading System or Facility of the Exchange).

- The Exchange proposes to use the term “Exchange” instead of “NYSE Arca Parent” in proposed Rule 5.1–E(b)(4) (Definitions) and in place of “Corporation and the NYSE Arca Parent” in Rule 9.18–E(b)(3) (Doing A Public Business In Options). Similarly, the Exchange proposes to use the term “Exchange” instead of “NYSE Arca

³² Current NYSE Arca Equities Rule 6 (Business Conduct) would be integrated into Rule 11 (Business Conduct). See “Rule 11 (Business Conduct)”, below.

³³ NYSE Arca Equities Rule 1(nn) defines “NYSE Arca Parent” as “the NYSE Arca, Inc., a Delaware corporation and national securities exchange as that term is defined in Section 6 of the Securities Exchange Act of 1934, as amended.”

Equities” in proposed Rule 7.29–E(b)(2)(I).

The Exchange proposes several changes to remove obsolete references in the Equities Rules, as follows:

- NYSE Arca Equities Rule 5.3(k)(4) (Independent Directors/Board Committees) sets forth two versions of paragraph (k)(4) (Compensation Committee). One provides the operative text through June 30, 2013, and one provides the operative text effective commencing July 1, 2013. Proposed NYSE Arca Rule 5.3–E(k)(4) would only include the text that was operative commencing July 1, 2013.

- Similarly, present NYSE Arca Equities Rule 5.3(n) (Listed Foreign Private Issuer) includes two versions of the rule. One provides the operative text through June 30, 2013, and one provides the operative text effective commencing July 1, 2013. Proposed NYSE Arca Rule 5.3–E(n) would only include the text that was operative commencing July 1, 2013.

- Present NYSE Arca Equities Rules 7.18(a) (Halts) and 7.46(f)(5)(C) and (F) (Tick Size Pilot Plan) cross reference Rules 7.11P, 7.31P(a)(2)(C) and (F), and Rule 7.31P(e), respectively. Because the “P” modifier has been deleted from such Rules, proposed NYSE Arca Rules 7.18–E(a) and 7.46–E(f)(5)(C) and (F) would not include the “P” modifier in the cross references.³⁴

- NYSE Arca Equities Rule 7.25 (Crowd Participant Program) expired on June 23, 2016. Accordingly, the Exchange proposes not to include an equivalent to NYSE Arca Equities Rule 7.25 in the Equities Rules. Instead, it would mark proposed Rule 7.25–E as “Reserved.”

- In proposed Rule 8.203–E(g) (Commodity Index Trust Shares) Commentary .03, an obsolete reference to “PCXE Rule 7.34” in NYSE Arca Equities Rule 8.203(g) would be updated to “Rule 7.34–E.” The term “PCXE” refers to the Pacific Exchange, Inc. The Pacific Exchange, Inc. was a predecessor of the Exchange, and so the reference is obsolete.

The Exchange proposes to make the following changes to cross references to the Exchange rules within the Equities Rules:

- Rule 4.15–E(d)(9)(G)(i) and (ii) (Other Provisions) includes references to “Rule 6.1(a)(23) of the NYSE Arca Parent.” The Exchange proposes to delete “of the NYSE Arca Parent” and revise the references to cite subsection (b)(24) instead of (a)(23), as the

Exchange believes that the current reference is incorrect.³⁵

- In Rule 9.18–E(b)(3) (Doing a Public Business in Options) the text “Rules of the Corporation and the NYSE Arca Parent” would be changed in the proposal to “Rules of the Exchange.”

- In Rule 9.20–E(a) (Transactions for Public Customers) “NYSE Arca Parent Rule 6.35” would be changed in the proposal to “Rule 6.35–O.”

Amendments That Are Approved but Not Yet Operative

NYSE Arca Equities Rules 7.10, 7.11, 7.31, and 7.35 have a notice stating that an amended version of the rule has been approved but is not yet operative. The notices include links to the amended version of the rule and the relevant approval order. The notices and links would be retained in proposed rules 7.10–E (Clearly Erroneous Executions), 7.11–E (Limit Up—Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility), 7.31–E (Orders and Modifiers), and 7.35–E (Auctions). Exhibit 5C sets forth the proposed text of the amended but not yet operative versions of such rules. The Exchange will announce by Trader Update when the amended version of the rule will become operative.

E. Disciplinary and Miscellaneous Rules

Proposed revised Rules 10, 11, 12, 13, and 14, which would apply to both the equities and options markets, would incorporate changes based on NYSE Arca Equities 10 (Disciplinary Proceedings, Other Hearings, and Appeals), 6 (Business Conduct), 12 (Arbitration), 11 (Cancellation, Suspension and Reinstatement), 13 (Liability of Directors and Corporation) and 5220. The proposed changes to each rule are addressed in turn below.

Rule 10 (Disciplinary Proceedings and Appeals)

The Exchange proposes to revise Rule 10 to incorporate NYSE Arca Equities Rule 10 (Disciplinary Proceedings, Other Hearings, and Appeals), which sets forth the equivalent requirements for ETP Holders. As a result, a single set of rules would encompass all disciplinary proceedings and appeals. As described below, to implement the change, the Exchange proposes to amend the title of Rule 10 to “Disciplinary Proceedings, Other Hearings and Appeals,” add one new rule, and amend the existing rules.

Proposed New Rule

The Exchange proposes to incorporate the entire text of current NYSE Arca Equities Rule 10.10 (Miscellaneous Provisions) into new Rule 10.10 (Miscellaneous Provisions), which would provide that any charges, notices or other documents may be served upon the Respondent either personally or by leaving the same at Respondent’s place of business or by deposit in the United States Post Office, postage prepaid via registered or certified mail addressed to the Respondent at its address as it appears on the books and records of the Exchange. The current text of NYSE Arca Rule 10.10 is marked “Reserved.”

Proposed Amendments to Rule 10

The Exchange proposes to add references to ETP Holders to show revised Rule 10’s applicability to both categories of trading permit holders. Accordingly, the following proposed Rules would be updated to include references to “ETP Holder” and/or “ETP Holders” including, where appropriate, when referring to person(s) associated with an ETP Holder: Rule 10.1(a) and (b) (Disciplinary Jurisdiction);³⁶ Rule 10.2 (Investigations and Regulatory Cooperation); Rule 10.3(c) (Ex Parte Communications); Rule 10.4(a) (Complaints); Rule 10.5(d) (Hearing); Rule 10.6(c) (Offers of Settlement); Rule 10.9(a) (Judgment and Penalty); Rule 10.11(a), (b), (d)(3) and (d)(5) (Appeal of Floor Citations and Minor Rule Plan Sanctions); Rule 10.12(a), (b), and (g) (Minor Rule Plan); Rule 10.14 (Hearings and Review of Decisions by the Exchange); and Rule 10.18(a)(2) (Expedited Client Suspension Proceeding). Rule 10.18(a)(2) would also include a reference to an “associated person of an ETP Holder.”

Similarly, the Exchange proposes to add references to the BCC, which is the NYSE Arca Equities disciplinary committee,³⁷ to Rule 10. Accordingly, a definition of the BCC would be added to Rule 10.3(a)(1) and the following rules would be updated to include references to the BCC³⁸: Rule 10.3(a), (c) and (e); Rule 10.4(c); Rule 10.5(a); Rule 10.6(d), (h), (j) and (k); Rule 10.11(d)(1); Rule 10.12(c) and (d); and Rule 10.17(e)(2) (Release of Disciplinary Information Through the Public Disclosure Program). In addition,

³⁶ The Exchange also proposes to delete a stray parenthetical in the first sentence, so that “Rule 10.1)” would be “Rule 10.1.”

³⁷ See NYSE Arca Equities Rule 3.2(b)(1) (Equity Committees) and proposed new Rule 3.2(b)(2).

³⁸ Throughout the rules, when adding “BCC” or “Business Conduct Committee” to a rule, the Exchange would utilize a comma, “and” or “or” as necessary to integrate it into the text.

³⁴ See Securities Exchange Act Release No. 79079 (October 11, 2016), 81 FR 71559 (October 17, 2016).

³⁵ See note 31, *supra*.

subsection (g) of Rule 10.12 would be amended to add “Business Conduct Committee or the” before “Ethics and Business Conduct Committee.”

The Exchange proposes to make the following additional changes to Rule 10:

- In the first sentence of Rule 10.1, the Exchange proposes to make the following non-substantive changes: “on the Exchange” would be amended to “of the Exchange,” and “or policy or procedure” would be amended to “or any policy of procedure.” In Rule 10.1(b), the Exchange proposes to change the semicolon after “such termination” to a comma.

- A new Commentary .02 would be added to Rule 10.3 that would provide that a disciplinary proceeding will be considered to be pending from the date that Complaint has been issued pursuant to Rule 10.4 until the proceeding, including any appeals, becomes final. This is the same text as in current NYSE Arca Equities Rule 10.3.

- The Exchange notes that proposed Rule 10.5 differs from the current NYSE Arca Equities version in two respects. First, current NYSE Arca Rule 10.5 requires the EBCC to appoint three or more members to hear a matter. NYSE Arca Equities Rule 10.5 requires the BCC to appoint one or more. The Exchange determined to retain the three person NYSE Arca requirement in proposed Rule 10.5, which is consistent with the disciplinary rules of its affiliates NYSE and NYSE MKT.³⁹

- In subsections (a) and (k) of proposed Rule 10.6, references to the “Department of Enforcement” would be shortened to “Enforcement.”

- Rule 10.8 (Review) would be amended as follows.

- First, subsection (b) would incorporate text from NYSE Arca Equities Rule 10.8(b) requiring a decision of the Review Board (as defined therein) to become final 15 calendar days after notifying the parties and that the decision would be stayed pending a request for review of such determination by the NYSE Arca Board of Directors filed pursuant Rule 10.8(c) or 10.8(d). The proposed change would add clarity to the current rule by specifying that a Board review stays a determination from becoming final. The second and third paragraphs of subsection (b) would be amended to replace “Board of Directors” with “CFR,” which is the Board committee with the delegated authority to consider appeals on behalf of the Board and

which appoints the Review Board under the Rule. As such, the proposed change would add clarity and transparency to the Exchange’s Rules by specifying that the CFR, and not the full Board, would be acting with respect to the Review Board. In the third paragraph, the Exchange would also add “or her” before “duties.”

- Second, paragraph (c) would be amended to incorporate text from current NYSE Arca Equities Rule 10.8(c), permitting the Complainant or Respondent to request review of a decision by the NYSE Arca Board of Directors and establishing the requirements for initiating such a review. “NYSE Arca Board” would be replaced with “Board of Directors” as “NYSE Arca Board” is not a defined term.

- The Exchange proposes various changes to Rule 10.11. In the second sentence of subsection (d)(4), the Exchange proposes the non-substantive change of adding the word “of” between “standard” and “review.” Subsection (b) would be amended to shorten “Department of Enforcement” to “Enforcement.”

- The Exchange proposes various changes to Rule 10.12.

- Subsection (e) would be amended to shorten “Department of Enforcement” to “Enforcement.”

- New subsection (i) would incorporate those current NYSE Arca Equities trading Rules eligible for minor rule violation treatment as set forth in NYSE Arca Equities Rule 10.12(g). The heading would be “Minor Rule Plan: Minor Trading Rule Violations.” Subsection (i) is currently marked “Reserved.”

- Subsection (j) would be amended to add cross references to the relevant Equities Rules; add “ETP Holder’s or” before “OTP Holder” in (j)(2); add “filing and/or” before “notification” in (j)(4); and add new item (13) to incorporate the provision in NYSE Arca Equities Rule 10.12(j)(13).

- The heading of Subsection (k) would be amended to add “Options.”

- New subsection (l) would be entitled “Equities Minor Rule Plan: Recommended Fine Schedule” and incorporate the current NYSE Arca Equities Rules eligible for minor rule violation treatment. Fine levels and eligible rules would remain the same as current NYSE Arca Equities Rule 10.12(i). Proposed subsection (l) reproduces current NYSE Arca Equities Rule 10.12(i) in its entirety.

- The word “—Options” would be added to the end of the titles of Rules 10.13 (Summary Sanction Procedure) and 10.16 (NYSE Arca Sanctioning

Guidelines). Such rules have no equities analogues and would only apply to options matters. In the first sentence of the fourth paragraph of Rule 10.16(a), “Principals” would be replaced with “Principles.”

- The Exchange proposes various changes to Rule 10.14:

- In subsection (a), “ETP” would be added before “OTP” and a reference to Rule 7.23–E would be added.

- Consistent with NYSE Arca Equities Rule 10.13(a)(5), a new subsection (a)(7) would be added to incorporate actions taken by the Exchange pursuant to proposed Rule 7.22–E, including the denial of the application for, or the termination or suspension of, a Market Maker’s registration in a security or securities, as eligible for relief under Rule 10.14.

- Consistent with NYSE Arca Equities Rule 10.13(a), subsection (a) would also be amended to provide that provisions of Rule 10.14 would not apply to reviews of delisting decisions for which review is already provided within Rule 5–E.

- Subsection (l) would be amended to add the Chairperson of the committee whose action was subject to the prior review as an additional person who can call a decision of the CFR Appeals Panel for review, consistent with NYSE Arca Equities Rule 10.13(k).

Rule 11 (Business Conduct)

The Exchange proposes to revise Rule 11 to incorporate NYSE Arca Equities Rule 6 (Business Conduct) and NYSE Arca Equities Rule 5220. To implement the change, the Exchange proposes to add three new rules and amend the existing rules.

Proposed New Rules

The Exchange proposes to import the text of current NYSE Arca Equities Rule 6.7 (Trading Ahead of Research Reports) into new proposed Rule 11.22 (Trading Ahead of Research Reports) without changes other than those made to the entire rulebook.⁴⁰

The Exchange proposes to import the text of current NYSE Arca Equities Rule 6.9 (Taking or Supplying Securities to Fill Customer’s Order) into new proposed Rule 11.23 (Taking or Supplying Securities to Fill Customer’s Order) without changes other than those made to the entire rulebook and the use of “Exchange” in place of “facilities of the Corporation” in proposed Rule 11.23(5).

The Exchange proposes to import the text of current NYSE Arca Equities Rule 6.10 (ETP Holders Holding Options)

³⁹ See NYSE and NYSE MKT Rule 9231(b)(1), which requires a hearing Panel to be composed of a Hearing Officer and two panelists.

⁴⁰ See “Proposed Changes Applicable to Entire Rulebook,” above.

into new proposed Rule 11.24 (ETP Holders Holding Options) without changes other than those made to the entire rulebook and the use of “Exchange” in place of “facilities of the Corporation.”

Proposed Amendments to Rule 11

The Exchange proposes to add references to ETP Holders to show revised Rule 11’s applicability to both categories of trading permit holders. Accordingly, the following proposed rules would be updated to include references to “ETP Holder” and/or “ETP Holders”: Rule 11.1 (Adherence to Law and Good Business Practice); Rule 11.2 (Prohibited Acts); Rule 11.3 (Prevention of the Misuse of Material, Nonpublic Information); Rule 11.4 (Rumors); Rule 11.5 (Manipulation); Rule 11.6 (Front-running of Block Transactions); Rule 11.10 (Excessive Trading); Rule 11.11 (Disclosure of Financial Arrangements of OTP Holders); Rule 11.12(a) (Joint Accounts); Rule 11.13 (Disciplinary Action By Other Organizations); Rule 11.18 (Supervision); Rule 11.19 (Anti-Money Laundering Compliance Program); Rule 11.20 (Miscellaneous Provisions); and Rule 11.21(a). Rule 11.21(a) would also include a reference to an “associated person of an ETP Holder.”

Similarly, the heading of Rule 11.11 would be amended to include “ETP Holders” and Rules 11.3 Commentary .02 (Prevention of the Misuse of Material, Nonpublic Information), 11.11(a), 11.18(b) and 11.19 would be amended to include references to “ETP Holder’s.”

The Exchange proposes to make the following additional changes to Rule 11:

- The Exchange proposes to add a new subsection (g) to Rule 11.2 that would state that an ETP Holder may not split any order into multiple orders for any purpose other than seeking the best execution of the entire order, which is the same text as NYSE Arca Equities Rule 6.2(g).

- The Exchange proposes to make several revisions to proposed Rule 11.3. Subsection (a) of proposed Rule 11.3 would be amended to replace “Options Surveillance Department” with “Regulatory staff.” Subsection (b) would also be amended to delete “the” before “Enforcement” and “Department” after it. Finally, the Exchange proposes to add a new Commentary .04 which has the same text as NYSE Arca Equities Rule 6.3 Commentary .04.

- The Exchange proposes to make several revisions to proposed Rule 11.6. Rule 11.6 sets 5,000 shares as the threshold for when an OTP Holder, OTP Firm or Associated Person must take

action under the Rule. Because NYSE Arca Equities Rule 6.6 sets a threshold of 10,000 shares, the Exchange proposes to amend Rule 11.6 by adding “(10,000 shares or more in the case of an ETP Holder)” after “5,000 shares or more.” In addition, the reference to “Pacific Exchange, Inc.” in Rule 11.6 would be replaced with “Exchange.” The Pacific Exchange, Inc. was a predecessor of the Exchange, and so the reference is obsolete.

- The Exchange proposes to make several changes to proposed Rule 11.12. In the last sentence of subsection (a), the phrase “or Market Maker” would be added after “specialist,” and “or she” after “he.” The Exchange proposes to add a new Commentary .01 to proposed Rule 11.12, which is the same text as Commentary .01 of NYSE Arca Equities Rule 6.12 (Joint Accounts). Finally, the Exchange proposes to add the text from NYSE Arca Equities Rule 6.12(b) to a new subsection (b) governing “Reporting.”

- In subsection (a) of Rule 11.18, the Exchange proposes to add the text “) and no ETP Holder” after “(DEA”. In addition, the Exchange proposes to add the text of current NYSE Arca Equities Rule 6.18(d) and Commentary .01 and .02 to a new subsection (d) and Commentary.

Rule 12 (Arbitration)

The Exchange proposes to revise Rule 12 (Arbitration) to incorporate NYSE Arca Equities Rule 12 (Arbitration). To implement the change, the Exchange proposes to amend the existing rules as follows.

- Subsections (a) and (c) would be amended to include a reference to “ETP Holder.”

- References to the “NASD” in “NASD Dispute Resolution” and in the defined term “NASD DR” would be replaced with “FINRA.”

In addition, the Exchange proposes to delete the brackets around the title of Rule 12.

Rule 13 (Cancellation, Suspension and Reinstatement)

The Exchange proposes to revise Rule 13 to incorporate NYSE Arca Equities Rule 11 (Cancellation, Suspension and Reinstatement). To implement the change, the Exchange proposes to amend the existing rules.

The Exchange proposes to add references to ETP Holders to show the revised rules’ applicability to both categories of trading permit holders. Accordingly, the following rules would be updated to include references to “ETP Holder” and/or “ETP Holders”: Rule 13.1 (Notice of Expulsion or

Suspension); Rule 13.2(a) (Procedures for Suspension); Rule 13.3 (Effect of Suspension or Cancellation); Rule 13.4 (Disciplinary Measures During Suspension); Rule 13.5 (Investigation Following Summary Suspension); Rule 13.6 (Grounds for Cancellation); Rule 13.7 (Reinstatement); Rule 13.8 (Failure to Obtain Reinstatement); and Rule 13.9 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).

Similarly, the Exchange proposes to add references to ETPs by adding “the ETP or” in place of “an” in the first sentence of Rule 13.3, and by adding “ETP or” before “OTP” in Rule 13.8.

The Exchange proposes to make the following additional changes to Rule 13.2:

- In subsection (a), the Exchange proposes to delete “and” from between “bars” and “limitations,” as a non-substantive grammatical change.

- The Exchange proposes to add the text of NYSE Arca Equities Rule 11.2(a)(1)(iii) as new subsection (a)(1)(C) of Rule 13.2. The current text of such subsection is marked “Reserved.”

- The Exchange proposes to delete “OTP” before “trading privileges” in subsection (a)(2)(A), to reflect that the rule would apply to both OTP and ETP trading privileges.

- In subsection (a)(2)(B) and (C), the Exchange proposes to add a new cross reference to proposed Rule 3.8–E and correct a cross reference from Rule 10.2(b) to Rule 10.2(d).

- Subsection (a)(2)(E) provides that the Exchange may suspend all trading rights and privileges of an OTP Holder or OTP Firm for failure to comply with Rule 3.4. Rule 3.4 was deleted in 2012 at the time of the merger of Archipelago Holdings, Inc. into NYSE Group, and so the referenced obligations no longer exist.⁴¹ Accordingly, the Exchange proposes to delete subsection (a)(2)(E) as obsolete and replace the text with “Reserved.”

- Rule 13.9(c), (e), and (h) would be updated to include references to the BCC, the NYSE Arca Equities disciplinary committee.⁴²

Rule 14 (Liability of Directors and Exchange)

The Exchange proposes to revise Rule 14 to incorporate NYSE Arca Equities Rule 13 (Liability of Directors and Corporation).

The Exchange proposes to add references to ETP Holders to show the

⁴¹ See Securities Exchange Act Release No. 67435 (July 13, 2012), 77 FR 42533 (July 19, 2012), note 12. See also Rule 3.4 (Reserved).

⁴² See NYSE Arca Equities Rule 3.2(b)(1) (Equity Committees) and proposed new Rule 3.2(b)(2).

revised rules' applicability to both categories of trading permit holders. Accordingly, the following rules would be updated to include references to "ETP Holder" and/or "ETP Holders": Rules 14.1 (Liability of Directors), 14.2 (Liability of Exchange), 14.3 (Legal Proceedings Against Exchange Directors, Officers, Employees or Agents) and 14.4 (Exchange's Costs of Defending Legal Proceedings).

Rule 14.5 (Deleted) would be deleted, as it is not needed as a placeholder.

IV. Fee Schedules

A. Proposed NYSE Arca Equities Fee Schedule

The Exchange proposes to delete the Equities Fee Schedule from the rules of the Exchange, and to adopt the NYSE Arca Equities Fee Schedule as the new fee schedule for the Exchange equity market.⁴³ The proposed NYSE Arca Equities Fee Schedule would be the same as the current Equities Fee Schedule, subject to the following changes:

- The title of the NYSE Arca Equities Fee Schedule would be "NYSE Arca Equities Fees and Charges," consistent with the title of the Options Fee Schedule, which is "NYSE Arca Options Fees and Charges."
- The references to the current NYSE Arca Equities Rules would be amended to cite the proposed NYSE Arca Rules, by adding "-E" to the proposed rule numbers. In addition, in footnotes 8 and 9, the references to NYSE Arca Equities Rules 1.1(c) and 1.1(d) would be changed to refer to proposed NYSE Arca Rules 1.1(b) and (c), respectively.
- As noted above, NYSE Arca Equities Rule 7.25 expired on June 23, 2016, and the Exchange proposes not to include an equivalent to NYSE Arca Equities Rule 7.25 in the Equities Rules. Consistent with such change, the table under "NYSE Arca Marketplace: Crowd Participant ("CP") Program Payments" would not be included in the proposed NYSE Arca Equities Fee Schedule, as it is also obsolete.
- The heading "NYSE Arca Equities: Regulatory Fees" would be changed to "Regulatory Fees."
- In General Note 1 under the heading "Co-Location Fees," the word "Equities" in "NYSE Arca Equities Fee Schedule" will be replaced with "Options," as the Note is meant to refer to the options market fee schedule.

B. NYSE Arca Options Fee Schedule

In the Options Fee Schedule, Note 8 under "NYSE Arca Options: General" refers to the "Schedule of Fees and Charges for NYSE Arca Equities, Inc." General Note 1 under the heading "Co-Location Fees" refers to the same document as the "NYSE Arca Equities Fee Schedule." The Exchange proposes to conform the two references to the name "NYSE Arca Equities Fee Schedule."

In addition, the Exchange proposes to update cross references in Notes 2, 6, 9 and 15 to reflect the proposed addition of "-O" to the rule numbers.

C. Listing Fee Schedule

In the Listing Fee Schedule, the Exchange proposes to update cross references in Item 6 under "Listing Fees"; Item 7 under "Annual Fee (Payable January in Each Calendar Year)"; and Notes 3 and 4 to reflect the proposed addition of "-E" to the rule numbers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act⁴⁴ in general, and with Section 6(b)(1)⁴⁵ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

Specifically, termination of the Delegation would result in the Exchange directly operating the equities market facility of the Exchange, while continuing to bear the responsibility to ensure the fulfillment of its statutory and self-regulatory obligations. As is true now, the independent regulatory oversight committee ("ROC") of the Board would oversee the Exchange's regulatory and self-regulatory organization responsibilities with regards to both the equities and options markets, and the Exchange's regulatory department would continue to carry out its regulatory functions with respect to both markets under the oversight of the ROC.⁴⁶

For the same reasons, the Exchange believes that the proposal to remove from the Exchange rules the

organizational documents of NYSE Arca Equities and NYSE Arca Equities Rules 14.1 and 14.3 in connection with the proposed termination of the Delegation is also consistent with Section 6(b)(1) of the Act.

The Exchange believes that the proposed amendment to Bylaws Section 3.01(b) to incorporate the ETP Holders into the existing statement of the authority of the Board would also be consistent with Section 6(b)(1) of the Act. By incorporating the ETP Holders, the limits that section sets on the Board's ability to exercise all powers of the Exchange and do all lawful acts and things would include those things as are not by law, the certificate of incorporation, the Bylaws or the Rules directed or required to be exercised, done or approved by ETP Holders, as well as the OTP Holders or the holding member.

Further, the Exchange believes that the proposed rule change would be consistent with the fair representation requirement of Section 6(b)(3) of the Exchange Act,⁴⁷ which is intended to give members a voice in the selection of an exchange's directors and the administration of its affairs. The proposed changes would ensure that all Permit Holders, irrespective of whether they are OTP Holders or ETP Holders, would have the same rights to participate in the Nominating Committee and the nomination of Non-Affiliated Directors and, in the case of a contested nomination, the same voting rights. Such process would also be consistent with the process for nominating non-affiliated directors of NYSE MKT, which also has both options and equity markets, as well as with the governing documents of Nasdaq LLC and Nasdaq BX.⁴⁸

The Exchange believes that the additional changes to Bylaws Section 3.02(a) would also allow the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. By clearly stating that the holding member determines the size of the Board, presenting the Board composition requirements in numbered clauses, and setting forth how the minimum number of Non-Affiliated directors shall be calculated, the provision would contribute to the orderly operation of

⁴³ The Exchange does not propose to amend the fee schedule for market data fees, the NYSE Arca Equities Proprietary Market Data Fees, which does not reference NYSE Arca Equities, Inc.

⁴⁴ 15 U.S.C. 78f(b).

⁴⁵ 15 U.S.C. 78f(b)(1).

⁴⁶ See NYSE Arca Rule 3.3(a)(1). NYSE Arca Equities does not have a regulatory oversight committee.

⁴⁷ See 15 U.S.C. 78f(b)(3).

⁴⁸ See notes 12 and 14, *supra*.

the Exchange by adding clarity and transparency to the Bylaws. Further, the proposed amendments would align the provision with the governing documents of the SRO Affiliates.⁴⁹

Similarly, the Exchange believes that the changes to Bylaws Article IV, Section 4.02, which would remove obsolete references to the Permit Holder Advisory Committee and add references to the Ethics and Business Conduct Committee of the Exchange, and the deletion of Rule 3.2(b)(2)(C)(i), which is an obsolete reference to the initial membership of the Board would contribute to the orderly operation of the Exchange by adding clarity and transparency to the Bylaws. Similarly, the Exchange believes that removing extraneous references to the voting process in the definitions of OTP Holder, OTP Firm and ETP Holder would add clarity and transparency to the Rules.

The Exchange believes that the proposed amendments to Rule 3 regarding the Board and Exchange Committees would allow the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange by ensuring that ETP Holders may participate in Exchange and Board Committees. Specifically, the proposed changes would ensure that ETP Holders and Allied Persons or Associated Persons of ETP Holders would be eligible for appointment to Exchange Committee [sic], just as OTP Holders and Allied Persons or Associated Persons of an OTP Firm are now. In addition, the proposed amendments would integrate the existing NYSE Arca Equities Business Conduct Committee into the Exchange rules, putting such committee on a par with the existing Ethics and Business Conduct Committee for OTP Holders. Similarly, the changes would mean that all reviews were conducted by a single CFR, and all CFR decisions were subject to the review of the Exchange Board, meaning that all Permit Holders were subject to the same rule. Presently, NYSE Arca and NYSE Arca Equities have separate CFRs, the NYSE Arca CFR decisions are subject to the review of the Exchange Board, and the NYSE Arca Equities CFR decisions are subject to the review of the NYSE Arca Equities board of directors.

The Exchange believes that the inclusion of the ETP Holders as well as OTP Holders in the Exchange and Board Committees would provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.⁵⁰ Allowing ETP Holders and Allied Persons or Associated Persons of ETP Holders to be eligible for appointment to Exchange Committees, putting the NYSE Arca Equities disciplinary committee on a par with the Exchange disciplinary committee, having reviews conducted by a single CFR, and having those decisions subject to the review of the same Board, would provide for the fair representation of members in the “administration of the affairs of the exchange,” including the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.

The Exchange believes that the integration of its two rulebooks into a single rulebook, with three categories of rules, is consistent with Section 6(b) of the Exchange Act⁵¹ in general, and with Section 6(b)(1)⁵² in particular because the integration and re-organization would contribute to the orderly operation of the Exchange by adding clarity and transparency to its Rules.

For similar reasons, the Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act⁵³ because the proposed rule change would be consistent with and would create a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 the termination of the Delegation would be consistent with and facilitate a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and

facilitating transactions in securities, 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, because the resulting structure would allow the Exchange to protect and maintain its self-regulatory functions and carry out its regulatory responsibilities under the Exchange Act.

The Exchange believes that the proposed amendments to (a) incorporate the ETP Holders into the existing statement of the authority of the Board; (b) integrate the ETP Holders into the process for appointing members of the Board; (c) have ETP Holders and Allied Persons or Associated Persons of ETP Holders be eligible for appointment to Exchange Committees; (d) integrate the existing NYSE Arca Equities Business Conduct Committee into the Exchange rules; and (e) have all reviews conducted by a single CFR would 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, because all Permit Holders would be subject to the same rules, irrespective of whether they were ETP Holders or OTP Holders. In addition, having the organization and administration rules for both the equities and options markets in the same Bylaws and Rule 3 would simplify and streamline the Exchange’s rules, as persons subject to the Exchange’s jurisdiction, regulators, and the investing public would not have to look at two separate sets of governing documents and organization and administration rules in order to fully understand the Exchange’s markets.

The Exchange believes that the proposed deletion of the organizational documents of NYSE Arca Equities from the Exchange rules as well as NYSE Arca Equities Rules 14.1 and 14.2 in connection with the proposed termination of the Delegation would remove impediments to and perfect a national market system because it would reduce potential confusion that may result from having these documents and Rules 14.1 and 14.2 remain rules of the Exchange following the proposed termination of the Delegation, when NYSE Arca Equities would no longer have responsibilities to operate the Exchange’s equity market.

Similarly, the Exchange believes that the proposed changes to (a) Bylaws Section 3.02(a), which would clearly state that the holding member determines the size of the Board, set forth the Board composition requirements in numbered clauses, and state how the minimum number of Non-

⁵⁰ See 15 U.S.C. 78f(b)(3).

⁵¹ 15 U.S.C. 78f(b).

⁵² 15 U.S.C. 78f(b)(1).

⁵³ 15 U.S.C. 78f(b)(5).

⁴⁹ See note 15, *supra*.

Affiliated directors shall be calculated; (b) Bylaws Article IV, Section 4.02, which would remove obsolete references to the Permit Holder Advisory Committee and add references to the Ethics and Business Conduct Committee of the Exchange; (c) deletion of Rule 3.2(b)(2)(C)(i), which would remove an obsolete reference to the initial membership of the Board; and (d) removing extraneous references to the voting process in the definitions of OTP Holder, OTP Firm and ETP Holder in Rule 1 would remove impediments to and perfect a national market system by adding clarity and transparency to the Bylaws, ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's governing documents.

The Exchange believes that the integration of its two rulebooks into one single rulebook, with three categories of rules, would remove impediments to and perfect a national market system and, in general, protect investors and the public interest, by adding clarity and transparency to the Bylaws, ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

The Exchange believes that (a) adding an "-O" or "-E" at the end of the number of any rule that applies only to the options or equities market, respectively, and (b) adding "—Equities" or "—Options" to the end of any rule that, despite being part of a rule of general application, only applies to one market, would allow trading permit holders and other market participants to quickly and easily identify which rules apply to each market, thereby removing impediments to and perfecting a national market system and, in general, protecting investors and the public interest.

Similarly, the Exchange believes that (a) incorporating the NYSE Arca Equities Conduct Rules into proposed Rule 9-E and Rule 11.21; (b) incorporating the NYSE Arca Equities Order Audit Trail System Rules into proposed Rule 6-E; and (c) creating a new NYSE Arca Equities Fee Schedule and updating the NYSE Arca Options Fee Schedule and Listing Fee Schedule would remove impediments to and perfect a national market system and, in general, protect investors and the public interest, because the proposed changes would ensure that all present NYSE Arca Equities rules were incorporated into the Exchange rulebook.

The Exchange believes that the proposed non-substantive changes to

the rules, including (a) deleting definitions marked "reserved" in Rule 1; (b) deleting references to the Pacific Exchange Inc. in Rule 11.6 and proposed Rule 8.203-E(g); and (c) removing obsolete text from proposed Rules 3.2(b), 5.3-E, 13.2(a) and 14.5, would remove impediments to and perfect a national market system by adding clarity and transparency to the Rules by deleting obsolete references or correcting minor typographical errors, ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's governing documents.

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 Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with the corporate structure of the Exchange and the administration and function of its corporate governance structures.

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 the 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-2017-40 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-2017-40. 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-2017-40 and should be submitted on or before July 11, 2017.

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

Eduardo A. Aleman,

Assistant Secretary.

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⁵⁴ 17 CFR 200.30-3(a)(12).