

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84471; File No. SR-NYSEArca-2018-63)

October 23, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change to Amend NYSE Arca Rule 1.1(l) to Modify the Formula for Establishing the Official Closing Price for a Derivative Securities Product When There Is No Closing Auction or If the Closing Auction Is Less than One Round Lot, By Excluding the NBBO Midpoint If the Midpoint Multiplied by 10% Is Less than the NBBO Spread or If the NBBO Is Crossed

I. Introduction

On August 29, 2018, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Arca Rule 1.1(l) to exclude from the time-weighted average price (“TWAP”) calculation, for purpose of determining the Official Closing Price³ for an Exchange-listed security that is a Derivative Securities Product⁴ if the Exchange does not conduct a Closing Auction⁵ or if a Closing Auction trade is less than a round lot, a midpoint that is based on a National Best Bid and Offer (“NBBO”) that may not be reflective of the security’s true and current value. The proposed rule change was published for comment in the Federal Register on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See NYSE Arca Rule 1.1(l) for a definition of Official Closing Price.

⁴ With respect to equities traded on the Exchange, the term “Derivative Securities Product” means a security that meets the definition of “derivative securities product” in Rule 19b-4(e) under the Act. See NYSE Arca Rule 1.1(k). For purposes of Rule 19b-4(e), a “derivative securities product” means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest, in, an underlying instrument. 17 CFR 240.19b-4(e).

⁵ See NYSE Arca Rule 7.35-E(d) regarding the operation of Closing Auctions on the Exchange.

September 17, 2018.⁶ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

On March 20, 2018, the Commission approved the Exchange's proposal ("OCP Filing") to amend NYSE Arca Rule 1.1(l) to provide for how the Official Closing Price is determined for an Exchange-listed security that is a Derivative Securities Product if the Exchange does not conduct a Closing Auction or if a Closing Auction trade is less than a round lot.⁷ As described in the Notice, the Exchange had sought a method for deriving the Official Closing Price that would be more indicative of the actual value of the securities, in particular for listed securities that are thinly traded or generally illiquid.⁸ Prior to approval of the OCP Filing, the Official Closing Price for such securities would have been based on a last-sale trade that may have been hours, days, or even months old and therefore not necessarily indicative of their true and current value. With approval of the OCP Filing, the Exchange adopted a revised calculation to derive the value for securities that have a potentially stale last-price, depending on when the last consolidated last-sale eligible trade occurred. Specifically, for such securities, the Official Closing Price would be derived by adding a percentage of the TWAP of the NBBO midpoint measured over the last five minutes before the end of Core Trading Hours and a percentage of the last consolidated last-sale eligible trade before the end of Core Trading Hours on that trading day.⁹

⁶ See Securities Exchange Act Release No. 84079 (September 11, 2018), 83 FR 46981 ("Notice").

⁷ See Securities Exchange Act Release No. 82907 (March 20, 2018), 83 FR 12980 (March 26, 2018) (order approving SR-NYSEArca-2018-08).

⁸ See Notice, supra, note 6, at 46981.

⁹ See NYSE Arca Rule 1.1(l)(1)(B)(i)-(vi).

The Exchange now proposes to further amend NYSE Arca Rule 1.1(l)(1)(B) to exclude from the TWAP calculation a midpoint that is based on an NBBO that the Exchange believes is too wide and therefore not reflective of the security's true and current value.¹⁰ Specifically, the Exchange proposes to exclude an NBBO midpoint from the calculation of the Official Closing Price if that midpoint, when multiplied by ten percent (10%), is less than the spread of that NBBO.¹¹ The Exchange also would exclude a crossed NBBO from the calculation.¹²

The Exchange notes that its proposed change to the Official Closing Price calculation in this scenario is similar to how it considers an "Auction NBBO," which is used as a basis for determining the Auction Reference Price for the Core Open Auction.¹³ To qualify as an Auction NBBO for the Core Open Auction, there must be both a bid and an offer that is not zero, the NBBO cannot be crossed, and the midpoint of the NBBO when multiplied by a designated percentage cannot be greater than or equal to the spread of the NBBO.¹⁴

¹⁰ See Notice, supra, note 6, at 46981.

¹¹ See proposed NYSE Arca Rule 1.1(l)(1)(B).

¹² See id. For an example of this proposed new process, see Notice, supra, note 6, at 46981-82.

¹³ The term "Auction NBBO" means an NBBO that is used for purposes of pricing an auction. See NYSE Arca Rule 7.35-E(a)(5). The Exchange also uses the Auction NBBO for determining the Indicative Match Price in specified situations for the Closing Auction. See NYSE Arca Rule 7.35-E(a)(8)(C).

¹⁴ See NYSE Arca Rule 7.35-E(a)(5). The Exchange notes that, unlike its current proposal to codify a designated percentage of ten percent (10%) to be used in the TWAP calculation for the Official Closing Price, the designated percentage used for determining the Auction NBBO for the Core Open Auction is determined by the Exchange upon prior notice to ETP Holders. See Notice, supra, note 6, at 46982.

The Exchange also proposes a non-substantive clarifying change to NYSE Arca Rule 1.1(II) to specify that the process under NYSE Arca Rule 1.1(II)(1)(D) would be utilized if the Official Closing Price cannot be determined under NYSE Arca Rule 1.1(II)(1)(A), (B), or (C).¹⁵

The Exchange anticipates the implementation date for the proposed rule change will be in the first quarter of 2019, and the Exchange will announce such implementation date by Trader Update.¹⁶

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,¹⁹ which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹⁵ See proposed NYSE Arca Rule 1.1(II)(1)(D).

¹⁶ See Notice, supra, note 6, at 46982.

¹⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78f(b)(8).

The proposal would set forth an additional procedure governing how the Exchange would determine the Official Closing Price in Exchange-listed securities that are Derivative Securities Products when the Exchange does not conduct a Closing Auction or if a Closing Auction trade is less than a round lot. The Commission notes that the primary listing market's closing price for a security is relied upon by market participants for a variety of reasons, including, but not limited to, calculation of index values, calculation of the net asset value of mutual funds and exchange-traded products, the price of derivatives that are based on the security, and certain types of trading benchmarks such as volume weighted average price strategies. As the Exchange notes, its current calculation for the Official Closing Price in such a scenario is designed to utilize more recent and reliable market information to provide a closing price that more accurately reflects the true and current value of a security that may be thinly traded or generally illiquid and when the Official Closing Price for such security may otherwise be based on a potentially stale last-sale trade.²⁰ The Exchange now proposes to exclude from the TWAP calculation used under this process a midpoint that is based on an NBBO that the Exchange believes is too wide and therefore not reflective of the security's true and current value.²¹ The Commission believes that this exclusion, utilizing a specified percentage of the midpoint value, is a reasonable approach to avoid utilizing market information in the TWAP calculation that may provide less accurate information about the true value of a security. The Commission therefore believes that the Exchange's proposal is reasonably designed to achieve the Act's objectives to protect investors and the public interest. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

²⁰ See Notice, supra note 6, at 46981.

²¹ See id.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-NYSEArca-2018-63) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

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Assistant Secretary

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).