

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80175; File No. SR-NYSEARCA-2017-19]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.46 To Modify the Date of Appendix B Web site Data Publication Pursuant to the Regulation NMS Plan To Implement a Tick Size Pilot Program

March 8, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 28, 2017, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to Rule 7.46 to modify the date of Appendix B Web site data publication pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”). 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

Rule 7.46(b) (Compliance with Data Collection Requirements)<sup>4</sup> implements the data collection and Web site publication requirements of the Plan.<sup>5</sup> Supplementary Material .70 to Rule 7.46 provides, among other things, that the requirement that the Exchange or their DEA make certain data publicly available on the Exchange’s or DEA’s Web site pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period,<sup>6</sup> and that the Exchange or their DEA shall make data for the Pre-Pilot Period publicly available on the Exchange’s or DEA’s Web site pursuant to Appendix B and C of the Plan by February 28, 2017.<sup>7</sup>

The Exchange is proposing amendments to Supplementary Material .70 to Rule 7.46 to delay the date by which Pre-Pilot and Pilot Appendix B data is to be made publicly available on the Exchange’s or DEA’s Web site from

<sup>4</sup> See Securities Exchange Act Release No. 77484 (March 31, 2016), 81 FR 20024 (April 4, 2016) (Immediate Effectiveness of Proposed Rule Change Adopting Requirements for the Collection and Transmission of Data Pursuant to Appendices B and C of Regulation NMS Plan to Implement a Tick Size Pilot Program) (SR-NYSEARCA-2016-52); see also Securities Exchange Act Release No. 78814 (September 12, 2016), 81 FR 63818 (September 16, 2016) (Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.46 to Modify Certain Data Collection Requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program) (SR-NYSEARCA-2016-124); see also Letter from John C. Roeser, Associate Director, Division of Trading and Markets, Commission, to Sherry Sandler, Associate General Counsel, NYSE Arca, dated April 4, 2016.

<sup>5</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014. See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014 (“SRO Tick Size Plan Proposal”). See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014); see also Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015).

<sup>6</sup> Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Plan.

<sup>7</sup> On November 30, 2016, the SEC granted exemptive relief to the Participants to, among other things, delay the publication of Web site data pursuant to Appendices B and C to the Plan until February 28, 2017, and to delay the ongoing Web site publication by ninety days such that data would be published within 120 calendar days following the end of the month. See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, Financial Industry Regulatory Authority, Inc. (“FINRA”), dated November 30, 2016; see also Securities Exchange Act Release No. 79476 (December 6, 2016), 81 FR 89529 (December 12, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEARCA-2016-159).

February 28, 2017, until April 28, 2017. Appendix C data for the Pre-Pilot Period through the month of January 2017 will be published on the Exchange’s or DEA’s Web site on February 28, 2017, and, thereafter, on the original 30-day schedule.

In the SRO Tick Size Plan Proposal, the Participants stated that the public data will be made available for free “on a disaggregated basis by trading center” on the Web sites of the Participants and the Designated Examining Authorities.<sup>8</sup> However, market participants have expressed confidentiality concerns regarding this approach for over-the-counter (“OTC”) data.<sup>9</sup> Thus, the Exchange is filing the instant proposed rule change to provide additional time to assess a means of addressing the confidentiality concerns raised in connection with the publication of Appendix B data related to OTC activity in furtherance of the objectives of the Plan.<sup>10</sup> Pursuant to this amendment, Appendix B data publication will be delayed until April 28, 2017. The Participants anticipate filing additional proposed rule changes in the near future to address Appendix B data publication.

As noted in Item 2 of this filing, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

<sup>8</sup> See Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (November 7, 2014) (Notice of Filing of Proposed National Market System Plan to Implement a Tick Size Pilot Program on a One-Year Pilot Basis, File No. 4-657) (“Tick Size Plan Proposal”).

<sup>9</sup> See letters from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, to Brent J. Fields, Secretary, Commission, dated December 21, 2016 (“Citadel letter”); and William Hebert, Managing Director, Financial Information Forum, to Robert W. Errett, Deputy Secretary, Commission, dated December 21, 2016 (“FIF letter”).

<sup>10</sup> FINRA, on behalf of the Participants, also is submitting an exemptive request to the SEC in connection with the instant filing.

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

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

<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.

general, to protect investors and the public interest.

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. The Exchange believes that this proposal is consistent with the Act because it is in furtherance of the objectives of Section VII(A) of the Plan in that it is designed to provide the Exchange with additional time to assess a means of addressing the confidentiality concerns raised in connection with the publication of Appendix B data, to comply with the Plan's requirements that the data made publicly available will not identify the trading center that generated the data.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

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

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

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

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

A proposed rule change filed under Rule 19(b)-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has filed the proposed rule

change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative on February 28, 2017.

The Exchange notes that the proposed rule change is intended to address confidentiality concerns raised in connection with the publication of over-the-counter ("OTC") Appendix B data by permitting the Exchange to delay Web site publication of its Appendix B data from February 28, 2017 to April 28, 2017.<sup>15</sup> The Exchange notes that the delay would provide additional time to assess a means of addressing the confidentiality concerns. The Exchange notes that it expects Participants to file a proposed rule changes related to publishing Appendix B data.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to delay publication of its Appendix B data until April 28, 2017. As noted above, commenters continue to raise concerns about the publication of OTC Appendix B data.<sup>16</sup> Delaying publication of Exchange's Appendix B data<sup>17</sup> will prevent the publication of partial (*i.e.*, Exchange-only) Appendix B data required under the Plan. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on February 28, 2017.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

<sup>15</sup> See *supra* note 9. The Commission notes that FINRA has submitted a proposed rule change to delay the publication of OTC Appendix B data. See SR-FINRA-2017-005.

<sup>16</sup> The Commission notes that FINRA has filed a proposed rule change that is intended to mitigate confidentiality concerns raised by commenters regarding the publication of OTC Appendix B data. See SR-FINRA-2017-006.

<sup>17</sup> The Commission notes that other Participants have proposed to delay the publication of their Appendix B data until April 28, 2017. See SR-BatsBYX-2017-05; SR-BatsBZX-2017-15; SR-BatsEDGA-2017-05; SR-BatsEDGX-2017-13; SR-BX-2017-016; SR-CHX-2017-05; SR-FINRA-2017-005; SR-IEX-2017-07; SR-NASDAQ-2017-024; SR-Phlx-2017-22; SR-NYSE-2017-10; SR-NYSEMKT-2017-11.

<sup>18</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2017-19 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEARCA-2017-19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2017-19 and should be submitted on or before April 4, 2017.

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

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80171; File No. SR-OCC-2017-004]

### Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Enhancements to OCC's Stock Loan Programs

March 8, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 2017, The Options Clearing Corporation ("OCC") 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 OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by OCC is designed to enhance the overall resilience of OCC's Stock Loan/Hedge Program ("Hedge Program") and Market Loan Program (collectively, the "Stock Loan Programs"). The proposed rule change would, among other things: (1) Require Clearing Members to have robust processes in place to reconcile open interest in the Stock Loan Programs at least once per stock loan business day; (2) provide further clarity and certainty regarding the formal record of stock loan positions being guaranteed by OCC at any given time ("golden copy" rules); (3) further clarify that stock loan positions at OCC are not terminated until the records of OCC reflect the termination of such stock loan; (4) provide a specific timeframe in which Clearing Members in the Stock Loan Programs must buy-in or sell-out of stock loan positions in the event of another Hedge or Market Loan Clearing Member suspension (as applicable); (5) provide OCC with the authority to

withdraw from a Clearing Member's account the value of any difference between the price reported by a Clearing Member instructed to execute a buy-in or sell-out of loaned stock as a result of another Clearing Member suspension and the price that OCC determines to be reasonable; and (6) allow OCC to close out the Matched-Book Positions of suspended Hedge Clearing Members through the termination by offset and "re-matching" of such positions without requiring the transfer of securities against the payment of settlement prices as currently required under OCC's rules.

All terms with initial capitalization not defined herein have the same meaning as set forth in OCC's By-Laws and Rules.<sup>3</sup>

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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 these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

##### (A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

OCC proposes a number of amendments to its By-Laws and Rules designed to enhance the overall resilience of its Stock Loan/Hedge Program ("Hedge Program") and Market Loan Program (collectively, the "Stock Loan Programs"). Specifically, the proposed rule change would improve risk management in the Stock Loan Programs by, among other things: (1) Requiring Clearing Members to have robust processes in place to reconcile open interest in the Stock Loan Programs at least once per stock loan business day; (2) providing further clarity and certainty regarding the formal record of stock loan positions being guaranteed by OCC at any given time ("golden copy" rules); (3) further clarifying that stock loan positions at OCC are not terminated until the records of OCC reflect the termination of such stock loan; (4) providing a specific timeframe in which Clearing Members in the Stock Loan Programs must buy-in or sell-out of stock loan positions in

the event of another Hedge or Market Loan Clearing Member suspension as applicable); (5) providing OCC with the authority to withdraw from a Clearing Member's account the value of any difference between the price reported by a Clearing Member instructed to execute a buy-in or sell-out of loaned stock as a result of another Clearing Member suspension and the price that OCC determines to be reasonable; and (6) allowing OCC to close out the Matched-Book Positions of suspended Hedge Clearing Members through the termination by offset and re-matching of such positions without requiring the transfer of securities against the payment of settlement prices as currently required under OCC's rules.

The proposed amendments to the By-Laws and Rules are discussed in more detail below.

#### Background

OCC currently operates two Stock Loan Programs: The Hedge Program and the Market Loan Program. In the Hedge Program, OCC acts as the principal counterparty for stock loans that are executed bilaterally outside of OCC and sent to OCC for clearance and settlement. In the case of a Hedge Loan, prospective Lending and Borrowing Clearing Members identify each other (independent of OCC), agree to bilaterally negotiated terms of the Hedge Loan, and then send the details of the stock loan to the Depository with a certain "reason code,"<sup>4</sup> which designates the stock loan as a Hedge Loan for guaranty and clearance at OCC. The Lending Clearing Member then instructs the Depository to transfer a specified number of shares of Eligible Stock to the account of the Borrowing Clearing Member, and the Borrowing Clearing Member instructs the Depository to transfer the appropriate amount of cash collateral to the account of the Lending Clearing Member.

In the Market Loan Program, stock loans are initiated through the matching of bids and offers that are either agreed upon by the Market Loan Clearing Members or matched anonymously through a Loan Market. In order to initiate a Market Loan, the Loan Market sends a matched transaction to OCC, which in turn sends two separate but linked settlement instructions to the Depository to effect the movement of Eligible Stock and cash collateral between the accounts of the Market

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> OCC's By-Laws and Rules can be found on OCC's public Web site: <http://optionsclearing.com/about/publications/bylaws.jsp>.

<sup>4</sup> Unique reason codes were created by the Depository for Clearing Members to designate stock loan transactions intended to be sent to OCC for novation and guarantee.