

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-BX-2016-041 and should be submitted on or before August 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78280; File No. SR-NYSEArca-2016-91]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 3.3 To Delete an Outdated Reference

July 11, 2016.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act") <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> notice is hereby given that on June 28, 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 Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)

of the Act <sup>4</sup> and Rule 19b-4(f)(6)(iii) thereunder, <sup>5</sup> which renders it effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 3.3 (Board Committees) to delete an outdated reference. 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend NYSE Arca Rule 3.3(a)(1)(B) to delete an outdated reference to "a director of NYSE Regulation, Inc. that satisfies the Public Director requirements set forth in Section 3.02(a) of the Bylaws of the Exchange."

In 2015, the Exchange amended, among other rules, Rule 3.3 in order to establish a Regulatory Oversight Committee ("ROC") as a committee of the SRO Board. <sup>6</sup> At the time, the Exchange's regulatory functions were performed by NYSE Regulation, Inc. ("NYSE Regulation"), a former subsidiary of the Exchange's affiliate New York Stock Exchange LLC ("NYSE"), pursuant to an intercompany Regulatory Service Agreement ("RSA"). <sup>7</sup> When the Exchange's ROC

was created, Rule 3.3(a)(1)(B) was amended to provide that the ROC would consist of at least three members, each of whom would be a director of either the Exchange or of NYSE Regulation and who satisfied the independence requirements of the Exchange. <sup>8</sup>

The intercompany RSA terminated on February 16, 2016. As of that date, NYSE Regulation ceased to provide regulatory services to the Exchange, which re-integrated its regulatory functions. NYSE Regulation has also since been merged out of existence. The reference to a director of NYSE Regulation in Rule 3.3 is thus obsolete. The ROC currently consists of Exchange directors that satisfy the Exchange's independence requirements. <sup>9</sup> To effectuate the proposed change, the Exchange would delete the phrase "or a director of NYSE Regulation, Inc. that satisfies the Public Director requirements set forth in Section 3.02(a) of the Bylaws of the Exchange" in Rule 3.3(a)(1)(B).

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act <sup>10</sup> in general, and with Section 6(b)(5) <sup>11</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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, help to protect investors and the public interest. Specifically, the Exchange believes that replacing the reference to a director of NYSE

2015), 80 FR 59837 (October 2, 2015) (SR-NYSE-2015-27).

<sup>8</sup> See NYSE Arca ROC Approval Order, 80 FR at 34744. Article III, Section 3.02(a) of the Exchange's Bylaws requires that at least 50% of the Exchange's directors be public directors, defined as "persons from the public and [who] will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates." The Exchange believes that the Bylaw requirements for "public directors" establish the Exchange's criteria for director independence, and therefore serve the same purpose as the NYSE and NYSE MKT Independence Policies. See Securities Exchange Act Release Nos. 74824 (April 28, 2015), 80 FR 25347, 25348 n.6 (May 4, 2015) (SR-NYSEArca-2015-29) ("Notice"); NYSE Arca ROC Approval Order, 80 FR at 34744. See also Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR-NYSE-2012-17); SR-NYSEArca-2012-59; SR-NYSEMKT-2012-07) (approving NYSE's and NYSE MKT's director independence policy).

<sup>9</sup> See note 8, *supra*.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<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>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> See Securities Exchange Act Release No. 75155 (June 11, 2015), 80 FR 34744 (June 17, 2015) (SR-NYSEArca-2015-29) ("NYSE Arca ROC Approval Order").

<sup>7</sup> See *id.*, at 34744 & n.7; see also Securities Exchange Act Release No. 75991 (September 28,

Regulation in Rule 3.3(a)(1)(B) removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having obsolete references in the Exchange's rulebook. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rulebook. The Exchange believes that eliminating an obsolete reference would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such obsolete references will also further the goal of transparency and add clarity to the Exchange's rules.

#### *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 to delete obsolete references, thereby increasing transparency, reducing confusion, and making the Exchange's rules easier to understand and navigate.

#### *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 prior to 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 Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</sup>

<sup>12</sup> 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

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)<sup>14</sup> 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 the proposed rule change benefits persons subject to the Exchange's jurisdiction, regulators, and the investing public by making the Exchange's rulebook easier to navigate and understand by deleting an obsolete reference.<sup>15</sup>

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal will reduce confusion and add clarity to the Exchange's rulebook by removing an outdated reference. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>17</sup> of the Act to determine whether the proposed rule change 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:

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.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>15</sup> See *supra* Section II.A.2.

<sup>16</sup> 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).

<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

#### *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-2016-91 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-2016-91. 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-2016-91, and should be submitted on or before August 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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<sup>18</sup> 17 CFR 200.30-3(a)(12).