

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92657; File No. SR-NYSErca-2021-71)

August 12, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.34-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 4, 2021, NYSE Arca, Inc. (“NYSE Arca” 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 amend Rule 7.34-E (Trading Sessions) to begin accepting orders 90 minutes before the Early Trading Session begins. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Rule 7.34-E (Trading Sessions) to begin accepting orders 90 minutes before the Early Trading Session begins.

Currently, Rule 7.34-E(a)(1) provides that the Early Trading Session will begin at 4:00 a.m. Eastern Time and conclude at the commencement of the Core Trading Session. The Rule further provides that the Exchange will begin accepting orders 30 minutes before the Early Trading Session begins and that the Early Open Auction will begin the Early Trading Session.

The Exchange proposes to amend Rule 7.34-E(a)(1) to provide that the Exchange would begin accepting orders 90 minutes before the Early Trading Session begins, i.e., at 2:30 a.m. Eastern Time. The Exchange proposes to begin accepting orders earlier to compete with non-exchange trading venues that begin accepting orders before 3:30 a.m. Eastern Time. By moving the Exchange's order acceptance time earlier, ETP Holders that route orders to multiple venues before 3:30 a.m. Eastern Time would be able to include the Exchange in their early morning routing determinations. The Exchange does not propose to change the time when the Early Trading Session would begin or make any other rule changes.

Because of the technology changes required to implement this change, subject to effectiveness of this proposed rule change, the Exchange will announce via Trader Update when the Exchange would begin accepting orders 90 minutes before the Early Trading Session begins, which the Exchange anticipates would be in August 2021.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Sections 6(b)(5) of the Act,⁵ in that it is designed to promote just and equitable principles of trade, 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 remove impediments to and perfect the mechanism of a free and open market and a national market system because it would not change any trading functions on the Exchange and would only move up the time when the Exchange would begin accepting order flow for trading in the Early Trading Session. In addition, an ETP Holder that opts to send in orders during this earlier time period could, as today, designate which trading session such orders would be eligible to trade, including per Rule 7.34-E(b), a trading session later in the trading day (“an order designated for a later trading session will be accepted but not eligible to trade until the designated trading session begins”) or choose to cancel such orders before they become eligible to trade. The Exchange further believes that the proposed rule change would promote competition among the Exchange and non-exchange venues because it would allow ETP Holders that currently route to non-exchange trading venues prior to 3:30 a.m. Eastern Time to include the Exchange in their early morning routing determinations.

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

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

Exchange believes that the proposed rule change would promote intermarket competition between the Exchange and non-exchange trading venues that accept order flow before 3:30 a.m. Eastern Time.

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 Act⁶ and Rule 19b-4(f)(6) thereunder.⁷ 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.

The Exchange has asked the Commission to waive the 30-day operative delay.⁸ The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because waiver of the operative delay will allow ETP Holders that route orders to non-exchange venues that accept order flow before 3:30 a.m. Eastern Time the opportunity to include the Exchange in its early morning routing determinations. According to the Exchange, this proposed rule change will not change any Exchange trading functions, including when the Early Trading Session begins, and the technology to support this proposed

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 17 CFR 240.19b-4(f)(6)(iii).

rule change will be available less than 30 days after filing. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.⁹

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)¹⁰ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2021-71 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 Number SR-NYSEARCA-2021-71. This file

⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78s(b)(2)(B).

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. 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-NYSEARCA-2021-71 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.¹¹

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).