

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-BX-2012-038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2012-038. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2012-038, and should be submitted on or before June 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-13894 Filed 6-7-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67101; File No. SR-NYSEArca-2012-48]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(h) To Add a PL Select Order Type

June 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on May 22, 2012, 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, II, and III below, which Items have been prepared by the Exchange. 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 7.31(h) to add a PL Select Order type. The text of 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h) to add a PL Select Order type.

Pursuant to NYSE Arca Equities Rule 7.31(h)(4), a Passive Liquidity ("PL") Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price. The PL Order was initially designed to attract liquidity to the Exchange by permitting market participants to express their trading interest more accurately than was possible with other order types available at the time.³ PL Orders were also designed to offer potential price improvement to incoming marketable orders submitted by any User.⁴

The Exchange believes that it is appropriate to provide Users who enter PL Orders with the flexibility to be able to select what type of contra-side interest that would interact with their PL Order. The Exchange believes that by restricting specified contra-side interest from interacting with PL Orders, Users may be incentivized to enter larger-sized, more aggressively-priced orders. In particular, the Exchange believes that market participants interested in providing liquidity that would offer potential price improvement should be provided the option to select that their "provider" interest would not interact with pure "taker" interest, i.e., interest that will execute immediately with interest at the Exchange without ever resting on the Exchange's order book.

The Exchange also believes that it would be able to attract larger-sized, more aggressively priced PL Orders if the User has the choice not to execute against contra-side orders that are larger sized than the resting PL Order. Because large-sized orders are more likely to trade at multiple price points, such an incoming order would likely sweep up the PL order as it executes through multiple price points. In such scenario, the PL Order would not serve its primary function of providing price improvement, but would instead be an execution among many that would ultimately be at an inferior price. The Exchange believes that if Users entering PL Orders can select not to trade with an incoming order that is larger in size,

³ See Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR-PCX-2005-53).

⁴ *Id.* The term "User" means any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to Rule 7.29. See NYSE Arca Equities Rule 1.1(yy).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the PL Order will remain available on the Arca Book to provide price improvement for smaller incoming orders.

To provide such flexibility, the Exchange proposes to add a new order type, the PL Select Order, which would be a subset of a PL Order. As proposed, NYSE Arca Equities Rule 7.31(h)(7) would define the PL Select Order as a PL Order that would not interact with an incoming order that: (i) has an immediate-or-cancel ("IOC") time in force condition,⁵ (ii) is an ISO,⁶ or (iii) is larger than the size of the PL Select Order. The Exchange believes that the first two restrictions on trading with incoming IOC or ISO orders would enable Users to designate that their PL Orders would not trade with interest that would never become displayed or passive liquidity at the Exchange. The Exchange believes that the third restriction would serve to attract larger-sized PL Orders because the User would not have to risk having the PL Select Order being swept up by larger-sized contra interest thereby obviating the primary purpose of the PL Order to provide price improvement.

As proposed, except for the specified restrictions on trading with certain incoming orders, the PL Select Order would otherwise operate as a PL order and would retain its standing in execution priority among PL Orders. The Exchange notes, however, that for those instances when an incoming order meets one of the PL Select Order restrictions, the PL Select Order would be skipped and can be traded through.

For example, assume that the protected best bid and offer is \$19.00–\$19.50 and a User enters a PL Select Order to buy 5,000 at \$19.25 (B1). A second User enters an order to buy 1,000 at \$19.00 (B2). If an incoming ISO sell order at \$19.00 for 500 shares arrives (S1), S1 would not trade with B1, and would instead trade with B2 for 500 shares at \$19.00. Because B1 is a PL Select Order, and is restricted from trading with an ISO, it would be skipped. If another sell order at \$19.00 for 700 shares arrives (S2), and it is not marked IOC or ISO, S2 would execute against B1, 700 shares at \$19.25. In this situation, because S2 does not meet any of the restrictions of the PL Select Order, B1, which arrived before B2, would receive the entire execution.

In order to be placed on the Exchange's book initially, the Exchange further proposes that incoming PL Select Orders that are marketable would execute against all available contra-side

interest, which potentially could include IOCs, ISOs, or larger-sized interest. After any marketable interest of the arriving PL Select Order executes, any remaining balance of the PL Select Order would be subject to the restrictions and would not trade with any incoming IOCs, ISOs, or larger-sized interest.

The Exchange further proposes to add that upon notice to ETP Holders, the Corporation may suspend the entry of PL Select Orders. If such provision is invoked, Users may continue to submit PL Orders, but would not be able to enter PL Select Orders and all open PL Select Orders on the NYSE Arca trading book would be cancelled back to the User. The Exchange believes that it is appropriate to be able to suspend the entry of PL Select Orders in circumstances where the volume of orders creates an issue with the ability of the Exchange to timely process inbound orders to the Exchange.

Because of the related technology changes that this proposed rule change would require, the Exchange proposes to announce the initial implementation date via Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ 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.

The Exchange believes that the proposed rule change would help prevent fraudulent and manipulative acts and practices because it would provide the ability for Users to select that a market participant that may be seeking only to probe the availability of hidden interest, and not add liquidity to the market, cannot execute against their passive liquidity. In particular, in today's equities market structure, the type of order flow that generally gets routed to the Exchange, and other registered exchanges, is order flow of the last resort. As evidenced by the increased use of off-Exchange trading venues, whether at dark pools or via

internalization agreements at broker-dealers, by the time trading interest reaches an exchange, it is often cast-off trading interest, rather than the primary order flow of a broker-dealer. The Exchange sees this with the high volumes of ping-type of interest that arrives at the Exchange, and relatively low volumes of trading interest that is intended to be displayed or become passive interest. Such "pinging" interest generally comes from professional traders, rather than from public customers, and is seeking to ferret out hidden liquidity at an exchange, rather than to become passive liquidity.

In seeking to attract more interest that is intended to be displayed interest and therefore promote just and equitable principles of trade, the Exchange proposes to add the PL Select Order type. As discussed in greater detail above, the PL Select Order type would be available to execute against any incoming interest that has the potential to become displayed or passive liquidity at the Exchange. The Exchange believes that the availability of the PL Select Order type could potentially incentivize the routing of interest to the Exchange that is intended to be displayed, which would support the goals of Regulation NMS to encourage the display of limit orders. In particular, Users interested in routing displayable interest to the Exchange would be aware that there is more likely to be hidden interest against which to execute because such hidden interest would not have been "taken" by ping interest. To the extent there is any disadvantage because a PL Select Order skips an execution, it would be to professional traders who are choosing to send ping interest, rather than to the investing public.

Likewise, the Exchange believes that skipping executions with larger-sized incoming interest would similarly incentivize Users to route PL Orders to the Exchange because such orders would remain available to provide price improvement and would not be swept up by such larger-sized incoming orders. Because such PL Select Orders would remain available to provide price improvement, it could similarly incentivize Users to route displayable interest to the Exchange because the likelihood of receiving price improvement could increase.

The Exchange further believes that the rule proposal promotes just and equitable principles of trade, and fosters cooperation and coordination with market participants because it provides additional flexibility for Users to specify against which interest their PL Orders would execute. The Exchange notes that Users can continue to enter PL Orders;

⁵ See NYSE Arca Equities Rule 7.31(e).

⁶ See NYSE Arca Equities Rule 7.31(jj).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

the ability to enter PL Select Orders would be an additional option for Users. Furthermore, the Exchange believes that the proposed PL Select Order furthers the goals of a free and open market and national market system by providing Users with the ability to add additional instructions to PL Orders to ensure that such orders are used primarily for liquidity providing, price improvement purposes.

The Exchange further believes that providing the Exchange with the ability to suspend the entry of PL Select Orders supports the principle of promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market. Currently, the technology process associated with the proposed PL Select Orders would be to assess each incoming order to determine whether it can interact with resting PL Select Orders. If, in the rare circumstances, the volume of orders received by the Exchange, including of PL Select Orders, and the attendant need to assess each order, results in reduced trading performance and increased latency, the Exchange believes that it is appropriate to suspend the entry of PL Select Orders, which would also result in cancelling any open PL Select Orders, until such time that the potential cause of increased latencies has been resolved.

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.

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 (i) as the Commission may designate up to 90 days of such date 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 the 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 Exchange 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-2012-48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2012-48. 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 a.m. and 3 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-2012-48 and should be submitted on or before June 29, 2012.

⁹ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67100; File No. SR-NYSEArca-2012-49]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow the Use of Swap Agreements Under Limited Circumstances by the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF, Which Are Listed and Traded on the Exchange Under NYSE Arca Equities Rule 8.200, Commentary .02

June 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on May 22, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 accommodate the use of swap agreements under limited circumstances by the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF, which are listed and traded on the Exchange under NYSE Arca Equities Rule 8.200, Commentary .02. The text of 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.