

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 81603; File No. SR-NYSEARCA-2017-102)

September 13, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NYSE Arca Rule 7.35-E, NYSE Arca Rule 7.31-E and NYSE Arca Rule 7.23-E

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 August 31, 2017, 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 (i) NYSE Arca Rule 7.35-E (Auctions) to provide that Market-on-Open (“MOO”), Limit-on-Open (“LOO”) Orders, and Imbalance Offset (“IO”) Orders would be cancelled if the Re-Opening Time for a Trading Halt Auction would be in the last ten minutes of trading before the end of Core Trading Hours; (ii) NYSE Arca Rule 7.31-E (Orders and Modifiers) regarding IO Orders; and (iii) NYSE Arca Rule 7.23-E (Obligations of Market Makers) to amend obsolete cross references. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 (i) NYSE Arca Rule 7.35-E (Auctions) (“Rule 7.35-E”) to provide that MOO, LOO, and IO Orders would be cancelled if the Re-Opening Time for a Trading Halt Auction would be in the last ten minutes of trading before the end of Core Trading Hours; (ii) NYSE Arca Rule 7.31-E (Orders and Modifiers) (“Rule 7.31-E”) regarding IO Orders; and (iii) NYSE Arca Rule 7.23-E (Obligations of Market Makers) (“Rule 7.23-E”) to amend obsolete cross references

Rule 7.35-E(e)(10) provides that if the Reopening Time for a Trading Halt Auction would be in the last ten minutes of trading before the end of Core Trading Hours, the Exchange will not conduct a Trading Halt Auction in that security, will not transition to continuous trading, will remain paused, and will conduct a Closing Auction in such security as provided for in Rule 7.35-E(d). Rule 7.35-E(e)(10)(A) further provides that in such circumstances, MOO Orders, LOO Orders, and IO Orders entered during the pause or halt will not participate in the Closing Auction and will expire at the end of the Core Trading Session.

The Exchange proposes to amend Rule 7.35-E(e)(10)(A) to provide that in such

circumstances, MOO Orders, LOO Orders, and IO Orders entered during the pause or halt will not participate in the Closing Auction and will be cancelled. This proposed rule change is not intended to make any functional changes to when MOO Orders, LOO Orders, and IO Orders are eligible to trade at the Exchange; these orders still would not participate in a Closing Auction. However, as proposed, if a trading pause or halt extends past 3:50 p.m., these orders would be cancelled back to the entering firm at 3:50 p.m. instead of remaining on the Exchange Book and expiring after Core Trading Hours concludes. The Exchange believes this proposed change would provide ETP Holders with more timely information regarding the status of pending orders.

The Exchange also proposes to amend Rule 7.31-E(c)(5), which defines the term IO Order, to provide that such orders would be available only to ETP Holders using Pillar phase II protocols.⁴ The Exchange previously filed a proposed rule change describing that when it implements Pillar phase II protocols, the Exchange will be able to support new order functionality.⁵ Because there will be a period when both Pillar phase I and Pillar phase II protocols will be available to ETP Holders, the Exchange amended its rules to describe how an ETP Holder's orders would behave depending on the protocol that an ETP Holder chooses to use. Because IO Orders would be available only via Pillar phase II protocols, the Exchange proposes to amend Rule 7.31-E(c)(5) to specify this requirement.

The Exchange proposes to implement the proposed amendments to Rules 7.35-E and 7.31-E at the same time that it implements previously-approved changes to Rule 7.35-E and 7.31-E, which the Exchange previously stated that it anticipated implementing in the third

⁴ The Exchange established IO Orders in the Reopening Filing, *infra* note 5 [sic].

⁵ See Securities Exchange Act Release No. 79688 (December 23, 2016), 82 FR 96534 (December 30, 2016) (SR-NYSEArca-2016-170) (Notice of Filing). The Pillar phase II protocols were implemented on August 21, 2017. See Trader Update dated August 17, 2017, available here: https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/Pillar_Update_NYSE_Arca_August_17_2017.pdf.

quarter of 2017.⁶ As described in greater detail in the Reopening Filing, the Exchange amended its rules relating to the reopening of trading in conjunction with the twelfth amendment to the Regulation NMS Plan to Address Extraordinary Market Volatility (“Plan”), which the Commission approved.⁷ The Exchange proposes to implement the changes described in the Reopening Filing, as amended by this proposed rule change, at the same time that the twelfth amendment to the Plan is implemented, which, subject to technology changes and effectiveness of the extension of the implementation date for the changes made in the twelfth amendment to the Plan, is anticipated to be in the fourth quarter of 2017.

The Exchange also proposes to amend NYSE Arca Equities Rules 7.23-E(a)(1)(B)(iii) and (iv) to remove obsolete cross references and to reflect that the applicable percentages are based on how a security is designated under the Plan.⁸ Rule 7.23-E(a)(1)(B) sets forth among other things, the obligation of Market Makers to maintain a bid (offer) not more than the “Designated Percentage” away from the then current National Best Bid (Offer) (“NBBO”) and if the NBBO changes such that the Market Maker’s bid/offer is more than the “Defined Limit” away from the NBBO, the Market Maker must enter an updated bid (offer). The Exchange proposes to amend Rule 7.23-E(a)(1)(B)(iii) and Rule 7.23-E(a)(1)(B)(iv) to remove cross-references to Rule 7.11-E and instead use Plan definitions for specifying which securities are

⁶ See Securities Exchange Act Release No. 79846 (January 19, 2017), 82 FR 8548 (January 26, 2017) (SR-NYSEArca-2016-130) (Approval Order) (the “Reopening Filing”).

⁷ See Securities Exchange Act Release No. 79845 (January 19, 2017), 82 FR 8551 (January 26, 2017) (File No. 4-631) (Order approving twelfth amendment to the Plan).

⁸ The Exchange’s affiliated equities exchange has adopted a similar change to its rules. See Securities Exchange Act Release No. 80577 (May 2, 2017), 82 FR 21446 (May 8, 2017) (SR-NYSEMKT-2017-04) (Order approving NYSE American LLC (“NYSE American”) Rule 7.23E(a)(1)(B)(iii) and (iv)). The proposed rule changes are also based on Bats BZX, Inc. (“BZX”) Rule 11.8(d)(2)(D) and (E).

subject to which “Designated Percentages” and “Defined Limits.” Accordingly, as proposed:

- the phrase “securities subject to Rule 7.11-E(a)(i)” would be replaced with the phrases “Tier 1 NMS Stocks under the Limit Up-Limit Down Plan” or “Tier 1 NMS Stocks;”
- the phrase “securities subject to Rule 7.11-E(a)(ii)” would be replaced with the phrases “Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than \$1.00” or “Tier 2 NMS Stocks with a price equal to or greater than \$1.00;”
- the phrase “securities subject to Rule 7.11-E(a)(iii)” would be replaced with the phrase “Tier 2 NMS Stocks with a price lower than \$1.00;” and
- the phrase “when Rule 7.11-E is not in effect” would be deleted.

Because rights and warrants are not subject to the Plan, but are subject to market maker quoting requirements, the Exchange proposes to provide that for purposes of Rule 7.23-E(a)(1)(B)(iii) and (iv), rights and warrants would be considered Tier 2 NMS Stocks. This proposed rule text is consistent with current practice and the now-obsolete cross references to Rule 7.11.⁹ The Exchange also proposes a non-substantive amendment to Rules 7.23-E(a)(1)(B)(iii) and (iv) to change references from Pacific Time to Eastern Time.

The Exchange also proposes a non-substantive amendment to Rule 7.23-E(a)(2) to replace the current reference to “Rule 4.1-E” with a reference to “the provisions of Rule 15c3-1

⁹ Securities previously subject to Rule 7.11(a)(ii) were all NMS Stocks, other than securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, with a price equal to or greater than \$1 and securities previously subject to Rule 7.11(a)(iii) were all NMS Stocks, other than securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, with a price less than \$1.00. See Securities Exchange Act Release No. 64422 (May 6, 2011), 76 FR 27691 (May 12, 2011) (SR-NYSEArca-2011-26) (Notice of filing).

under the Securities Exchange Act of 1934.” Rule 4.1-E requires ETP Holders to maintain minimum net capital in accordance with the provisions of Rule 15c3-1 under the Act.

Accordingly, by referencing Rule 15c3-1 under the Act instead of Rule 4.1-E, the proposed rule change to Rule 7.23-E(a)(2) would not make any substantive changes to the rule. This proposed rule change is based on NYSE American Rule 7.23E(a)(2).

The Exchange proposes that the amendments to Rule 7.23-E would be operative upon the operative date of this proposed rule change.

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.

The Exchange believes that the proposed amendments to Rule 7.35-E would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule change would provide ETP Holders with timely information regarding the status of MOO Orders, LOO Orders, and IO Orders, which are intended to participate in a Trading Halt Auction, if there is a trading pause or halt that extends past the last ten minutes of trading of Core Trading Hours. In such case, because the Exchange would not be conducting a Trading Halt Auction, the Exchange would provide ETP Holders with more timely

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

information about the status of their orders. The proposed rule change would not make any substantive differences regarding how such orders would execute on the Exchange.

Accordingly, the proposed rule change is designed to enhance transparency.

The Exchange believes that the proposed amendment to Rule 7.31-E would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule change would provide transparency to ETP Holders regarding which communication protocol should be used for entering IO Orders.

The Exchange believes that the proposed amendments to Rule 7.23-E would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule change is designed to remove obsolete cross references. The proposed rule change is based on the rules of NYSE American and BZX.

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 rule change is not designed to address any competitive issues but rather to provide ETP Holders with more timely information about the status of orders intended for a Trading Halt Auction and which communication protocol to use for entering IO Orders. In addition, the proposed rule change is designed to remove obsolete cross references and is based on the rules of NYSE American and BZX.

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 foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

At any time within 60 days of the filing of the 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 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 e-mail to rule-comments@sec.gov. Please include File Number SR-

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

NYSEARCA-2017-102 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-2017-102. This file number should be included on the subject line if e-mail 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; 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-2017-102 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.¹⁴

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).