

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.⁸

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)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ 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, 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁸ 17 CFR 200.30-3(a)(6).

otherwise determined by the Board as to particular days, the Exchange shall be open for the transaction of business on every business day. The Exchange proposes to remove the current exclusion of Saturdays and Sundays because Saturdays and Sundays are not business days and therefore no exclusion is needed. Finally, the amended paragraph would provide that the hours at which trading sessions shall open and close may be specified by Exchange rule, as well as by the Board. The two paragraphs of the present rule would become paragraphs (a) and (b). These proposed rule changes are based in part on New York Stock Exchange LLC (“NYSE”) Rule 51(a) and NYSE MKT LLC (“NYSE MKT”) Rule 51(a)—Equities.⁴

The Exchange proposes to add new paragraphs (c), (d), and (e) to NYSE Arca Rule 7.1. These proposed changes are based on NYSE Rule 51(b) and (c) and NYSE MKT Rule 51(b)–(d)—Equities. New paragraph (c) would provide that, except as may be otherwise determined by the NYSE Arca Board, the CEO of the Exchange or his or her designee may halt or suspend trading in some or all securities traded on the Exchange; extend the hours for the transaction of business on the Exchange; close some or all Exchange facilities; determine the duration of any such halt, suspension or closing undertaken; or determine to trade securities on the Exchange’s disaster recovery facility.⁵

New paragraph (d) would provide that the CEO or his or her designee shall take any of the actions described in new paragraph (c) only when he or she deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances such as:

- Actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange,

- a request by a governmental agency or official, or
- a period of mourning or recognition for a person or event.

New paragraph (e) would require that the CEO or his or her designee notify the NYSE Arca Board of actions taken pursuant to the rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.⁶

The Exchange proposes that the commentary to NYSE Arca Rule 7.1 be amended by deleting “under unusual conditions” and a reference to the Board’s designee, and by adding a reference to the authority of the CEO or his or her designee under new subparagraph (c).

Finally, the Exchange proposes to change the name of NYSE Arca Rule 7.1 from “Trading Sessions” to “Hours of Business,” which would make it consistent with NYSE Arca Equities Rule 7.1.

Proposed Changes to NYSE Arca Equities Rule 7.1

The first paragraph of NYSE Arca Equities Rule 7.1 provides that, unless otherwise ruled by the NYSE Arca Equities Board, the Corporation shall be open for the transaction of business daily except on Saturdays and Sundays, and the hours at which trading sessions shall open and close shall be established by the NYSE Arca Equities Board. NYSE Arca Equities Rule 7.1 does not provide for a Board designee.

The Exchange proposes to amend the first paragraph of NYSE Arca Equities Rule 7.1 to provide that, except as may be otherwise determined by the NYSE Arca Equities Board as to particular days, the Corporation shall be open for the transaction of business on every business day. The Exchange proposes to remove the current exclusion of Saturdays and Sundays because Saturdays and Sundays are not business days and therefore no exclusion is needed. Finally, the amended paragraph would provide that the hours at which trading sessions shall open and close may be specified by Exchange rule, as well as by the Board. The two paragraphs of the present rule would become paragraphs (a) and (b). These proposed rule changes are based in part on NYSE Rule 51(a) and NYSE MKT Rule 51(a)—Equities.

The Exchange proposes to add a new subparagraph (c) to provide that, except as may be otherwise determined by the NYSE Arca Equities Board, the President of the Corporation or his or her designee may halt or suspend trading in some or all securities traded on the Corporation; extend the hours for the transaction of business on the Corporation; close some or all Corporation facilities; determine the duration of any such halt, suspension or closing; or determine to trade securities on the Exchange’s disaster recovery facility. These proposed changes are based on NYSE Rule 51(b) and NYSE MKT Rule 51(b)—Equities.

New subparagraphs (d) and (e) would subject the President or his or her designee to the same limitations and reporting requirements as in proposed NYSE Arca Rule 7.1(d) and (e), which are based on NYSE Rule 51(b) and (c) and NYSE MKT Rule 51(b)–(d)—Equities.

Discussion

Currently, NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 require Board action if extraordinary circumstances arise. However, the Boards may not be able to convene and act quickly, thereby delaying any potential response. Pursuant to their respective bylaws, at least half of the directors on the NYSE Arca and NYSE Arca Equities Boards are Public Directors.⁷ Therefore, as a practical matter, they are unlikely to be at or near the Exchange if extraordinary circumstances arise, making it harder to convene quickly. Further, if communication systems are severely compromised in an emergency, the Boards may not be able to convene at all.⁸

Current NYSE Arca Rule 7.1 partially addresses this concern by allowing the NYSE Arca Board to name designees. However, use of a designee requires that the Board make the delegation before any unusual conditions arise. Further, NYSE Arca Rule 7.1 does not set any limits on when designees may act under the rule, unlike proposed paragraphs (c) and (d). Accordingly, the Exchange proposes to delete the references to a Board designee in the first paragraph of

⁴ NYSE LLC and NYSE MKT are affiliates of the Exchange. See Securities Exchange Act Release Nos. 45433 (February 12, 2002), 67 FR 7441 (February 19, 2002) (SR–NYSE–2001–55), and 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63). NYSE MKT LLC is submitting substantially the same proposed rule change for NYSE MKT Rule 901NY, applicable to the trading of options contracts on NYSE Amex Options LLC. See SR–NYSEMKT–2016–106.

⁵ As part of its business continuity and disaster recovery plans, the Exchange maintains a disaster recovery facility, which is a secondary data center located in a geographically diverse location, as required by Regulation SCI. See 14 CFR 242.1001(a)(2)(v) (requiring policies and procedures for business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption).

⁶ For example, the Exchange may close on a national day of mourning for a former president of the United States.

⁷ See NYSE Arca, Inc. Bylaws, Article III, Sec. 3.02(a) and NYSE Arca Equities, Inc. Bylaws, Art. III, Sec. 3.02(a). “Public Directors” are directors that are persons from the public who are not, or are not affiliated with, a broker-dealer in securities and, in the case of the Exchange Board, are not employed by, or involved in any material business relationship with, the Exchange or its affiliates.

⁸ For both Boards, the presence of a majority of directors is necessary to constitute a quorum. See NYSE Arca, Inc. Bylaws, Article III, Sec. 3.07 and NYSE Arca Equities, Inc. Bylaws, Art. III, Sec. 3.09.

NYSE Arca Rule 7.1 and commentary thereto. Such proposed deletions would make NYSE Arca Rule 7.1 consistent with NYSE Arca Equities Rule 7.1, NYSE Rule 51(a) and NYSE MKT Rule 51(a)—Equities, none of which contemplate the Board appointing a designee to set the hours for business.

The Exchange believes designating by rule that the CEO of the Exchange, President of NYSE Arca Equities, or their designees may take certain actions in extraordinary circumstances would make NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 more reflective of the organizational structure of the Exchange and NYSE Arca Equities. As described above, the CEO, President, or their designees would be able to take such action only when they deem it to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

The proposed amendments would ensure that the NYSE Arca and NYSE Arca Equities Boards continue to have the authority to take action they deem necessary or appropriate in particular situations. In addition, as proposed, the amended rules would ensure that the Boards would remain informed, by requiring the CEO or President to notify the relevant Board of actions taken pursuant to the authority granted under the rule, with the exception of a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

The proposed changes would have the additional benefit of bringing NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 into greater conformity with the rules of the NYSE and NYSE MKT.⁹

The Exchange notes that the trading rules of Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGX Exchange, Inc., and Bats EDGA Exchange, Inc. also provide that the CEO of the relevant exchange may halt, suspend trading in any and all securities traded on the exchange, close some or all exchange facilities, and determine the duration of any such halt, suspension, or closing, when he deems such action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest. The lists of

special circumstances set out in such trading rules are substantially similar to those in NYSE Rule 51 and NYSE MKT Rule 51—Equities.¹⁰

NYSE Arca Rule 7.2 and NYSE Arca Equities Rule 7.2

The last sentence in the first paragraph of NYSE Arca Rule 7.2 provides that the Board will determine whether to open the Exchange on presidential election days. Similarly, the last sentence in the first paragraph of NYSE Arca Equities Rule 7.2 provides that the Board will determine whether to open NYSE Arca Equities on presidential election days. The Exchange proposes to delete both sentences.

The existing sentences are worded as if the Exchange and NYSE Arca Equities will be closed on presidential election days unless the Board determines otherwise. The Exchange believes the wording is potentially confusing to investors, because the Exchange and NYSE Arca Equities are generally open on presidential election days. Accordingly, the Exchange proposes to delete the language. The proposed edits will not affect the Board's ability to close the Exchange or NYSE Arca Equities for a presidential election day, as it would continue to have authority to do so under Rule 7.1.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,¹¹ in general, and further the objectives of Section 6(b)(5) of the Act,¹² in particular, because they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because they are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(1) of the Act,¹³ in that they enable the Exchange to be so

organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed changes to NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because they would make NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 more reflective of the organizational structure of the Exchange and NYSE Arca Equities. In this manner, they would strengthen the ability of the Exchange and NYSE Arca Equities to respond appropriately and in a timely fashion to extraordinary circumstances, even if the relevant Board is unable to convene. However, unlike present NYSE Arca Rule 7.1, which puts no limits on when the Board's designees may act, the proposed amended rules would ensure that the CEO, President, or their designees, as applicable, would be able to take action only when he or she deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

The Exchange believes that the proposed changes to NYSE Arca Rule 7.2 and NYSE Arca Equities Rule 7.2 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because they would remove sentences that are worded as if the Exchange and NYSE Arca Equities will be closed on presidential election days unless the Board determines otherwise. The Exchange believes the wording is potentially confusing to investors, because the Exchange and NYSE Arca Equities are generally open on presidential election days. Accordingly, the Exchange proposes to delete the language.

In addition, the Exchange believes that the proposed rule changes to [sic] would remove impediments to, and perfect the mechanisms of, a free and open market and a national market

⁹ NYSE Rule 51(a) and NYSE MKT Rule 51(a)—Equities do not state that the CEO can name a designee. However, pursuant to NYSE Rule 1 and NYSE MKT Rule 1—Equities, the CEO of the relevant exchange may designate one or more qualified employees to act in his or her place in the event that the CEO is not available. See NYSE Rule 1 and NYSE MKT Rule 1—Equities. See also Securities Exchange Act Release No. 61810 (March 31, 2010), 75 FR 17816 (April 7, 2010) (SR-NYSE-2010-26).

¹⁰ See Bats BZX Exchange, Inc. Rule 11.1(c); Bats BYX Exchange, Inc. Rule 11.1(c); Bats EDGX Exchange, Inc. Rule 11.1(c); and Bats EDGA Exchange, Inc. Rule 11.1(c).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(1).

system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because they would ensure that the NYSE Arca and NYSE Arca Equities Boards continue to have the authority to take action they deem necessary or appropriate in particular situations. In addition, as proposed, the proposed amended NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 would ensure that the Boards would remain informed, by requiring the CEO or President to notify the relevant Board of actions taken pursuant to the authority granted under the rule, with the exception of a period of mourning or recognition for a person or event, as soon thereafter as is feasible. The proposed changes to NYSE Arca Rule 7.2 and NYSE Arca Equities Rule 7.2 will not affect the Board's ability to close the Exchange or NYSE Arca Equities for a presidential election day, as it would continue to have authority to do so under Rule 7.1.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange and its subsidiary NYSE Arca Equities.

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 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 Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁶ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would immediately strengthen the ability of the Exchange and NYSE Arca Equities to respond appropriately and in a timely fashion to extraordinary circumstances.

The Exchange further states that waiving the 30-day operative delay would not affect the authority of the NYSE Arca and NYSE Arca Equities Boards to take action they deem necessary or appropriate in particular situations. Moreover, the Exchange states that waiver of the 30-day operative delay would allow the Exchange to align its rules with those of its affiliated exchanges without delay. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁸

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 change should be approved or disapproved.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 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.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2016-148 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-2016-148. 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-NYSEArca-2016-148, and should be submitted on or before December 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-28460 Filed 11-25-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79366; File No. SR-NASDAQ-2016-106]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of Proposed Rule Change To Modify Rule IM-5900-7 To Adjust the Entitlement to Services of Acquisition Companies

November 21, 2016.

I. Introduction

On September 22, 2016, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to modify the treatment of acquisition companies under Rule IM-5900-7 so that acquisition companies will not be entitled to complimentary services under IM-5900-7 until they complete an acquisition meeting the Exchange’s requirements, as described below. The proposed rule change was published in the **Federal Register** on October 7, 2016.³ The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposed to amend Rule IM-5900-7 to adjust the timing of when complimentary services are provided to listed acquisition companies under that rule. Under the current rules, except as described below, Nasdaq generally does not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies. However, in the case of a company whose business plan is to complete an initial public offering (“IPO”) and engage in a merger or

acquisition with one or more unidentified companies within a specific period of time (an “Acquisition Company”), Nasdaq will permit the listing on the Nasdaq Global Market or Capital Market if the company meets all applicable initial listing requirements, as well as the additional conditions described in Nasdaq Rule IM-5101-2 (Listing of Companies Whose Business Plan is to Complete One or More Acquisitions).⁴ Pursuant to Rule IM-5101-2(b), among other requirements, within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the company specified in its registration statement, the company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination (a business combination that satisfies the conditions of IM-5101-2(b) is referred to as a “Business Combination”).⁵ Rule IM-5101-2 also requires that following each Business Combination, the combined company must meet the requirements for initial listing.⁶

As set forth in Rule IM-5900-7, the Exchange offers certain complimentary services to companies newly listing on the Nasdaq Global and Global Select Markets in connection with an IPO, upon emerging from bankruptcy, or in connection with a spin-off or carve-out from another company (“Eligible New Listings”) and to companies that switch

⁴ *Id.* at 69882. Rule IM-5101-2(a) requires that at least 90% of the gross proceeds from the IPO and any concurrent sale by the company of equity securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an “insured depository institution,” as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act, or in a separate bank account established by a registered broker or dealer (collectively, a “deposit account”). For a full set of requirements to list an Acquisition Company, see Rule IM-5101-2. The Exchange permits Acquisition Companies to list only on the Capital and Global Markets but not the Global Select Market. See Notice, *supra* note 3, at 69882 (citing Rule 5310(i), which provides that a company subject to IM-5101-2 is not eligible to list on the Global Select Market).

⁵ Rule IM-5101-2 also provides, among other things, that if the company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth in the rule, Nasdaq will issue a Staff Delisting Determination to delist the company’s securities.

⁶ See Rule IM-5101-2. If the company does not meet the requirements for initial listing following a Business Combination or does not comply with one of the requirements set forth in the IM-5101-2, Nasdaq will issue a Staff Delisting Determination under Nasdaq Rule 5810 to delist the company’s securities. *Id.*

their listing from the New York Stock Exchange (“NYSE”) to the Global or Global Select Markets (“Eligible Switches”).⁷ The complimentary services provided to some listed companies under IM-5900-7 are not, however, available to companies listing on the Capital Market. The Exchange also noted that, as of the date of filing its proposal with the Commission, all companies listing as an Acquisition Company have listed on the Capital Market.⁸

Currently, pursuant to Rule IM-5900-7, the services offered include a whistleblower hotline (with a retail value of approximately \$4,000 annually), an investor relations Web site (with a retail value of approximately \$16,000 annually), disclosure services for earnings or other press releases (with a retail value ranging from \$15,000 to \$20,000 annually, depending on the company’s market capitalization and whether it is an Eligible New Listing or an Eligible Switch), audio webcasting (with a retail value of approximately \$6,500 annually), market analytic tools (with a retail value ranging from approximately \$29,000 to \$51,000 annually, depending on the number of users granted access), and may include market advisory tools such as stock surveillance (with a retail value of approximately \$51,000 annually), global targeting (with a retail value of approximately \$40,000 annually), monthly ownership analytics and event driven targeting (with a retail value of approximately \$46,000 annually), and an annual perception study (with a retail value of approximately \$35,000 annually).⁹ The total retail value of the services provided ranges from approximately \$70,500 to \$188,500 annually, depending on a company’s market capitalization and whether it is an Eligible New Listing or an Eligible Switch.¹⁰ In addition, one-time development fees of approximately \$3,500 to establish the services in the first year are waived.¹¹ The length of the complimentary period that a company receives services under IM-5900-7 is either two or four years from the listing date, depending on a company’s market capitalization and whether it is an

⁷ In addition, all companies listed on Nasdaq receive services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk. See Notice, *supra* note 3, at 69882.

⁸ See Notice, *supra* note 3, at 69882.

⁹ The Exchange noted that it does not propose to make any changes in its filing to the values of the various services provided to eligible listed companies discussed above, which values are specified in Rule IM-5900-7. See Notice, *supra* note 3, at 69882.

¹⁰ See Rule IM-5900-7.

¹¹ *Id.*

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 79025 (October 3, 2016), 81 FR 69881 (October 7, 2016) (“Notice”).