and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2016–066. 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 will also 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 No. SR–NASDAQ–2016–066 and should be submitted on or before June 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11879 Filed 5–19–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77837; File No. SR–NYSEARCA–2016–65]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Definition of Professional Customer in Rule 6.1A(a)(4A)

May 16, 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 May 3, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the definition of Professional Customer in Rule 6.1A(a)(4A) to specify the manner in which the Exchange calculates average daily order submissions for purposes of counting Professional Customer orders. 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 the definition of Professional Customer in Rule 6.1A(a)(4A) to adopt a methodology for counting average daily order submissions in listed options to determine whether a person or entity meets the definition of a Professional Customer (''Professional Customer order counting''). The proposed rule change is designed to harmonize Professional Customer order counting with the recently adopted rules of competing options exchanges—specifically the Chicago Board of Options Exchange,

Inc. (''CBOE'') and NASDAQ OMX PHLX LLC (''PHLX'').[4]

Rule 6.1A(a)(4A) defines Professional Customer ''as an individual or organization that (i) is not a Broker/Dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).'' In adopting the Rule 6.1A(a)(4A), the Exchange noted that identifying Professional Customer accounts based upon the average number of orders entered in qualified accounts is an appropriate, objective approach that will reasonably distinguish such persons and entities from non-professional, retail investors or market participants. In order to properly represent orders entered on the Exchange, OTP Holders and OTP Firms are required to indicate whether Customer orders are ''Professional Customer'' orders.[5] To comply with this requirement, member organizations are required to review their Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Customer orders or Professional Customer orders.[6]

The advent of new multi-leg spread products and the proliferation of the use of complex orders and algorithmic execution strategies by both institutional and retail market participants has raised questions as to what should be counted as an ''order'' for Professional Customer order counting purposes. The proposed changes would specifically address the

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[4] *See* Securities Exchange Act Release Nos. 77450 (March 25, 2016), 81 FR 18668, (March 31, 2016) (SR–CBOE–2016–005); 77449 (March 25, 2016), 81 FR 18665, (March 31, 2016) (SR–Phlx–2016–10) (approval orders). The Exchange notes that it recently issued guidance regarding Professional Customer order counting. *See e.g.,* NYSE Arca, Inc.'s and NYSE MKT LLC's Joint Regulatory Bulletin (RBO–15–03 and RBO–15–06, respectively) dated September 9, 2015. This proposal codifies that guidance in a manner that is consistent with CBOE and PHLX's approved rules.

[5] *See e.g.,* Rule 6.69 (Reporting Duties), Commentary .03 (requiring that manual orders submitted be marked with an origin code ''PC.'').

[6] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional Customer orders for the next calendar quarter. OTP Holders and OTP Firms would be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter. While members only would be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Customer orders but that has averaged more than 390 orders per day during a month, the Exchange would notify the OTP Holder and the OTP Holder would be required to change the manner in which it is representing the customer's orders within five business days.

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[11] 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.

counting of multi-leg spread products, algorithm generated orders, and complex orders for purposes of determining Professional Customer status. In addition, the proposal is intended to provide guidance regarding the methodology used by the Exchange when calculating average daily orders for Professional order counting purposes.[7]

As proposed, the rule would provide that an order would count as one order for Professional Customer counting purposes, unless one of the exceptions enumerated in the proposed rule stipulates otherwise (each an "Exception"). The first Exception relates to the treatment of complex orders for purposes of computing orders for Professional order counting purposes. Specifically, the proposed rule provides that a complex order of eight legs or less would count as one order, whereas a complex order comprised of nine (9) option legs or more counts as multiple orders with each option leg counting as its own separate order.[8] The Exchange believes the distinction between complex orders with up to eight legs from those with nine or more legs is appropriate in light of the purposes for which Rule 6.1A(a)(4A) was adopted. In particular, the Exchange notes that multi-leg complex order strategies with nine or more legs are more complex in nature and thus, more likely to be used by professional traders than traditional two, three, and four leg complex order strategies such as the strangle, straddle, butterfly, collar, and condor strategies, and combinations thereof with eight legs or fewer, which are generally not algorithmically generated and are frequently used by non-professional, retail investors. Thus, the types of complex orders traditionally placed by retail investors would continue to count as only one order while the more complex strategy orders that are typically used by professional traders would count as multiple orders for Professional Customer order counting purposes.[9]

The second Exception relates to calculations for parent/child orders. As proposed, if a parent order submitted for the beneficial account(s) of a person or entity other than a broker or dealer is subsequently broken up into multiple child orders on the *same side* (buy/sell) *and series* by a broker or dealer, or by an algorithm housed at the broker or dealer, or by an algorithm licensed from the broker or dealer but housed with the customer, then the order would count as one order even if the child orders are routed across several exchanges.[10] The Exchange believes this proposed change would allow the orders of public customers to be "worked" by a broker (or a broker's algorithm) in order to achieve best execution without counting the multiple child orders as separate orders for Professional Customer order counting purposes. Conversely, if a parent order, including a strategy order,[11] is broken into multiple child orders on *both sides* (buy/sell) of a series and/or multiple series, then each child order would count as a *separate* new order per side and series.[12] This proposed change would allow the Exchange, for Professional Customer order counting purposes, to count as multiple orders those "child" orders of "parent" orders generated by algorithms that are typically used by sophisticated traders to continuously update their orders in concert with market updates in order to keep their overall trading strategies in balance.

The third Exception would govern the counting methodology for cancel/replace orders. As proposed, any order that cancels and replaces an existing order would count as a *separate* order (or multiple orders in the case of complex orders of nine legs or more) for Professional Customer order counting purposes.[13] However, the Exchange proposes that an order to cancel and replace a child order would *not* count as a new order if the parent order that was placed for the beneficial account(s) of a non-broker or dealer had been subsequently broken into multiple child orders on the same side and series as the parent order by a broker or dealer, algorithm at a broker or dealer, or algorithm licensed from a broker or dealer but housed at the customer.[14] By contrast, the Exchange proposes that an order that cancels and replaces a child order resulting from a parent order, including a strategy order, that generated child orders on both sides (buy/sell) of a series and/or in multiple series would count as a new order per side and series ("Both Sides/Multiple Series").[15] Finally, the Exchange proposes that, notwithstanding the treatment of a cancel/replace relating to Both Sides/Multiple Series orders, an

order that cancels and replaces any child order resulting from a parent order being pegged to the Exchange's best bid or offer ("BBO") or the national best bid or offer ("NBBO") or that cancels and replaces any child order pursuant to an algorithm that uses the BBO or NBBO in the calculation of child orders and attempts to move with or follow the BBO or NBBO of a particular options series would count as a new order each time the order cancels and replaces in order to attempt to move with or follow the BBO or NBBO.[16]

Implementation

The Exchange proposes to implement the rule on July 1, 2016, which would be announced via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5),[18] 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.

Specifically, the Exchange believes that the proposal is designed to adopt a reasonable and objective approach to determine Professional Customer status that is consistent with the approach being utilized on other options exchanges, which benefits market participants by providing consistency across exchanges regarding the Professional Customer order counting.[19] In this regard, the Exchange believes that codifying the manner in which the Exchange would conduct Professional Customer order counting would provide OTP Holders and OTP Firms with certainty and provide them with insight as they conduct their own quarterly reviews for purposes of designating orders.

The Exchange notes that it is not amending the threshold of 390 orders in listed options per day but, consisting with other exchanges is revising the method for counting Professional Customer orders in the context of multi-part orders and cancel/replace activity. In short, the proposal addresses how to account for complex orders, parent/

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[7] This proposal is consistent with CBOE and PHLX's approved rules. *See supra* n. 4.

[8] *See* proposed Rule 6.1A(a)(4A)(A)(1)(i)–(ii).

[9] *See also supra* n. 4.

[10] *See* proposed Rule 6.1A(a)(4A)(A)(2)(i).

[11] The term "strategy order" refers to an execution strategy, trading instruction, or algorithm whereby multiple "child" orders on both sides of a series and/or multiple series are generated prior to being sent to an options exchange(s).

[12] *See* proposed Rule 6.1A(a)(4A)(A)(2)(ii).

[13] *See* proposed Rule 6.1A(a)(4A)(A)(3)(i).

[14] *See* proposed Rule 6.1A(a)(4A)(A)(3)(ii).

[15] *See* proposed Rule 6.1A(a)(4A)(A)(3)(iii).

[16] *See* proposed Rule 6.1A(a)(4A)(A)(3)(iv).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* n. 4.

child orders, and cancel/replace orders. The Exchange believes that distinguishing between complex orders with 9 or more options legs and those orders with 8 or fewer options legs is a reasonable and objective approach. In addition, the Exchange believes the proposal appropriately distinguishes between parent/child orders that are generated by a broker's efforts to obtain an execution on a larger size order while minimizing market impact and multi-part orders that used by more sophisticated market participants. Similarly, the Exchange believes that the proposal that cancel/replace orders would count as separate orders with limited exceptions is a reasonable and objective approach to distinguish the orders of retail customers that are ''worked'' by a broker from orders generated by algorithms used by more sophisticated market participants.

Thus, the Exchange believes the proposal, which establishes an objective methodology for counting average daily order submissions for Professional Customer order counting purposes, is consistent with the Act.

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. To the contrary, the proposed rule change is a competitive change that is substantially similar to recent rule changes filed by the CBOE and PHLX.[20]

The Exchange notes that one of the purposes of the Professional Customer designation is to help ensure fairness in the marketplace and promote competition among all market participants. The Exchange believes that this proposal would help establish more competition among market participants and promote the purposes for which the Exchange's Professional Customer rule was originally adopted. Moreover, the proposal would stem ensure consistency and stem potential confusion as to the manner in which options exchanges compute the Professional Customer order volume.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22] 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.

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)[23] 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:

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 No. SR– NYSEARCA–2016–65 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 No. SR–NYSEARCA–2016–65. 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 No. SR– NYSEARCA–2016–65, and should be submitted on or before June 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,
Deputy Secretary.
[FR Doc. 2016–11878 Filed 5–19–16; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:
  Rule 19b–5 and Form PILOT, SEC File No. 270–448, OMB Control No. 3235–0507.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19b–5 (17 CFR 240.19b–5) and Form PILOT (17 CFR 249.821) under the Securities Exchange

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[20] *See id.*

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).