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 Equites 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 Order[5] to buy (sell) that upon entry to the NYSE Arca Marketplace[6] would be assigned a working price[7] equal to the lower (higher) of the midpoint of the PBBO[8] (''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.

[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.

[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.

Proposed Rule 7.31P(h)(3)(C) would provide that a Discretionary Pegged Order would be eligible to exercise price discretion to its discretionary price, except during periods of quote instability, as specified in proposed Rule 7.31P(h)(3)(D). Proposed Rule 7.31P(h)(3)(C)(i) would provide that if the Corporation [9] determines the PBB for a particular security to be an unstable quote in accordance with proposed Rule 7.31P(h)(3)(D), it would restrict buy Discretionary Pegged Orders in that security from exercising price discretion to trade against interest above the PBB. Proposed Rule 7.31P(h)(3)(C)(ii) would provide that if the Corporation determines the PBO for a particular security to be an unstable quote in accordance with proposed Rule 7.31P(h)(3)(D), it would restrict sell Discretionary Pegged Orders in that security from exercising price discretion to trade against interest below the PBO. This rule text is based on proposed IEX Rule 11.190(a)(10)(K) with non-substantive differences to refer to the Corporation instead of the ''System'' and to measure the PBBO rather than the NBBO for quote instability.

Proposed Rule 7.31P(h)(3)(D) would set forth how the Exchange would determine quote stability, *i.e.,* crumbling quote, of the PBBO. This proposed rule text is based on proposed IEX Rule 11.190(g) with non-substantive differences to use the term ''Corporation'' instead of ''System,'' and as described above, to measure the stability of the PBBO rather than the NBBO. As proposed, when the Corporation determines a quote, either the PBB or the PBO, is unstable, the determination would remain in effect at that price level for ten (10) milliseconds. As further proposed, the Corporation would only treat one side of the PBBO as unstable in a particular security at any given time.

The Exchange would determine quote instability or a crumbling quote when the following factors occur:

- The PBB and PBO are the same as the PBB and PBO one (1) millisecond ago (proposed Rule 7.31P(h)(3)(D)(i)(A)); and
- the PBBO spread is less than or equal to the thirty (30) day median PBBO spread during the Core Trading Session (proposed Rule 7.31P(h)(3)(D)(i)(B)); and
- there are more protected quotations on the far side, *i.e.* more protected quotations on the PBO than the PBB for buy orders, or more protected quotations on the PBB than the PBO for sell orders (proposed Rule 7.31P(h)(3)(D)(i)(C)); and
- the quote instability factor result from the quote stability calculation is greater than the defined quote instability threshold (proposed Rule 7.31P(h)(3)(D)(i)(D).

The Exchange proposes that the quote stability calculation used to determine the current quote instability factor would be defined by the following formula that utilizes the quote stability coefficients and quote stability variables defined below:

$$1/(1 + e\,\hat{}\,-(C0 + C1 * N + C2 * F + C3 * N{-}1 + C4 * F{-}1))$$

(See proposed Rule 7.31P(h)(3)(D)(i)(D)(1)).

As set forth in proposed Rule 7.31P(h)(3)(D)(i)(D)(1)(a), the Exchange proposes to utilize the values below for the quote stability coeffecients:

C0 = −2.39515; (ii) C1 = −0.76504; (iii) C2 = 0.07599; (iv) C3 = 0.38374; and (v) C4 = 0.14466.

As set forth in proposed Rule 7.31P(h)(3)(D)(i)(D)(1)(b), the Exchange proposes to utilize the following quote stability variables to calculate the current quote instability factor: (i) N = the number of protected quotations on the near side of the market, *i.e.* PBB for buy orders and PBO for sell orders; (ii) F = the number of protected quotations on the far side of the market, *i.e.* PBO for buy orders and PBB for sell orders; (iii) N–1 = the number of protected quotations on the near side of the market one (1) millisecond ago; and (iv) F–1 = the number of protected quotations on the far side of the market one (1) millisecond ago.

As set forth in proposed Rule 7.31P(h)(3)(D)(i)(D)(2), the Exchange proposes to utilize a quote instability threshold of 0.32. Finally, as set forth in proposed Rule 7.31P(h)(3)(D)(i)(D)(3), the Exchange reserves the right to modify the quote instability coeffecients or quote instability threshold at any time, subject to a filing of a proposed rule change with the SEC.

Because of the technology changes associated with this proposed rule change, the Exchange will announce by Trader Update the implementation date.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, because 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, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting transparency in Exchange rules by adopting a new order type that is designed to exercise discretion in order to provide price improvement to contra-side orders. Similar to how MPL Orders operate, the Discretionary Pegged Order is designed to be a non-displayed order that could execute at the midpoint of the PBBO, and thus would enhance order execution opportunities at the Exchange that provide price improvement opportunities over the PBBO. However, unlike an MPL Order, the Exchange would monitor the quality of the PBBO to assess whether a Discretionary Pegged Order would be eligible to exercise its discretion. As proposed, the Exchange would use a mathematical calculation (the ''quote instability calculation'') to assess the probability of an imminent change to the current PBB to a lower price or the PBO to a higher price for a particular security (''quote instability factor''). When the quoting activity meets predefined criteria and the quote instability factor calculated is greater than the Exchange's proposed threshold (''quote instability threshold''), the Exchange would treat the quote as not stable (''quote instability'' or ''crumbling quote'').

The Exchange believes that using the proposed quote instability calculation to determine quote instability would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange would be monitoring the PBBO on behalf of its members in an objective and transparent manner to assess the quality of the PBBO and whether it is appropriate for a Discretionary Pegged Order to exercise its discretion. The Exchange further believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system for the Exchange to monitor the quote stability because it would assist ETP Holders in obtaining best execution for their

[9] The term ''Corporation'' is defined in Rule 1.1(k) to mean NYSE Arca Equities, as described in NYSE Arca Equities' Certificate of Incorporation and Bylaws.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

customers by limiting executions at the midpoint of the PBBO when the PBBO is not stable, thereby providing a more conservative alternative for investors seeking to passively participate with contra-side order flow. The proposed rule change would therefore facilitate transactions in securities and improve trading within the national market system.

As discussed above, the proposed rule change is based on the proposed rules of IEX, which has not yet been approved as a registered securities exchange. In a letter commenting on IEX's Form 1 Application, the Exchange previously stated that it did not oppose IEX's proposed quote instability feature, but noted that it offers a feature typically performed by broker-dealers.[12] Generally, an exchange's function is to reprice orders based on direction from its members and input from market data, *e.g.,* a Pegged Order is repriced based on changes to the PBBO. By contrast, broker dealers generally perform the function of evaluating the quality of the market to determine whether to trade and at what price. The proposed quote stability calculation would perform a similar function by monitoring the quality of the market in order to assess whether to exercise price discretion, and therefore the Exchange would be making pricing decisions for its members based on the Exchange's evaluation of the quality of the PBBO. In a separate context, the Commission has disapproved a registered exchange from performing the same services as a broker-dealer.[13] While the Exchange believes that the proposal is consistent with the Act for the reasons described above, the Exchange respectfully requests that the Commission clearly articulate the boundaries of when an exchange may and may not offer services that are otherwise performed by broker dealers and, when it is appropriate for an exchange to monitor the quality of the prices in a market to determine how to price an order.

To this end, the Exchange believes that the proposed rule change would achieve efficiency and cost savings for market participants that rely on the Exchange to manage the price-discovery process on their behalf because it presents an option for ETP Holders to have the Exchange monitor the quality of the PBBO. Specifically, the Discretionary Pegged Order will be an option to assist market participants to achieve best execution on behalf of their customers by reducing the potential to execute at a stale price. The manner by which the Exchange would monitor the quality of the quote would be objective and transparent, as specified in proposed Rule 7.31P(h)(3)(D). Market participants that use the Discretionary Pegged Order would thus be able to serve their customers better, thereby protecting investors and the public interest.

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 Act. The Exchange believes that the proposed Discretionary Pegged Order and related quote instability would promote competition because it is based on the proposed rules of IEX, which would implement the Discretionary Peg Order and related quote instability if approved as a registered securities exchange under Section 6 of the Act.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be 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.* Please include File Number SR–NYSEArca–2016–44 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–2016–44. 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–2016–44 and should be submitted on or before April 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

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[12] *See* Letter from Elizabeth K. King, General Counsel & Secretary, New York Stock Exchange to Brent J. Fields, Secretary, Commission, dated November 12, 2015.

[13] *See* Securities Exchange Act Release No. 68629 (Jan. 11, 2013), 78 FR 3928, 3931 (Jan. 17, 2013) (SR–NASDAQ–2012–059) (Order disapproving proposal to establish ''benchmark orders'' because, in part, the proposed functionality would create regulatory disparities that would give Nasdaq an inappropriate advantage over broker-dealers providing the same services and therefore the Commission could not find that the proposal would be consistent with Section 6(b)(8) of the Act).

[14] 17 CFR 200.30–3(a)(12).