

Improvement Order percentage thresholds are reasonable, equitable and not unfairly discriminatory. The proposed changes to the thresholds are equitable and not unfairly discriminatory as they are available to all BOX Participants that initiate Auction Transactions, and Participants may choose whether or not to take advantage of the percentage thresholds and their applicable discounted fees. Further, the Exchange believes that the proposed changes are reasonable and competitive as they will further incentivize Participants to direct order flow to the Exchange, benefiting all market participants.

The Exchange also believes the proposed amendments to the BVR in Section I.B.2 of the BOX Fee Schedule are reasonable, equitable and not unfairly discriminatory. The BVR was adopted to attract Public Customer order flow to the Exchange by offering these Participants incentives to submit their Public Customer PIP and COPIP Orders to the Exchange and the Exchange believes it is appropriate to now amend the BVR. The Exchange believes it is equitable and not unfairly discriminatory to amend the BVR, as all Participants have the ability to qualify for a rebate, and rebates are provided equally to qualifying Participants. Other exchanges employ similar incentive programs;<sup>7</sup> and the Exchange believes that the proposed changes to the volume thresholds are reasonable and competitive when compared to incentive structures at other exchanges. Finally, the Exchange believes it is reasonable and appropriate to continue to provide incentives for Public Customers, which will result in greater liquidity and ultimately benefit all Participants trading on the Exchange.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is simply proposing to amend certain percentage thresholds for Auction Transaction fees and rebates in the BOX Fee Schedule. The Exchange believes that the volume based rebates and fees increase intermarket and intramarket competition by incenting Participants to direct their order flow to the exchange, which benefits all participants by providing more trading

opportunities and improves competition on the Exchange.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</sup> because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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-BOX-2016-53 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-BOX-2016-53. 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 such 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-BOX-2016-53, and should be submitted on or before December 19, 2016.

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

**Robert W. Errett,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-79360; File No. TP 16-16]

### **Order Granting Limited Exemption From Exchange Act Rule 15c2-11 to Certain Interdealer Quotation Systems Pursuant to Exchange Act Rule 15c2-11(h)**

November 21, 2016.

By letter dated November 21, 2016 (the "Letter"), Global OTC requested that the Securities and Exchange Commission (the "Commission") grant a limited exemption from rule 15c2-11 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in connection with the publication or submission for publication of quotations for a covered over-the-counter ("OTC") equity security (an "OTC Security" or, plural, "OTC Securities") in the interdealer quotation system ("IDQS") operated by Global OTC ("Global OTC IDQS"). Specifically, Global OTC seeks an exemption to permit broker-dealers, consistent with the approach described below, to publish or submit for

<sup>7</sup> See Section B of the PHLX Pricing Schedule entitled "Customer Rebate Program;" ISE Gemini's Qualifying Tier Thresholds (page 6 of the ISE Gemini Fee Schedule); and CBOE's Volume Incentive Program (VIP).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

publication quotations in Global OTC IDQS for an OTC Security that is already “piggyback” qualified, or “piggyback” eligible, under rule 15c2–11(f)(3), in another IDQS, without the broker-dealer separately complying with the requirements of rule 15c2–11, subject to certain conditions.

Rule 15c2–11, with certain exceptions, requires that a broker-dealer that publishes or submits for publication quotations for OTC Securities in a quotation medium gather, review, and preserve certain specified information and have a reasonable basis under the circumstances for believing that the information is accurate in all material respects and was obtained from reliable sources.<sup>1</sup> Rule 15c2–11 includes an exception to the rule’s requirements—the “piggyback” exception—for when a broker-dealer publishes, in an IDQS<sup>2</sup> that specifically identifies as such unsolicited customer indications of interest, a quotation for an OTC Security that was already the subject of regular and frequent quotations in compliance with rule 15c2–11(f)(3)(i).<sup>3</sup> For this piggyback exception to apply, the security must have been the subject of quotations (exclusive of any identified customer interests) in the IDQS on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without a quotation.<sup>4</sup> Thus, if a publication or submission for publication of a quotation for an OTC Security meets all of the requirements of this exception, a broker-dealer can “piggyback” on either its own or other broker-dealers’ previously published quotations in an IDQS.

The Letter represents that the concerns the Commission raised in adopting rule 15c2–11 would not be implicated if exemptive relief, subject to the conditions below, were granted to broker-dealers publishing or submitting for publication quotations in Global OTC IDQS. Specifically, Global OTC describes in the Letter an approach based on transferability of piggyback eligibility from one IDQS to another

IDQS to allow a broker-dealer to avail itself of the piggyback exception when quoting in Global OTC IDQS any OTC Security that (1) qualifies for the piggyback exception in another IDQS, or (2) is initially quoted in Global OTC IDQS based on the relief provided in this Order and then establishes and maintains piggyback eligibility under rule 15c2–11(f)(3)(i) based on quotations (exclusive of any identified customer interests) in Global OTC IDQS. Global OTC represents that this approach would assist investors in OTC Securities by increasing competition, promoting fair and orderly markets, and providing redundancy in the event of systems failures by having an additional IDQS in which to continuously quote OTC Securities that already are eligible for the piggyback exception in another IDQS.

Based on the facts and representations made in the Letter, we find that it is appropriate in the public interest, and is consistent with the protection of investors, to grant, and hereby grant, broker-dealers a limited exemption from rule 15c2–11 to permit a broker-dealer to publish or submit for publication quotations in Global OTC IDQS, or in any other IDQS,<sup>5</sup> for an OTC Security that is piggyback eligible under rule 15c2–11(f)(3) in another IDQS, without the broker-dealer separately complying with the requirements of rule 15c2–11, subject to the conditions of this Order.

The conditions of this Order are designed to extend the rule 15c2–11(f)(3)(i) exception to broker-dealers that are publishing or submitting for publication quotations for already-quoted OTC Securities that are currently piggyback eligible under rule 15c2–11(f)(3) in an IDQS other than an IDQS in which piggyback eligibility has been established, while at the same time limiting the scope of relief by excluding from eligibility certain OTC Securities. The first condition limits the applicability of relief to an IDQS that meets the requirements to be an IDQS as defined in the rule<sup>6</sup> and that meets the requirements of rule 15c2–11(f)(3)(i). Conditions two, three, and four are designed to help ensure that the relief is limited to quotations in an IDQS that has established, maintains, and enforces monitoring and review requirements to verify that the OTC Security is piggyback eligible in another IDQS (or has established piggyback eligibility in

the IDQS) and that there are current quotations for that OTC Security in that other IDQS, and that the issuer of the OTC Security is not delinquent in its required filing obligations under the federal securities laws, on the day that a broker-dealer commences publishing or submitting for publication quotations for that OTC Security in the IDQS. Finally, condition five is designed to ensure that the IDQS maintains adequate books and records to demonstrate compliance with this Order.

This Order does not expand the number of OTC Securities that are already quoted pursuant to the exception from the requirements of rule 15c2–11 contained in rule 15c2–11(f)(3); rather, this Order extends the rule 15c2–11(f)(3)(i) exception to quotations for these already-quoted OTC Securities published by broker-dealers in an IDQS other than the IDQS in which piggyback eligibility is established if, and only if, the requirements of Rule 15c2–11(f)(3)(i) are otherwise satisfied and the conditions of this Order are met. As such, we do not believe that the transfer of piggyback eligibility for these already-quoted OTC Securities under rule 15c2–11(f)(3), from one IDQS to another IDQS, as conditioned in this Order, constitutes a fraudulent, manipulative, or deceptive practice comprehended within the purpose of rule 15c2–11.

### Conclusion

It is hereby ordered, pursuant to Exchange Act rule 15c2–11(h), that broker-dealers are exempt from the requirements of rule 15c2–11 solely to permit broker-dealers to publish or submit for publication quotations in Global OTC IDQS or in any similarly situated IDQS for an OTC Security that is piggyback eligible under rule 15c2–11(f)(3) in another IDQS, subject to the following conditions:

1. The IDQS meets the requirements to be an IDQS as defined in the rule<sup>7</sup> and specifically identifies as such unsolicited indications of customer interest of the kind described in paragraph (f)(2) of rule 15c2–11.

2. The IDQS permits a broker-dealer to commence publishing or submitting for publication quotations in such IDQS for the OTC Security, in reliance on this Order, only if (a) the OTC Security is piggyback eligible under rule 15c2–11(f)(3) in another IDQS; and (b) the OTC Security has current quotations in that other IDQS, and the symbol for the OTC Security does not contain the fifth letter identifier appended by FINRA to

<sup>1</sup> See 17 CFR 240.15c2–11(a)–(c).

<sup>2</sup> Paragraph (e)(2) of rule 15c2–11 defines an IDQS to mean “any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.” 17 CFR 240.15c2–11(e)(2). Global OTC represents that it qualifies as an IDQS because Global OTC IDQS does not accept or maintain dark orders and fully attributes to the broker-dealer representing the quotation all quotations submitted on Global OTC IDQS.

<sup>3</sup> See 17 CFR 240.15c2–11(f)(3)(i) (providing frequency of quotation requirements for a security to meet the piggyback exception).

<sup>4</sup> *Id.*

<sup>5</sup> Based on the facts and representations, we believe it is appropriate to expand the scope of the exemptive relief to include publishing or submitting for publication quotations in any IDQS, not just Global OTC IDQS, provided that the conditions of this Order are satisfied.

<sup>6</sup> See 17 CFR 240.15c2–11(e)(2); *supra* note 2.

<sup>7</sup> See 17 CFR 240.15c2–11(e)(2); *supra* note 2.

the symbols of OTC Securities to identify issuers that are delinquent in their required filings, on the day the broker-dealer commences quoting in such IDQS.

3. Once a broker-dealer commences publishing or submitting for publication quotations in the IDQS for the OTC Security in accordance with condition 2, such IDQS permits broker-dealers to continue publishing or submitting for publication quotations in such IDQS for the OTC Security only if the OTC Security continues to be piggyback eligible under rule 15c2-11(f)(3) in another IDQS or has established and maintains piggyback eligibility under rule 15c2-11(f)(3)(i) based on quotations (exclusive of any identified customer interests) in such IDQS.

4. The IDQS establishes, maintains, and enforces policies and procedures reasonably designed to ensure compliance with this Order.

5. The IDQS maintains books and records sufficient to demonstrate that such IDQS is complying with the terms of this Order, and such IDQS promptly provides such records to Commission staff upon request.

This Order is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this Order are directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, particularly section 10(b) of the Exchange Act and rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this Order. This Order should not be considered a view with respect to any other question that the publication or submission for publication of quotations in reliance on this Order may raise, including, but not limited to, the applicability of other federal or state laws to such activity.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79363; File No. SR-NYSEArca-2016-148]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rules 7.1 and 7.2, and NYSE Arca Equities Rules 7.1 and 7.2

November 21, 2016.

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 November 10, 2016, 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 Rule 7.1 (Trading Sessions) to permit the Chief Executive Officer of the Exchange or his or her designee to take certain actions in connection with the trading of securities on the Exchange; (b) NYSE Arca Equities Rule 7.1 (Hours of Business) to permit the President of NYSE Arca Equities or his or her designee to take certain actions in connection with the trading of securities on the NYSE Arca Equities marketplace; and (c) NYSE Arca Rule 7.2 (Holidays) and NYSE Arca Equities Rule 7.2 (Holidays) to remove a reference to presidential election days. The proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

##### 1. Purpose

The Exchange proposes to amend (a) NYSE Arca Rule 7.1 (Trading Sessions) to permit the Chief Executive Officer (“CEO”) of the Exchange or his or her designee to take certain actions in connection with the trading of securities on the Exchange; (b) NYSE Arca Equities Rule 7.1 (Hours of Business) to permit the President of NYSE Arca Equities or his or her designee to take certain actions in connection with the trading of securities on the NYSE Arca Equities marketplace; and (c) NYSE Arca Rule 7.2 (Holidays) and NYSE Arca Equities Rule 7.2 (Holidays) to remove a reference to presidential election days.

The Exchange believes the proposed changes to NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 would make such rules more reflective of the organizational structure of the Exchange and NYSE Arca Equities. At the same time, the proposed rule changes would ensure that the Boards of Directors of NYSE Arca and of NYSE Arca Equities (each, a “Board”) continue to have the authority to take action they deem necessary or appropriate in particular situations.

#### NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1

##### Proposed Changes to NYSE Arca Rule 7.1

The first paragraph of NYSE Arca Rule 7.1 provides that, unless otherwise ruled by the Board of the Exchange or its designee, the Exchange shall be open for the transaction of business daily except on Saturdays and Sundays, and that the hours at which trading sessions shall open and close shall be established by the Board or its designee. Commentary .01 to Rule 7.1 notes that, except under unusual conditions as may be determined by the Board or its designee, hours during which transactions in options on individual securities may be made on the Exchange shall correspond to the normal hours for business set forth in the rules of the primary exchange listing the securities underlying the options.

The Exchange proposes to amend the first paragraph of NYSE Arca Rule 7.1 to provide that, except as may be

<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>8</sup> 17 CFR 200.30-3(a)(6).