

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95499; File No. SR-NYSEAMER-2022-35)

August 12, 2022

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delete Current Rule 7.39E

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 August 5, 2022, NYSE American LLC (“NYSE American” or the “Exchange”) 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 delete current Rule 7.39E governing Off-Hours Trading. The proposed rule change is available on the Exchange’s website 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 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 delete current Rule 7.39E governing Off-Hours Trading.

In 2017, in connection with the transition to the Pillar trading platform, the Exchange adopted Rule 7.39E in order to maintain certain functionality in its Off-Hours Trading Facility.³ Currently, the Exchange offers an Off-Hours Trading Facility pursuant to Rule 7.39E that only accepts aggregate-price coupled orders.

NYSE American recently determined to cease offering an after-hours crossing session and decommission the Off-Hours Trading Facility. In connection with the decommissioning of the Off-Hours Trading Facility, the Exchange proposes to delete Rule 7.39E in its entirety. The Exchange notes that its affiliate New York Stock Exchange LLC (“NYSE”) has filed to adopt a new Rule 7.39 governing its off-hours trading facility based on Rule 7.39E that would permit NYSE member organizations to enter aggregate-price coupled orders for securities, including UTP securities, listed and traded on NYSE.⁴

³ See Securities Exchange Act Release No. 80590 (May 4, 2017), 82 FR 21843, 21847 (May 10, 2017) (SR-NYSEMKT-2017-01) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Adopt New Equity Trading Rules To Transition Trading on the Exchange From a Floor-Based Market With a Parity Allocation Model to a Fully Automated Market With a Price-Time Priority Model on the Exchange's New Trading Technology Platform, Pillar). Prior to that time, Rules 900 – Equities through 907 – Equities governed off-hours trading activity on the Exchange. Rules 900 – Equities through 907 – Equities were designated as inapplicable to trading on the Pillar trading platform and later deleted. See Securities Exchange Act Release No. 82212 (December 4, 2017), 82 FR 58036 (December 8, 2017) (SR-NYSEAMER-2017-34) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rules To Delete Obsolete Cash Equities Rules That Are Not Applicable to Trading on the Pillar Trading Platform and To Delete Other Obsolete Rules).

⁴ See SR-NYSE-2022-37. The NYSE’s proposed rule filing would permit NYSE member organizations to enter aggregate-price coupled orders, defined as orders to buy or sell a

The Exchange will announce the implementation date by Trader Update. The Exchange anticipates that the proposed change will be implemented on September 1, 2022.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5),⁶ 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 deleting Rule 7.39E concomitantly with the decommissioning of the Off-Hours Trading Facility would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system by deleting obsolete rules, thereby adding clarity, transparency and consistency to the Exchange's rulebook. By making the proposed change, the Exchange would ensure that its rules are consistent with the existing functionality offered by the Exchange, thereby promoting clarity and transparency in its rules. The Exchange believes that the change 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 the increased clarity and transparency that the change would introduce, thereby reducing

group of securities that have a total market value of \$1 million or more and that are comprised of 15 or more securities listed or traded on the NYSE, which would include UTP securities.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

potential confusion.

The Exchange further 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 and, in general, protect investors and the public interest, because it would remove any potential confusion among market participants that may result if the Exchange retained rules governing its Off-Hours Trading Facility after the Exchange decommissioned it.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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. Specifically, the Exchange believes that decommissioning its Off-Hours Trading Facility would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Pursuant to the NYSE's recent filing to adopt a new rule based on NYSE American Rule 7.39E, all ETP Holders that are also NYSE member organizations would be able to utilize the NYSE's off-hours trading facility to enter aggregate-price coupled orders for securities, including UTP securities, listed and traded on the NYSE.⁷ The Exchange further believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate because the proposed change is designed to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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.

⁷ See SR-NYSE-2022-37.

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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ 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 Act¹⁰ and Rule 19b-4(f)(6)(iii) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may 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 on September 1, 2022.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the Exchange plans to decommission the

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its 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.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

Off-Hours Trading Facility as of September 1, 2022. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative on September 1, 2022.¹⁴

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)¹⁵ 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 Number SR-NYSEAMER-2022-35 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.

¹⁴ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEAMER-2022-35. 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 website (<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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NYSEAMER-2022-35 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier

Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).