SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Establish a Retail Liquidity Program

November 6, 2013.

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 October 22, 2012, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to [sic] a one-year pilot program that would add new Rule 7.44 to establish a Retail Liquidity Program (''Program'' or ''proposed rule change'') to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, while also providing the potential for price improvement to such order flow. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange is proposing a one-year pilot program that would add new NYSE Arca Equities Rule 7.44 to establish a Retail Liquidity Program to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, while also providing the potential for price improvement to such order flow.

Under the proposed rule change, the Exchange would create two new classes of market participants: (1) Retail Member Organizations (''RMOs''), which would be eligible to submit certain retail order flow (''Retail Orders'') to the Exchange, and (2) Retail Liquidity Providers (''RLPs''), which would be required to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the best protected bid or the best protected offer (''PBBO'') [4] (''Retail Price Improvement Order'' or ''RPI'') for securities to which they are assigned.[5] Equity Trading Permit (''ETP'') Holders would also be permitted, but not required, to submit RPIs.

The Exchange would submit a separate proposal to amend its Price List in connection with the proposed Retail Liquidity Program. Under that proposal, the Exchange expects to charge RLPs and other ETP Holders a fee for executions of their RPIs against Retail Orders and in turn would provide a credit or free executions to RMOs for executions of their Retail Orders against RPIs of RLPs and other ETP Holders. The fees and credits for liquidity providers and RMOs would be determined based on experience with the Program in the first several months.

[4] The terms protected bid and protected offer would have the same meaning as defined in Regulation NMS Rule 600(b)(57). The PBB is the best-priced protected bid and the PBO is the best-priced protected offer. Generally, the PBB and PBO and the national best bid (''NBB'') and national best offer (''NBO'') will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the PBB or PBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

[5] RLPs would be permitted to submit RPIs for securities to which it was [sic] not assigned. For non-assigned securities, an RLP would be treated the same as other non-RLP ETP Holders.

Definitions

The Exchange proposes to adopt the following definitions under proposed NYSE Arca Equities Rule 7.44(a). First, the term ''Retail Liquidity Provider'' would be defined as an ETP Holder that was approved by the Exchange to act as such and to submit RPIs according to certain requirements set forth in proposed Rule 7.44.

Second, the term ''Retail Member Organization'' would be defined as an ETP Holder that has been approved by the Exchange to submit Retail Orders.

Third, the term ''Retail Order'' would be defined as an agency order or a riskless principal order that met the criteria of FINRA Rule 5320.03 that originated from a natural person and was submitted to the Exchange by an RMO, provided that no change was made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. Retail Orders must be priced in one cent increments in prices above $1.00 per share. In addition to interacting with RPIs, Retail Orders would interact with non-displayed liquidity priced better than the PBBO on the opposite [sic] of the Retail Order, excluding contra-side Retail Orders, in Exchange Systems, such as Passive Liquidity (''PL'') Orders and Mid-Point Passive Liquidity (''MPL'') Orders, would interact with displayable odd lot interest priced within the PBBO, and, depending upon how they are designated by an RMO, could interact with other interest in Exchange systems.

Finally, the term ''Retail Price Improvement Order'' would be defined as non-displayed interest in NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that was better than the best protected bid (''PBB'') or best protected offer (''PBO'') by at least $0.001 and that was identified as an RPI in a manner prescribed by the Exchange.[6] The price

[6] Exchange systems would prevent Retail Orders from interacting with an RPI if the RPI was not priced at least $0.001 better than the PBBO. The Exchange notes, however, that price improvement of $0.001 would be a minimum requirement and RLPs and other ETP Holders could enter Retail Price Improvement Orders that better the PBBO by more than $0.001. Concurrently with this filing, the Exchange has submitted a request for an exemption under Regulation NMS Rule 612 that would permit it to accept and rank the undisplayed RPIs. As outlined in the request, the Exchange believes that the minimum price improvement available under the Program, which would amount to $0.50 on a 500 share order, would be meaningful to the small retail investor. *See* Letter from Janet M. McGinness, Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission dated October

of an RPI would be determined by an ETP Holder's entry of RPI buy or sell interest into Exchange systems. RPIs would remain undisplayed. An RPI that was not priced within the PBBO would be rejected upon entry. A previously entered RPI that became priced at or inferior to the PBBO would not be eligible to interact with incoming Retail Orders, and such an RPI would cancel if a Retail Order executed against all displayed interest ranked ahead of the RPI and then attempted to execute against the RPI. If not cancelled, an RPI that was no longer priced at or inferior to the PBBO would again be eligible to interact with incoming Retail Orders. An RPI must be designated as either a PL or MPL Order, and an order so designated would interact with only Retail Orders.

RLPs and other liquidity providers [7] and RMOs could enter odd lots, round lots or mixed lots as RPIs and as Retail Orders, respectively. As discussed below, RPIs would be ranked and allocated according to price and time of entry into Exchange systems and therefore without regard to whether the size entered was an odd lot, round lot or mixed lot. Similarly, Retail Orders would interact with RPIs according to the priority and allocation rules of the Program and without regard to whether they were odd lots, round lots or mixed lots. Finally, Retail Orders could be designated as Type 1 or Type 2 without regard to the size of the lot. In accordance with CTA rules, executions less than a round lot would not print to the tape or be considered the last sale.

RPIs would interact with Retail Orders as follows; a more detailed priority and order allocation discussion is below. An RPI would interact with Retail Orders at the level at which the RPI was priced as long as the minimum required price improvement was produced. Accordingly, if RPI sell interest was entered with a $10.098 offer while the PBO was $10.11, the RPI could interact with the Retail Order at $10.098, producing $0.012 of price improvement.

RMO Qualifications and Approval Process

Under proposed NYSE Arca Equities Rule 7.44(b), any ETP Holder [8] could qualify as an RMO if it conducted a retail business or handled retail orders on behalf of another broker-dealer. Any ETP Holder that wished to obtain RMO status would be required to submit: (1) An application form; (2) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted by the ETP Holder as Retail Orders would meet the qualifications for such orders under proposed Rule 7.44; and (3) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow.[9]

An RMO would be required to have written policies and procedures reasonably designed to assure that it would only designate orders as Retail Orders if all requirements of a Retail Order were met. Such written policies and procedures must require the ETP Holder to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represented Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it received from such broker-dealer customer that it designated as Retail Orders would meet the definition of a Retail Order. The RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders would be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.[10]

If the Exchange disapproved the application, the Exchange would provide a written notice to the ETP Holder. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 7.44(i), and/or reapply for RMO status 90 days after the disapproval notice was issued by the Exchange. An RMO also could voluntarily withdraw from such status at any time by giving written notice to the Exchange.

Any ETP Holder that has qualified as an RMO pursuant to NYSE or NYSE MKT Rule 107C shall be deemed to be so qualified pursuant to this Rule.

RLP Qualifications

To qualify as an RLP under proposed NYSE Arca Equities Rule 7.44(c), an ETP Holder would be required to: (1) Already be registered as an MM or LMM; (2) demonstrate an ability to meet the requirements of an RLP; (3) have the ability to accommodate Exchange-supplied designations that identify to the Exchange RLP trading activity in assigned RLP securities; and (4) have adequate trading infrastructure and technology to support electronic trading.

Because an RLP would only be permitted to trade electronically, an ETP Holder's technology must be fully automated to accommodate the Exchange's trading and reporting systems that are relevant to operating as an RLP. If an ETP Holder was unable to support the relevant electronic trading and reporting systems of the Exchange for RLP trading activity, it would not qualify as an RLP. An RLP may not use the Exchange supplied designations for non-RLP trading activity at the Exchange. Additionally, an ETP Holder will not receive credit for its RLP trading activity for which it does not use its designation.

RLP Approval Process

Under proposed Rule 7.44(d), to become an RLP, an ETP Holder would be required to submit an RLP application form with all supporting documentation to the Exchange. The Exchange would determine whether an applicant was qualified to become an RLP as set forth above. After an applicant submitted an RLP application to the Exchange with supporting documentation, the Exchange would notify the applicant ETP Holder of its decision. The Exchange could approve one or more ETP Holders to act as an RLP for a particular security. The Exchange could also approve a particular ETP Holder to act as an RLP for one or more securities. Approved RLPs would be assigned securities according to requests made to, and approved by, the Exchange.

22, 2013 ("Sub-Penny Rule Exemption Request"). The Exchange is also planning to submit a request for no-action relief from Rule 602 of Regulation NMS.

[7] A Market Maker ("MM") or Lead Market Maker ("LMM") would be permitted to enter RPIs for securities in which they were not registered as an MM or LMM; however, the MM or LMM would not be eligible for execution fees that are lower than non-RLP rates for such securities.

[8] An RLP could also act as an RMO for securities to which it was not assigned, subject to the qualification and approval process established by the proposed rule.

[9] For example, a prospective RMO could be required to provide sample marketing literature, Web site screenshots, other publicly disclosed materials describing the retail nature of their order flow, and such other documentation and information as the Exchange could require to obtain reasonable assurance that the applicant's order flow would meet the requirements of the Retail Order definition.

[10] FINRA, on behalf of the Exchange, would review an RMO's compliance with these requirements through an exam-based review of the RMO's internal controls.

If an applicant was approved by the Exchange to act as an RLP, the applicant would be required to establish connectivity with relevant Exchange systems before the applicant would be permitted to trade as an RLP on the Exchange.

If the Exchange disapproves the application, the Exchange would provide a written notice to the ETP Holder. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 7.44(i) and/or reapply for RLP status 90 days after the disapproval notice was issued by the Exchange.

Voluntary Withdrawal of RLP Status

An RLP would be permitted to withdraw its status as an RLP by giving notice to the Exchange under proposed NYSE Arca Equities Rule 7.44(e). The withdrawal would become effective when those securities assigned to the withdrawing RLP were reassigned to another RLP. After the Exchange received the notice of withdrawal from the withdrawing RLP, the Exchange would reassign such securities as soon as practicable, but no later than 30 days after the date the notice was received by the Exchange. If the reassignment of securities took longer than the 30-day period, the withdrawing RLP would have no further obligations and would not be held responsible for any matters concerning its previously assigned RLP securities.

RLP Requirements

Under proposed NYSE Arca Equities Rule 7.44(f), an RLP would only be permitted to enter RPIs electronically and directly into Exchange systems and facilities designated for this purpose and could only submit RPIs in their role as an RLP for the securities to which it is assigned as RLP.[11] In order to be eligible for execution fees that are lower than non-RLP rates, an RLP would be required to maintain (1) an RPI that was better than the PBB at least five percent of the trading day for each assigned security; and (2) an RPI that was better than the PBO at least five percent of the trading day for each assigned security.

An RLP's five-percent requirements would be calculated by determining the average percentage of time the RLP maintained an RPI in each of its RLP securities during the regular trading day, on a daily and monthly basis. The Exchange would determine whether an RLP met this requirement by calculating the following:

(1) The "Daily Bid Percentage" would be calculated by determining the percentage of time an RLP maintained an RPI with respect to the PBB during each trading day for a calendar month;

(2) The "Daily Offer Percentage" would be calculated by determining the percentage of time an RLP maintained an RPI with respect to the PBO during each trading day for a calendar month;

(3) The "Monthly Average Bid Percentage" would be calculated for each RLP security by summing the security's "Daily Bid Percentages" for each trading day in a calendar month then dividing the resulting sum by the total number of trading days in such calendar month; and

(4) The "Monthly Average Offer Percentage" would be calculated for each RLP security by summing the security's "Daily Offer Percentage" for each trading day in a calendar month and then dividing the resulting sum by the total number of trading days in such calendar month.

Finally, only RPIs would be used when calculating whether an RLP was in compliance with its five-percent requirements.

The Exchange would determine whether an RLP met its five-percent requirement by determining the average percentage of time an RLP maintained an RPI in each of its RLP securities during the regular trading day on a daily and monthly basis. The lower fees would not apply during a month in which the RLP had not satisfied the five-percent requirements. Additionally, beginning with the third month of operation as an RLP, an RLP's failure to satisfy the five-percent requirements described above for each of its assigned securities could result in action taken by the Exchange, as described below.

The Exchange would not begin calculating whether an RLP met the quoting requirement during the first two calendar months that the RLP participated in the Program. If the Program was implemented mid-month, the Exchange would begin calculating the quoting requirement two calendar months after the end of the month in which the program was implemented.

Failure of RLP To Meet Requirements

Proposed NYSE Arca Equities Rule 7.44(g) addresses an RLP's failure to meet its requirements. If, after the first two months an RLP acted as an RLP, an RLP failed to meet any of the requirements of proposed Rule 7.44(f) for any assigned RLP security for three consecutive months, the Exchange could, in its discretion, take one or more of the following actions[12]: (1) Revoke the assignment of any or all of the affected securities from the RLP; (2) revoke the assignment of unaffected securities from the RLP; or (3) disqualify the ETP Holder from its status as an RLP.

The Exchange, in its sole discretion, would determine if and when an ETP Holder was disqualified from its status as an RLP. One calendar month prior to any such determination, the Exchange would notify an RLP of such impending disqualification in writing. When disqualification determinations were made, the Exchange would provide a written disqualification notice to the ETP Holder.

A disqualified RLP could appeal the disqualification as provided in proposed Rule 7.44(i) and/or reapply for RLP status 90 days after the disqualification notice was issued by the Exchange.[13]

Failure of RMO To Abide by Retail Order Requirements

Proposed NYSE Arca Equities Rule 7.44(h) addresses an RMO's failure to abide by Retail Order requirements. If an RMO designated orders submitted to the Exchange as Retail Orders and the Exchange determined, in its sole discretion, that those orders failed to meet the requirements of Retail Orders, the Exchange could disqualify an ETP Holder from its status as an RMO. When disqualification determinations were made, the Exchange would provide a written disqualification notice to the ETP Holder. A disqualified RMO could appeal the disqualification as provided in proposed Rule 7.44(i) and/or reapply for RMO status 90 days after the disqualification notice was issued by the Exchange.[14]

Appeal of Disapproval or Disqualification

Proposed NYSE Arca Equities Rule 7.44(i) provides appeal rights to ETP Holders. If an ETP Holder disputed the Exchange's decision to disapprove it under Rule 7.44(b) or (d) or disqualify it under Rule 7.44(g) or (h), such ETP Holder ("appellant") could request, within five business days after notice of the decision was issued by the Exchange, that the Retail Liquidity

[11] An ETP Holder acting as an RLP for a security could enter RPIs into Exchange systems and facilities for securities to which it was not assigned; however, the ETP Holder would not be eligible for execution fees that are lower than non-RLP rates for securities to which it was not assigned.

[12] As discussed previously, an RLP's failure to satisfy its requirement would result in the RLP no longer being charged the lower fees for execution of its Retail Price Improvement Orders.

[13] The Exchange notes that the RPI executions of an ETP Holder disqualified from acting as an RLP would thereafter be subject to the transaction pricing applicable to non-RLP ETP Holders.

[14] As above for RLPs, the Retail Order executions of an ETP Holder disqualified from RMO status would thereafter be subject to the transaction pricing applicable to non-RMO ETP Holders.

Program Panel (''RLP Panel'') review the decision to determine if it was correct.[15]

The RLP Panel would consist of the NYSE's Chief Regulatory Officer (''CRO''), or a designee of the CRO, and two officers of the Exchange designated by the Co-Head of U.S. Listings and Cash Execution. The RLP Panel would review the facts and render a decision within the time frame prescribed by the Exchange. The RLP Panel could overturn or modify an action taken by the Exchange and all determinations by the RLP Panel would constitute final action by the Exchange on the matter at issue.

Retail Liquidity Identifier

Under proposed NYSE Arca Equities Rule 7.44(j), the Exchange would disseminate an identifier through the Consolidated Quotation System (''CQS''), the UTP Quote Data Feed, and the Exchange's proprietary data feed when RPI interest priced at least $0.001 better than the PBB or PBO for a particular security was available in Exchange systems (''Retail Liquidity Identifier''). The Retail Liquidity Identifier would reflect the symbol and the side (buy or sell) of the RPI interest, but would not include the price or size of the RPI interest. In particular, CQS, UTP Quote Data Feed, and proprietary data feed outputs would be modified to include a field for codes related to the Retail Liquidity Identifier. The codes would indicate RPI interest that was priced better than the PBBO by at least the minimum level of price improvement as required by the Program.

Retail Order Designations

Under proposed NYSE Arca Equities Rule 7.44(k), an RMO could designate how a Retail Order would interact with available contra-side interest as follows.

As proposed, a Type 1-designated Retail Order would be a limit order that would interact only with available contra-side RPIs and other non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order, excluding contra-side Retail Orders,[16] but would not interact with other available contra-side interest in Exchange systems or route to other markets. The portion of a Type 1-designated Retail Order that would not execute against contra-side RPIs or other price-improving liquidity would be immediately and automatically cancelled.

A Type 2-designated Retail Order could be marked as Immediate or Cancel (''IOC''), Day, or Market. A Type 2-designated Retail Order marked as IOC would be a limit order that would interact first with available contra-side RPIs and other non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order, excluding contra-side Retail Orders, and then any remaining portion of the Retail Order would be executed as a limit order marked as an IOC, pursuant to Rule 7.31(e)(2). A Type 2-designated Retail Order marked as IOC would not trade through Protected Quotations and would not route. A Type 2-designated Retail Order marked as Day would be a limit order that would interact first with available contra-side RPIs and other non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order, excluding contra-side Retail Orders, and then any remaining portion of the Retail Order would interact with the Arca Book and would route to Protected Quotations. Any unfilled balance of such an order would post to the Arca Book. A Type 2-designated Retail Order marked as Market would interact first with available contra-side RPIs and other non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order, excluding contra-side Retail Orders, and then any remaining portion of the Retail Order would be executed as a Market Order.[17]

A Retail Order designated with a ''No Midpoint Execution'' modifier, pursuant to Rule 7.31(h)(5), would not execute against resting MPL Orders but would execute against eligible RPIs that are also designated as MPL Orders.

Priority and Order Allocation

Under proposed NYSE Arca Equities Rule 7.44(l), the Exchange proposes that competing RPIs in the same security would be ranked and allocated together with all other non-displayed interest according to price then time of entry into Exchange systems. Any displayable odd lot interest priced between the PBBO would be ranked ahead of any RPIs and other non-displayed interest at any given price point. The Exchange further proposes that executions would occur in price/time priority in accordance with NYSE Arca Equities Rule 7.36. Any remaining unexecuted RPI interest would remain available to interact with other incoming Retail Orders if such interest was at an eligible price. Any remaining unexecuted portion of the Retail Order would cancel, execute, or post to the NYSE Arca Book in accordance with proposed Rule 7.44(k). The following examples illustrate this proposed method:

PBBO for security ABC is $10.00–$10.05
RLP 1 enters a Retail Price Improvement Order to buy ABC at $10.01 for 500
RLP 2 then enters a Retail Price Improvement Order to buy ABC at $10.02 for 500
RLP 3 then enters a Retail Price Improvement Order to buy ABC at $10.03 for 500

An incoming Type 1-designed Retail Order to sell ABC for 1,000 would execute first against RLP 3's bid for 500 at $10.03, because it was the best priced bid, then against RLP 2's bid for 500 at $10.02, because it was the next best priced bid. RLP 1 would not be filled because the entire size of the Retail Order to sell 1,000 would be depleted. The Retail Order would execute against RPI Orders in price/time priority, and *would not* execute at the single clearing price that completes the order's execution.

However, assume the same facts above, except that RLP 2's RPI to buy ABC at $10.02 was for 100. The incoming Retail Order to sell 1,000 would execute first against RLP 3's bid for 500 at $10.03, because it was the best priced bid, then against RLP 2's bid for 100 at $10.02, because it was the next best priced bid. RLP 1 would then receive an execution for 400 of its bid for 500 at $10.01, at which point the entire size of the Retail Order to sell 1,000 would be depleted.

Assume the same facts as above, except that RLP 3's order was not an RPI to buy ABC at $10.03, but rather, a non-displayed order to buy ABC at $10.03. The result would be similar to the result immediately above, in that the incoming Retail Order to sell 1,000 would execute first against RLP 3's non-displayed bid for 500 at $10.03, because it was the best priced bid, then against RLP 2's bid for 100 at $10.02, because it was the next best priced bid. RLP 1 then receives an execution for 400 of its bid for 500 at $10.01, at which point the entire size of

[15] In the event an ETP Holder was disqualified from its status as an RLP pursuant to proposed Rule 7.44(g), the Exchange would not reassign the appellant's securities to a different RLP until the RLP Panel informed the appellant of its ruling.

[16] PL Orders, MPL Orders, and all other non-displayed price improving liquidity would be available to interact with incoming Retail Orders. Non-displayed price improving liquidity and RPIs entered at the same price would be ranked according to time of entry. Furthermore, PL Orders and MPL Orders may be entered in conjunction with RPIs, and orders designated as such would be available to interact with only Retail Orders. Displayable odd lot interest would also be available to interact with incoming Retail Orders. Displayable odd lot interest would be ranked according to time of entry and would be ranked ahead of RPIs and non-displayed price improving liquidity entered at the same price.

[17] Retail Orders marked as Market would be subject to trading collars. *See* NYSE Arca Equities Rule 7.31(a).

the Retail Order to sell 1,000 would be depleted.

As a final example, assume the original facts, except that LMT 1 entered a displayable odd lot limit order to buy ABC at $10.02 for 60. The incoming Retail Order to sell for 1,000 would execute first against RLP 3's bid for 500 at $10.03, because it was the best priced bid, then against LMT 1's bid for 60 at $10.02, because it was the next best priced bid and displayable odd lot interest would have priority over equally priced RPIs and non-displayed interest. RLP 2 would then receive an execution for 440 of its bid for 500 at $10.02, at which point the entire size of the Retail Order to sell 1,000 would be depleted.

To demonstrate how the different types of Retail Orders would interact with available Exchange interest, assume the following facts:

PBBO for security DEF is $19.99–$20.01 (100 × 100)
LMT 1 enters a Limit Order to buy DEF at $20.00 for 100
RLP 1 then enters a Retail Price Improvement Order to buy DEF at $20.003 for 100
MPL 1 then enters a Midpoint Passive Liquidity Order to buy DEF at $21.00 for 100

An incoming Type 2-designated IOC Retail Order to sell DEF for 300 at $20.00 would execute first against MPL 1's bid for 100 at $20.005, because it was the best priced bid, then against RLP 1's bid for 100 at $20.003, because it was the next best priced bid, and then against LMT 1's bid for 100 at $20.00 because it was the next best priced bid, at which point the entire size of the Retail Order to sell 300 would be depleted.

Assume the same facts as above except the incoming order was a Type 2-designated Day Retail Order to sell DEF for 500 at $20.00. The Retail Order would execute first against MPL 1's bid for 100 at $20.005, because it was the best priced bid, then against RLP 1's bid for 100 at $20.003, because it was the next best priced bid, and then against LMT 1's bid for 100 at $20.00 because it was the next best priced bid. The remaining balance of the Retail Order would post to the NYSE Arca Book at $20.00, resulting in a PBBO of $19.99–$20.00 (100 × 200).

Assume the same facts as above except the incoming order was a Type 1-designated Retail Order to sell DEF for 300. The Retail Order would execute first against MPL 1's bid for 100 at $20.005, because it was the best priced bid, and then against RLP 1's bid for 100 at $20.003. The remaining balance of the Retail Order would be cancelled and not execute against LMT 1 because Type 1-designated Retail Orders would not interact with interest on the NYSE Arca Book other than non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order.

Finally, to demonstrate the priority of displayed interest over RPIs, assume the following facts:

PBBO for security GHI is $30.00–$30.05
RLP 1 enters a Retail Price Improvement Order to buy GHI at $30.02 for 100
LMT 1 then enters a Limit Order to buy GHI at $30.02 for 100
New PBBO of $30.02–$30.05
RLP 2 then enters a Retail Price Improvement Order at $30.03 for 100

An incoming Type 2-designated IOC Retail Order to sell GHI for 300 at $30.01 would execute first against RLP 2's bid for 100 at $30.03, because it was the best priced bid, then against LMT 1 for 100 at $30.02 because it was the next best priced bid. The Retail Order would then attempt to execute against RLP 1, but because RLP 1 was priced at the PBBO and no longer price improving, RLP 1 would cancel. At that point, the remaining balance of the Retail Order would cancel because there were no remaining orders within its limit price.

Assume the same facts as above except the incoming Retail Order was for 200. The Retail Order would execute against RLP 2's bid for 100 at $30.03, because it was the best priced bid, then against LMT 1 for 100 at $30.02 because it was the next best priced bid. RLP 1 does not cancel because the incoming Retail Order was depleted before attempting to execute against RLP 1. RLP 1 would be eligible to interact with another incoming Retail Order because it would be priced better than the PBBO.

Implementation

The Exchange proposes that all NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, would be eligible for inclusion in the Retail Liquidity Program. In order to provide for an efficient implementation, the Retail Liquidity Program would initially cover only a certain specified list of NYSE Arca-listed securities to which RLPs would be assigned, as announced by the Exchange via Information Memo. The Exchange anticipates that the securities included within the Retail Liquidity Program would be expanded periodically as demand for RLP assignments developed in response to increased Retail Order activity on the Exchange.[18] The Retail Liquidity Program would be available for the Core Trading Session only. The Exchange would accept Retail Orders and RPIs only after the official opening price for the security had been disseminated.

The Exchange proposes to limit the Program during the pilot period to trades occurring at prices equal to or greater than $1.00 per share, and similarly, Retail Orders and RPIs could not be priced below $1.00. Toward that end, Exchange trade validation systems would prevent the interaction of RPI buy or sell interest and Retail Orders at a price below $1.00 per share and would reject Retail Orders and RPIs priced below $1.00. However, if the Retail Order was a Type 2-designated Market Retail Order,[19] it would be able to interact at prices below $1.00 with liquidity outside the Program in the Exchange's regular order book. In addition to facilitating an orderly[20] and operationally intuitive pilot, the Exchange believes that limiting the Program to trades equal to or greater $1.00 per share during the pilot would enable it better to focus its efforts to monitor price competition and to assess any indications that data disseminated under the Program was potentially disadvantaging retail orders. As part of that review, the Exchange would produce data throughout the pilot, which would include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.

The Exchange will announce via Trader Update the implementation date of the Program.

Comparison to Existing Programs

Proposed NYSE Arca Equities Rule 7.44 is based on NYSE Rule 107C, governing NYSE's ''Retail Liquidity Program'' which was recently approved by the Commission and commenced operations on August 1, 2012.[21]

[18] The Exchange would announce any such expansions via Information Memo.

[19] Type 2-designated Market Retail Orders would not be entered with a price and therefore would not implicate rules preventing the pricing of Retail Orders and RPIs below $1.00.

[20] Given the proposed limitation, the pilot Program would have no impact on the minimum pricing increment for orders priced less than $1.00 and therefore no effect on the potential of markets executing those orders to lock or cross. In addition, the undisplayed nature of the liquidity in the Program simply has no potential to disrupt displayed, protected quotes. In any event, the Program would do nothing to change the obligation of exchanges to avoid and reconcile locked and crossed markets under NMS Rule 610(d).

[21] Securities Exchange Act Release No. 67347 (July 3, 2012, 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84 (the ''RLP Approval Order''). In conjunction with the approval of the NYSE Retail Liquidity Program, a nearly identical program was proposed and approved to operate on NYSE MKT LLC. For ease of reference, the comparisons made in this section

Proposed Rule 7.44 is similar to NYSE Rule 107C with three key distinctions. The first distinction between proposed Rule 7.44 and NYSE Rule 107C is that the Exchange proposes to in all cases execute incoming Retail Orders against resting RPI Orders *and* other resting non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order to maximize the price improvement available to the incoming Retail Order. As proposed, the Exchange would maintain its price/time priority model and would provide all available price improvement to incoming Retail Orders, whether such price improvement is submitted pursuant to the Program or as an order type currently accepted by the Exchange.[22] In contrast, pursuant to NYSE Rule 107C(k)(1), a Type 1-designated Retail Order ''will interact only with available contra-side RPIs and will not interact with other available contra-side interest in Exchange systems.'' Accordingly, other non-displayed orders and displayable odd lot interest offering price improvement at prices better than resting RPI interest do not have an opportunity to interact with incoming Retail Orders pursuant to NYSE Rule 107C. The Exchange is proposing in all cases to provide the maximum price improvement available to incoming Retail Orders. Accordingly, Retail Orders under the Exchange's Program would always interact with available contra-side RPI Orders and any other non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order, in price/time priority consistent with the Exchange's Rule 7.36. Such other non-displayed price-improving contra-side liquidity would of course remain available to all participants, as it is today, while RPI Orders would only be available to RMOs, as described above.

Second, as proposed, the Exchange would provide applicable price improvement to incoming Retail Orders at potentially multiple price levels.[23] In contrast, pursuant to NYSE Rule 107C, an incoming Retail Order to NYSE will execute at the single clearing price level at which the incoming order will be fully executed. To illustrate, assume the same facts set forth in the second example above, where RLP 2's RPI Order to buy ABC at $10.02 was for 100 shares. Pursuant to NYSE Rule 107C, an incoming Retail Order to sell 1,000 shares would execute first against RLP 3's bid for 500 shares, because it is the best priced bid, then against RLP 2's bid for 100 shares, because it is the next best priced bid, then against 400 of the 500 shares bid by RLP 1. However, rather than executing at each of these price levels for the number of shares available, as it would under proposed NYSE Arca Equities Rule 7.44, the Retail Order submitted to NYSE pursuant to NYSE Rule 107C executes at the single clearing price that completes the order's execution, which is $10.01 to complete the entire order to sell 1,000 shares. The Exchange intends to provide all of the price improvement in these examples to the incoming Retail Order, and thus has proposed to execute orders under the Program consistent with its existing price/time market model.

Third, as proposed, RPIs would not be entered to track the PBBO, but instead would be entered at a single price.[24] In contrast, pursuant to NYSE Rule 107C, the price of an RPI is determined by an RLP's entry of the following into NYSE systems: (1) RPI buy or sell interest; (2) an offset, if any; and (3) a ceiling or floor price. The offset is a predetermined amount by which the RLP is willing to improve the PBBO, subject to a ceiling or floor price. The ceiling or floor price is the amount above or below which the RLP does not wish to trade. As such, pursuant to NYSE Rule 107C, an RPI typically tracks the PBBO. The Exchange would not offer the ability for RPIs to track the PBBO due to technological limitations and the complexity of offering such functionality. The Exchange further notes that because RPI interest will not peg to the PBBO, it will encourage ETP Holders to enter RPI interest that improves the price of the PBBO.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[25] in general, and furthers the objectives of Section 6(b)(5),[26] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[27] The Exchange believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market.

The Exchange understands that Section 6(b)(5) of the Act prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from discriminating, so long as their activities are otherwise consistent with the federal securities laws. Nor does Section 6(b)(5) of the Act require exchanges to preclude discrimination by broker-dealers. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business.

While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The differentiation proposed herein by the Exchange is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would

only refer to NYSE Rule 107C, but apply equally to NYSE MKT Rule 107C—Equities.

[22] The Exchange notes that this functionality aligns with the functionality offered by BATS Y-Exchange, Inc. (''BYX'') for its Retail Price Improvement Program. *See* Securities Exchange Act Release No. 68303 (Nov. 27, 2012) (SR–BYX–2012–19). BYX's Program permits Retail Orders to interact with not only contra-side RPI Orders but also other contra-side price improving liquidity. *See* BYX Rules 11.24(f)(1) and (2).

[23] Again, the Exchange notes that this aspect of the Exchange's Program aligns with that of BYX's Program. BYX's Program executes Retail Orders and RPIs at multiple price levels rather than a single clearing price. *See* BYX Rule 11.24(g).

[24] The only exception is that MPL RPI orders would re-price with changes in the PBBO since an MPL RPI order is priced at the midpoint of the PBBO.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009); *see also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

result in better prices for retail investors. The Exchange recognizes that sub-penny trading and pricing could potentially result in undesirable market behavior. The Exchange would monitor the Program in an effort to identify and address any such behavior.

Finally, the Exchange proposes that the Commission approve the proposed rule for a pilot period of twelve months from the date of implementation, which shall occur no later than 90 days after Commission approval of Rule 7.44. The Program shall expire on [Date will be determined upon adoption of Rule 7.44]. The Exchange believes that this pilot period is of sufficient length to permit both the Exchange and the Commission to assess the impact of the rule change described herein.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that was not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter. The Exchange believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market.

Additionally, as previously stated, the differentiation proposed herein by the Exchange is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would result in better prices for retail investors.

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 (i) as the Commission may designate up to 90 days of such date 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–2013–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–107. 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 will also 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 publicly available. All submissions should refer to File Number SR–NYSEArca–2013–107 and should be submitted on or before December 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–27053 Filed 11–12–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70820; File No. SR–NASDAQ–2013–136]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Penny Pilot Options Rebates and Fees

November 6, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. 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

NASDAQ proposes to modify Chapter XV, entitled "Options Pricing," at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend certain Customer[3] and Professional[4]

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "Customer" applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

[4] The term "Professional" means any person or entity that (i) is not a broker or dealer in securities,