

as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Positions and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Acquiring Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Acquiring Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are affiliated persons, or second tier affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from an Acquiring Fund, and to engage in the accompanying in-kind

transactions with the Acquiring Fund.<sup>2</sup> The purchase of Creation Units by an Acquiring Fund directly from a Fund will be accomplished in accordance with the policies of the Acquiring Fund and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>2</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to an Acquiring Fund and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or a second-tier affiliate, of an Acquiring Fund because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Acquiring Fund.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81142; File No. SR-NYSEArca-2017-73]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Equities Rule 7.38 To Specify the Ranking of an Odd Lot Order That Has a Display Price That Is Better Than Its Working Price

July 13, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 30, 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

The Exchange proposes to amend NYSE Arca Equities Rule 7.38 (Odd and Mixed Lots) to specify the ranking of an odd lot order that has a display price that is better than its working price. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

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

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

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

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.38 (Odd and Mixed Lots) ("Rule 7.38") to specify the ranking of an odd lot order that has a display price that is better than its working price.

Rule 7.38 provides that the working price of an odd lot order will be adjusted both on arrival and when resting on the NYSE Arca Book based on the limit price of the order as follows:

- If the limit price of an odd lot order is equal to or worse than the contra-side PBBO, it will have a working price equal to the limit price.
- If the limit price of an odd lot order is better than the contra-side PBBO, it will have a working price equal to the contra-side PBBO.
- If the PBBO is crossed, the odd lot order will have a working price equal to the same-side PBB or PBO.

By moving the working price, an odd lot order to buy (sell) will not trade at a price above (below) the PBO (PBB), or if the PBBO is crossed, above (below) the PBB (PBO). In either case, if the odd lot order is ranked Priority 2—Display Orders,<sup>4</sup> its display price would not change when its working price is adjusted.

Exchange rules are currently silent regarding how a resting odd lot order that has a display price that is better than its working price would be ranked for trading at that working price.<sup>5</sup> This scenario would only occur if a resting odd lot order is displayed at a price, and then an Away Market PBBO crosses that display price. In that limited scenario, pursuant to Rule 7.38(b)(1) described above, the working price of the odd-lot order would be adjusted to a price inferior to the display price, but it would remain displayed at the now crossed price.

The Exchange proposes to specify that in such case, the ranking and priority category applicable to such an order at its display price, *i.e.*, the price it is displayed and Priority 2—Display Orders, would govern its ranking for purposes of a trade at its different,

<sup>4</sup> As described in Rule 7.36(e)(2), Priority 2—Display Orders are non-marketable Limit Orders with a displayed working price.

<sup>5</sup> Pursuant to Rule 7.38(b)(1), on arrival, an odd lot order's working price may be adjusted consistent with the terms of the order. However, an arriving odd-lot order would not be assigned a working price that would be inferior to the price at which the arriving odd lot order would be displayed.

inferior working price.<sup>6</sup> This ranking would differ from the Exchange's general rule that an order is ranked based on its working price.<sup>7</sup> However, the Exchange believes that if the display price of an order is better than its working price, such order has already demonstrated a public willingness to trade at a more aggressive price because it continues to be published in a market data feed at the more aggressive display price.<sup>8</sup> In such case, the order should receive the benefit of the ranking (both price and priority category) associated with its better display price when determining how that order would be traded at its working price. In other words, an odd-lot order with a better display price than its working price would not be ranked based on its working price, including that it would not be assigned Priority 3—Non-Display Orders at its working price.

The Exchange further believes that if an odd-lot order is assigned a new working price that is worse than its display price, such order should not be assigned a new working time. In other words, when trading at its working price, its time ranking would be based on the working time associated with its display price.<sup>9</sup> Maintaining the original working time of such order would ensure that it maintains its original ranking, even if it trades at a different price.

To effect this change, the Exchange proposes to amend Rule 7.38(b)(1) to provide that an odd-lot order ranked Priority 2—Display Orders would not be assigned a new working time if its working price is adjusted under Rule 7.38(b)(1). In addition, if the display price of an odd lot order to buy (sell) is above (below) its working price, it would be ranked based on its display price.<sup>10</sup>

<sup>6</sup> As described in Rule 7.36(c), an order is ranked based on price, priority category, and time. Such ranking is only applicable once an order is resting on the NYSE Arca Book.

<sup>7</sup> Rule 7.36(d) provides that [sic] all orders are ranked based on the working price of an order. Rule 7.36(e)(3) generally provides that non-marketable orders for which the working price is not displayed have third priority behind Market Orders and non-marketable Limit Orders that are displayed at their working price. This proposed rule change would be an exception to these rules.

<sup>8</sup> See Rule 7.36(b)(1) (odd-lot sized orders are considered displayed for ranking purposes).

<sup>9</sup> Rule 7.36(f)(2) provides that an order is assigned a new working time any time the working price of the order changes. This proposed rule change would be an exception to this general rule.

<sup>10</sup> For example, assume the PBBO is 10.07 × 10.10 and the Exchange receives orders ranked Priority 2—Display Orders in the following sequence: T1 to buy 25 shares displayed at 10.08, T2 to buy 25 shares displayed at 10.09, T3 to buy 25 shares displayed at 10.08, and T4 to buy 100 shares displayed at 10.07. Assume next that the PBO

Because an odd lot order with a display price better than its working price currently trades in this manner, these changes will be in effect when this proposed rule change is operative.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>12</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

Specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange believes that an order that has been displayed should receive the benefit of the ranking of that displayed price if it trades at a less aggressive working price. This scenario would only occur if a resting odd-lot order has been displayed at a price, and then an Away Market PBBO crosses that price and then the working price of that order is adjusted to a price inferior to its display price. In such case, while the odd lot order would be executed at its working price, because it was both willing to trade at a better price *and* is still displayed at that better price, the Exchange proposes that it would be ranked based on its display price for purposes of its execution at the working price. If the PBBO had not crossed the odd-lot order, such order would have had the benefit of the ranking based on its display price and the Exchange believes it would be consistent with the protection of investors and the public for the odd-lot order to retain such ranking when its working price is moved to an inferior price. The Exchange further believes that the

changes to 10.07. The working price of T1, T2, and T3 will be adjusted to 10.07, but they would keep their original working time. Next, the Exchange receives an incoming order to sell 100 shares at 10.07. The Exchange would trade the incoming order with the resting orders in the following sequence: T2, T1, T3, and then T4 would be allocated the remaining 25 shares. T2 would trade before T1 because it has a better price ranking based on its display price. If the incoming order to sell were for 50 shares, only T2 and T1 would trade.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

proposed rule change would promote fair and orderly markets that would protect investors and the public interest because it would promote the display of liquidity by ensuring that a displayed odd lot order maintains its ranking even if it trades at a less aggressive price.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency in Exchange rules and reduce potential confusion regarding how an odd-lot order would be ranked and execute [sic] in the limited scenario when the display price of a resting odd lot has been crossed, and it has been assigned a working price inferior to its display price.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change is not designed to address any competitive issues but rather to provide an incentive for market participants to enter aggressively-priced displayed liquidity.

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

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

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2017-73 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2017-73. 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-2017-73 and should be submitted on or before August 9, 2017.

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

**Jill M. Peterson,**  
*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-81140; File No. SR-NYSEArca-2017-77]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule**

July 13, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 10, 2017, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee Schedule"). The Exchange proposes to implement the fee change effective July 10, 2017.<sup>4</sup> The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

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

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

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

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

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

<sup>4</sup> The Exchange originally filed to amend the Fee Schedule on July 3, 2017 (SR-NYSEArca-2017-74) and withdrew such filing on July 10, 2017.