

amount to be invested by each such party will be allocated among them pro rata based on each participating party's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of follow-on investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Independent Directors or Independent Trustees, as applicable, of each Investment Company will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by the other Investment Companies and the Private Funds that the applicable Investment Company considered but declined to participate in, so that the Independent Directors or Independent Trustees, as applicable, may determine whether all investments made during the preceding quarter, including those investments which the applicable Investment Company considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Directors or Independent Trustees, as applicable, will consider at least annually the continued appropriateness for such Investment Company of participating in new and existing Co-Investment Transactions.

10. The Investment Companies will maintain the records required by section 57(f)(3) of the Act as if each of the Investment Companies were a business development company and as if each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Independent Directors or Independent Trustees, as applicable, will also be a director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of any Private Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Investment Companies and the Private Funds, be shared by the participating Investment Companies and the participating Private Funds in proportion to the relative amounts of the securities held or being

acquired or disposed of, as the case may be.

13. Any transaction fee¹⁰ (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable) received in connection with a Co-Investment Transaction will be distributed to the participating Investment Companies and the participating Private Funds on a pro rata basis, based on the amount each invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the Co-Investment Transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and such account will earn a competitive rate of interest that will also be divided pro rata among the participating Investment Companies and the participating Private Funds based on the amount each invests in such Co-Investment Transaction. None of the Investment Companies, the Private Funds, the Advisers, nor any affiliated person of the Investment Companies or Private Funds will receive additional compensation or remuneration of any kind as a result of, or in connection with, a Co-Investment Transaction (other than (a) in the case of the participating Investment Companies and the participating Private Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C) and (b) in the case of the Advisers, investment advisory fees paid in accordance with the respective investment advisory agreements).

14. If the Holders own in the aggregate more than 25 percent of the Shares of an Investment Company, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable state law affecting the Board's composition, size, or manner of election.

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

Brent J. Fields,
Secretary.

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¹⁰ Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77440; File No. SR-NYSEArca-2016-50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.2 To Create a Reserve Market Maker Options Trading Permit

March 24, 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 March 22, 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 Rule 6.2 to create a Reserve Market Maker Options Trading Permit ("Reserve OTP"). 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.2 to create a Reserve OTP.

Under the current NYSE Arca Fee Schedule (Fee Schedule),⁴ an OTP Holder or OTP Firm⁵ acting as a Market Maker must pay a monthly fee for each Options Trading Permit ("OTP") it utilizes.⁶ In order to act as a Market Maker⁷ on the Exchange Floor, an individual must be specifically named on the relevant Market Maker's OTP. On some occasions, a Market Maker operating on the Floor may be absent from the Floor either briefly or for an entire trading day due to illness or planned absence. When such absences occur, the OTP Holder or OTP Firm may wish to have a Market Maker Authorized Trader⁸ ("MMAT") employee engage in open outcry trading to cover for the absent Market Maker. However, an MMAT may only step in to cover for the absent Market Maker if it is specifically named on the relevant OTP, and it may not be economical for the OTP Holder or OTP Firm to maintain an additional OTP—or there may not be enough time to complete the approval process for an additional OTP—to address the such [sic] short-term absences. In such cases, the OTP Holder or OTP Firm must carry out its

responsibilities with fewer than the optimal number of Market Makers on the Trading Floor. For example, under the Fee Schedule, a total of four OTPs are required to stream quotes electronically into all option issues traded on the Exchange. Additionally, each OTP can have an individual named to act as a Market Maker in open outcry trading on the Floor of the Exchange. Thus, an OTP Holder or OTP Firm with four OTPs may stream quotes in every option issue on the Exchange and have four individuals conduct trading in open outcry on the trading Floor as Market Makers. If one of those four individuals is unavailable due to sickness, vacation or other reason, the OTP Holder or OTP Firm is required to pay for an additional OTP (presently \$1,000) in order to have a fifth individual trade in open outcry as a Market Maker. If the OTP Holder or OTP Firm activates an individual on an OTP for any portion of a month, even as little as one day, the OTP Holder or OTP Firm is charged the full monthly OTP fee.⁹

The Exchange believes that an option should be available to Market Maker firms to address the short-term absence of an employee in a more economical way, which also would assist the Exchange in maintaining fair and orderly markets. Accordingly, the Exchange proposes new paragraph (i) to Rule 6.2 (Admission to and Conduct on the Options Trading Floor) to create a Reserve OTP. A Reserve OTP would permit an OTP Holder or OTP Firm to have a qualified MMAT employee cover for the absent Market Maker under the firm's OTP, effectively empowering the individual acting as a qualified MMAT to act as a Market Maker in lieu of the absent individual until such time as the absent Market Maker returns.

As proposed, when a Market Maker is or will be absent, an OTP Holder or OTP Firm that maintains a Reserve OTP would be required to provide written notice to the Exchange—at least one day in advance—that it will utilize such Reserve OTP (the "Notice"). The Notice would identify both the absent Market Maker (who will not be utilizing the Reserve OTP) and the MMAT who will be acting as the substitute Market Maker. While the Notice is in effect, only the specifically named MMAT acting as a substitute Market Maker will be authorized to utilize the OTP. When the original Market Maker returns, the OTP Holder or OTP Firm would provide written notice to the Exchange—at least

one day in advance, and, as of the date specified in the notice, the original Market Maker may resume reliance on the OTP and the MMAT would no longer be able to utilize the OTP. In this manner, an OTP Holder or OTP Firm that has purchased the four OTPs required to quote every issue on the Exchange would have the ability to ensure it has sufficient Market Maker coverage in the event of an absence, without having to incur the full OTP fee, by instead paying a Reserve OTP fee of \$175 per month, which would be established by a separate fee filing with the Commission.¹⁰ The proposed fee would be assessed to an OTP Holder for each MMAT in its employ whom the OTP Holder or OTP Firm wishes to be eligible to be named to the OTP to act as a Market Maker to cover for another Market Maker who is otherwise unable to be at work that day.

Any natural person to whom a Reserve OTP is issued would be required, as of the date of notice, to (a) be fully qualified and approved by the Exchange to be an OTP Holder or OTP Firm authorized as an MMAT; and (b) meet all of the requirements of an OTP Holder or OTP Firm under the Exchange's rules.

Implementation

The Exchange proposes to announce the implementation of the proposed rule change via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5),¹² in particular, in that it is designed 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 facilitation transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with

⁴ See Fee Schedule, available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

⁵ An OTP Holder is a natural person, in good standing, that has been issued an OTP. See Rule 1.1.(q). An OTP Firm is a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing, who has been issued an OTP or upon whom an OTP Holder has conferred trading privileges on the Exchange. See Rule 1.1.(r).

⁶ OTPs are issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities. See Rule 1.1.(p). The cost of each OTP ranges from \$6,000, for the first OTP, to \$1,000 for the fifth or greater OTP, as the cost decreases as the number of OTPs utilized per month increases. See *supra* n. 4. The first OTP allows a Market Maker to quote in up to 175 issues; a Market Maker is required to have four OTPs to quote all issues on the Exchange. See *id.*

⁷ A Market Maker is an individual who is registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Floor of the Exchange or for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the NYSE Arca OX electronic trading system. See Rule 6.32(a).

⁸ A Market Maker Authorized Trader is an authorized trader who performs market making activities pursuant to Rule 6 on behalf of an OTP Holder or OTP Firm registered as a Market Maker. See Rule 6.1A(a)(9). A Market Maker Authorized Trader must meet the same registration requirements as a Market Maker before they can be designated as a Market Maker Authorized Trader. See Rule 6.33.

⁹ The Monthly OTP fee is based on the maximum number of OTPs held by an OTP Firm or OTP Holder during a calendar month. See *supra* n. 4, endnote 1.

¹⁰ The Exchange will not implement the proposed change until it has filed to modify its fee schedule to address the addition of a Reserve OTP. The Exchange also notes this \$175 fee is consistent with fees on other option exchanges. See NYSE Amex Options Fee Schedule, Section III.A. (charging \$175 monthly fee for Reserve Floor Market Maker), available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would provide a more cost-effective method for OTP Holders or OTP Firms to have fully qualified personnel step in to handle other employees' absences. As such, the proposed change would enable OTP Holders and OTP Firms to better utilize their personnel and resources, thereby contributing to fair and orderly markets.

The Exchange notes that the concept of a Reserve OTP is not new or novel and has been in place at other option exchanges for several years. For example, NYSE Amex Options implemented the concept in January 2012.¹⁴

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

The Exchange does not believe that this proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would relieve the burden on OTP Holders or OTP Firms when they have employees absent from the trading floor and would, in turn, improve the competitiveness of Exchange Market Makers and also promote competition for order flow among market participants and the options exchanges.

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 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 if consistent with the protection of

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver would allow the Exchange to begin implementation of the proposed rule without delay, which the Exchange believes would promote the efficient use of resources and promote competition among the option exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. As stated in the filing, the Exchange believes that the proposed rule change will enable OTP Holders and OTP Firms to better utilize their personnel and resources, thereby contributing to fair and orderly markets. The Exchange states that it will not implement the proposed rule change until it submits a filing to adopt a fee related to the Reserve OTP. Accordingly, the Commission designates the proposed rule change to be operative upon filing.¹⁹

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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ 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-2016-50 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-NYSEARCA-2016-50. 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-2016-50, and should be submitted on or before April 20, 2016.

¹³ *Id.*

¹⁴ See Securities Exchange Act Release No. 66237 (January 25, 2012), 77 FR 4848 (January 31, 2012) (SR-NYSEAmex-2012-02) (amending Rule 902NY to create a Reserve Floor Market Maker Amex Trading Permit ("Reserve ATP")).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77441; File No. SR-NYSEArca-2016-44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31P(h) To Add a New Discretionary Pegged Order

March 24, 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 March 11, 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 Equities Rule 7.31P(h) (Orders and Modifiers) to add a new Discretionary Pegged Order. 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 NYSE Arca Equities Rule 7.31P(h) (Orders and Modifiers) (“Rule 7.31P”) to add a new Discretionary Pegged Order. The proposed new order is based on the Discretionary Peg Order as proposed by Investors' Exchange, LLC (“IEX”) in its Form 1 Application seeking registration as a national securities exchange under Section 6 of the Act (“IEX Form 1 Application”).⁴ The Exchange proposes to adopt the Discretionary Pegged Order for its Pillar trading platform only.

As proposed, Rule 7.31P(h)(3) would provide that a Discretionary Pegged Order would be a Pegged Order⁵ to buy (sell) that upon entry to the NYSE Arca Marketplace⁶ would be assigned a working price⁷ equal to the lower (higher) of the midpoint of the PBBO⁸ (“Midpoint Price”) or the limit price of the order. Any untraded shares of such order would be assigned a working price equal to the lower (higher) of the PBB (PBO) or the order's limit price and would automatically be adjusted in response to changes to the PBB (PBO) for buy (sell) orders up (down) to the order's limit price. In order to trade with contra-side orders on the NYSE Arca Book, a Discretionary Pegged Order to buy (sell) would exercise the least amount of price discretion necessary from its working price to its discretionary price (defined as the lower (higher) of the Midpoint Price or the Discretionary Pegged Order's limit

price), except during periods of quote instability, as defined in proposed Rule 7.31P(h)(3)(D), as described in greater detail below. This proposed rule text is based on proposed IEX Rule 11.190(a)(10), but with non-substantive differences to use Pillar terminology to describe how the Discretionary Pegged Order would operate on the Exchange. Unlike IEX, the Exchange proposes to price a Discretionary Pegged Order based on the PBBO rather than the NBBO, which is the reference price that the Exchange uses for its Pegged Orders under Rule 7.31P(h).

Proposed Rule 7.31P(h)(3)(A) would provide that Discretionary Pegged Orders would not be displayed, must be designated Day, and would be eligible to be designated for the Core Trading Session only. Accordingly, the proposed rule would provide that Discretionary Pegged Orders that include a designation for the Early Trading Session or Late Trading Session would be rejected. This proposed rule text is based on proposed IEX Rules 11.190(a)(10)(F) (a Discretionary Peg Order is eligible to trade only during IEX's Regular Market Session) and 11.190(a)(10)(H) (a Discretionary Peg Order is not eligible to display). Unlike IEX, the Exchange proposes that a Discretionary Pegged Order be Day time-in-force and not include any other time-in-force instruction. The descriptions set forth in proposed IEX Rule 11.190(a)(10)(A), (C), and (E) are set forth in current Rule 7.31P(h), which defines Pegged Orders as a Limit Order that does not route. Therefore, the Exchange proposes not to specify these requirements separately for the proposed Discretionary Pegged Order. Unlike IEX's proposed Discretionary Peg Order, the Exchange's proposed Discretionary Pegged Order would have to include a limit price.

Proposed Rule 7.31P(h)(3)(B) would provide that when exercising discretion, Discretionary Pegged Orders would maintain their time priority at their working price as Priority 3—Non-Display Orders and would be prioritized behind Priority 3—Non-Display Orders with a working price equal to the discretionary price of a Discretionary Pegged Order at the time of execution. If multiple Discretionary Pegged Orders are exercising price discretion during the same book processing action, they would maintain their relative time priority at the discretionary price. This proposed rule text is based on the last two full sentences of proposed IEX Rule 11.190(a)(10), with non-substantive differences to use Pillar terminology to describe the relative ranking and priority of Discretionary Pegged Orders.

⁴ See proposed IEX Rules 11.190(a)(10) and 11.190(g) in Exhibit B to IEX's Form 1 Application and Securities Exchange Act Release No. 75925 (Sept. 15, 2015), 80 FR 57261 (Sept. 22, 2015) (File No. 10-222).

⁵ A “Pegged Order” is defined in Rule 7.31P(h) as a Limit Order that does not route with a working price that is pegged to a dynamic reference price. If the designated reference price is higher (lower) than the limit price of a Pegged Order to buy (sell), the working price will be the limit price of the order.

⁶ The term “NYSE Arca Marketplace” is defined in Rule 1.1(e) as the electronic securities communications and trading facility designated by the Board of Directors through which orders of Users are consolidated for execution and/or display.

⁷ The term “working price” is defined in Rule 7.36P(a)(3) as the price at which an order is eligible to trade at any given time, which may be different from the limit price or display price of the order. The term “limit price” is defined in Rule 7.36P(a)(2) as the highest (lowest) specified price at which a Limit Order to buy (sell) is eligible to trade.

⁸ The term “PBBO” is defined in Rule 1.1(dd) as the highest Protected Bid and the lowest Protected Offer.

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.