

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96499; File No. SR-NYSEARCA-2022-80)

December 14, 2022

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.19-E

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 8, 2022, 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, II, and III 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 7.19-E pertaining to pre-trade risk controls to make additional pre-trade risk controls available to Entering Firms. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Rule 7.19-E pertaining to pre-trade risk controls to make additional pre-trade risk controls available to Entering Firms.

Background and Purpose

In 2020, in order to assist ETP Holders’ efforts to manage their risk, the Exchange amended its rules to add Rule 7.19-E (Pre-Trade Risk Controls),⁴ which established a set of pre-trade risk controls by which Entering Firms and their designated Clearing Firms⁵ could set credit limits and other pre-trade risk controls for an Entering Firm’s trading on the Exchange and authorize the Exchange to take action if those credit limits or other pre-trade risk controls are exceeded. Specifically, the Exchange added a Gross Credit Risk Limit, a Single Order Maximum Notional Value Risk Limit, and a Single Order Maximum Quantity Risk Limit⁶ (collectively, the “2020 Risk Controls”).

The Exchange now proposes to expand the list of the optional pre-trade risk controls available to Entering Firms by adding several additional pre-trade risk controls that would provide Entering Firms with enhanced abilities to manage their risk with respect to orders on the Exchange. Like the 2020 Risk Controls, use of the pre-trade risk controls proposed herein is

⁴ See Securities Exchange Act Release No. 88904 (May 19, 2020), 85 FR 31560 (May 26, 2020) (SR-NYSEArca-2020-43).

⁵ The terms “Entering Firm” and “Clearing Firm” are defined in Rule 7.19-E.

⁶ The terms “Gross Credit Risk Limit,” “Single Order Maximum Notional Value Risk Limit, and “Single Order Maximum Quantity Risk Limit” are defined in Rule 7.19-E.

optional, but all orders on the Exchange would pass through these risk checks. As such, an Entering Firm that does not choose to set limits pursuant to the new proposed pre-trade risk controls would not achieve any latency advantage with respect to its trading activity on the Exchange. In addition, the Exchange expects that any latency added by the pre-trade risk controls would be *de minimis*.

The proposed new pre-trade risk controls proposed herein would be available to be set by Entering Firms only. Clearing Firms designated by an Entering Firm would continue to be able to view all pre-trade risk controls set by the Entering Firm and to set the 2020 Risk Controls on the Entering Firm's behalf.

Proposed Amendment to Rule 7.19-E

To accomplish this rule change, the Exchange proposes to amend paragraph (a) to include a new paragraph (a)(3) that would define the term "Pre-Trade Risk Controls" as all of the risk controls listed in proposed paragraph (b), inclusive of the 2020 Risk Controls and the proposed new risk controls.

In proposed paragraph (b), the Exchange proposes to list all Pre-Trade Risk Controls available to Entering Firms, which would include the existing 2020 Risk Controls and the proposed new controls. The Exchange proposes to move the definition of Gross Credit Risk Limit from current paragraph (a)(5) to proposed paragraph (b)(1), with no substantive change. Next, the Exchange proposes to add paragraph (b)(2), which would list all available "Single Order Risk Controls." The Exchange proposes to move the definitions of Single Order Maximum Notional Value Risk Limit and Single Order Maximum Quantity Risk Limit from current paragraphs (a)(3) and (a)(4) to proposed paragraph (b)(2)(A), with no substantive change.

Next, the Exchange proposes to add paragraphs (b)(2)(B) through (b)(2)(F) to enumerate the proposed new Single Order Risk Controls, as follows:

- (B) controls related to the price of an order (including percentage-based and dollar-based controls);
- (C) controls related to the order types or modifiers that can be utilized;
- (D) controls to restrict the types of securities transacted (including but not limited to restricted securities);
- (E) controls to prohibit duplicative orders; and
- (F) controls related to the size of an order as compared to the average daily volume of the security (including the ability to specify the minimum average daily volume for the securities for which such controls will be activated).

Each of the Single Order Risk Controls in proposed paragraph (b)(2) is substantively identical to risk settings already in place on the Exchange's affiliate exchange NYSE American LLC ("NYSE American"),⁷ as well as those on the Cboe and MEMX equities exchanges.⁸ As such, the proposed new Pre-Trade Risk Controls are familiar to market participants and are not novel.

⁷ See NYSE American Rule 7.19E; see also Securities Exchange Act Release No. 96403 (November 29, 2022) (SR-NYSEAMER-2022-53).

⁸ See Cboe BZX Exchange, Inc. ("Cboe BZX") Rule 11.13, Interpretations and Policies .01; Cboe BYX Exchange, Inc. ("Cboe BYX") Rule 11.13, Interpretations and Policies .01; Cboe EDGA Exchange, Inc. ("Cboe EDGA") Rule 11.10, Interpretations and Policies .01; Cboe EDGX Exchange, Inc. ("Cboe EDGX") Rule 11.10, Interpretations and Policies .01; and MEMX LLC ("MEMX") Rule 11.10, Interpretations and Policies .01.

The Exchange proposes to move current paragraph (b)(2) to proposed paragraph (c) and to re-name that paragraph “Pre-Trade Risk Controls Available to Clearing Firms.” The Exchange proposes to renumber current paragraphs (b)(2)(A), (b)(2)(B), and (b)(2)(C) as paragraphs (c)(1), (c)(2), and (c)(3) accordingly. The Exchange proposes to smooth the grammar in proposed paragraph (c)(1) by moving the “or both” language from the end of the sentence to the beginning, to clarify that an Entering Firm that does not self-clear may designate its Clearing Firm to take either or both of the following actions: viewing or setting Pre-Trade Risk Controls on the Entering Firm’s behalf. Finally, in proposed paragraph (c)(1)(B), the Exchange proposes to specify that Clearing Firms so-designated may only set the 2020 Risk Controls on an Entering Firm’s behalf; the proposed new risk controls set out in proposed paragraph (b)(2)(B) through (b)(2)(F) are available to be set by Entering Firms only. The Exchange does not propose any changes to proposed paragraph (c)(2), and with respect to proposed paragraph (c)(3), proposes only to update internal cross-references.

The Exchange proposes to move current paragraph (b)(3) regarding “Setting and Adjusting Pre-Trade Risk Controls” to proposed paragraph (d), and to renumber current paragraphs (b)(3)(A) and (b)(3)(B) as proposed paragraphs (d)(1) and (d)(2) accordingly. The Exchange proposes to amend the text of proposed paragraph (d)(2) to state that in addition to Pre-Trade Risk Controls being available to be set at the MPID level or at one or more sub-IDs associated with that MPID, or both, Pre-Trade Risk Controls related to the short selling of securities, transacting in restricted securities, and the size of an order compared to the average daily volume of a security must be set per symbol.

The Exchange proposes to move current paragraph (b)(4) regarding “Notifications” to paragraph (e), with no changes.

The Exchange proposes to move current paragraph (c) regarding “Automated Breach Actions” to proposed paragraph (f) and to renumber current paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) as paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) accordingly. The Exchange proposes no changes to the text of proposed paragraphs (f)(1), (f)(3), or (f)(4), other than to update an internal cross-reference. With respect to proposed paragraph (f)(2) regarding “Breach Action for Single Order Risk Limits,” the Exchange proposes to change the word “Limits” in the heading to “Controls.” The Exchange further proposes to amend the text of current paragraph (c)(2) to specify in paragraph (f)(2)(A) that if an order would breach a price control under paragraph (b)(2)(B), it would be rejected or canceled as specified in Rule 7.31-E(a)(2)(B) (the “Limit Order Price Protection Rule”), while providing in paragraph (f)(2)(B) that an order that breaches the designated limit of any other Single Order Risk Control would be rejected.

The Exchange proposes to move current paragraph (d) regarding “Reinstatement of Entering Firm After Automated Breach Action” to proposed paragraph (g), with no changes.

The Exchange proposes to move current paragraph (e) regarding “Kill Switch Actions” to proposed paragraph (h) with no changes, other than to update an internal cross-reference.

The Exchange proposes no changes to Commentary .01 to the Rule. The Exchange proposes to add Commentary .02 to specify the interplay between the Exchange’s Limit Order Price Protection Rule and the price controls that may be set by an Entering Firm pursuant to proposed paragraph (b)(2)(B). Proposed Commentary .02 specifies that pursuant to paragraph (b)(2)(B), an Entering Firm may always set dollar-based or percentage-based controls as to the price of an order that are equal to or more restrictive than the levels set out in Rule 7.31-E(a)(2)(B) regarding Limit Order Price Protection (e.g., the greater of \$0.15 or 10% (for securities with a reference price up to and including \$25.00), 5% (for securities with a reference

price of greater than \$25.00 and up to and including \$50.00), or 3% (for securities with a reference price greater than \$50.00) away from the NBB or NBO). However, an Entering Firm may set price controls under paragraph (b)(2)(B) that are less restrictive than the levels in the Limit Order Price Protection Rule only (i) outside of Core Trading Hours or (ii) with respect to LOC Orders.

Continuing Obligations of ETP Holders Under Rule 15c3-5

The proposed Pre-Trade Risk Controls described here are meant to supplement, and not replace, the ETP Holders' own internal systems, monitoring, and procedures related to risk management. The Exchange does not guarantee that these controls will be sufficiently comprehensive to meet all of an ETP Holder's needs, the controls are not designed to be the sole means of risk management, and using these controls will not necessarily meet an ETP Holder's obligations required by Exchange or federal rules (including, without limitation, the Rule 15c3-5 under the Act⁹ ("Rule 15c3-5")). Use of the Exchange's Pre-Trade Risk Controls will not automatically constitute compliance with Exchange or federal rules and responsibility for compliance with all Exchange and SEC rules remains with the ETP Holder.¹⁰

Timing and Implementation

The Exchange anticipates completing the technological changes necessary to implement the proposed rule change in the first quarter of 2023, but in any event no later than April 30, 2023. The Exchange anticipates announcing the availability of the Pre-Trade Risk Controls

⁹ See 17 CFR 240.15c3-5.

¹⁰ See also Commentary .01 to Rule 7.19-E, which provides that "[t]he pre-trade risk controls described in this Rule are meant to supplement, and not replace, the ETP Holder's own internal systems, monitoring and procedures related to risk management and are not designed for compliance with Rule 15c3-5 under the Exchange Act. Responsibility for compliance with all Exchange and SEC rules remains with the ETP Holder."

introduced in this filing by Trader Update in the first quarter of 2023.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² 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 regulating, clearing, settling, processing information with respect to, and 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, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed additional Pre-Trade Risk Controls would provide Entering Firms with enhanced abilities to manage their risk with respect to orders on the Exchange. The proposed additional Pre-Trade Risk Controls are not novel; they are based on existing risk settings already in place on NYSE American,¹³ as well as those on the Cboe and MEMX equities exchanges,¹⁴ and market participants are already familiar with the types of protections that the proposed risk controls afford. As such, the Exchange believes that the proposed additional Pre-

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ See supra note 7.

¹⁴ See supra note 8.

Trade Risk Controls would provide a means to address potentially market-impacting events, helping to ensure the proper functioning of the market.

In addition, the Exchange believes that the proposed rule change will protect investors and the public interest because the proposed additional Pre-Trade Risk Controls are a form of impact mitigation that will aid Entering Firms in minimizing their risk exposure and reduce the potential for disruptive, market-wide events. The Exchange understands that ETP Holders implement a number of different risk-based controls, including those required by Rule 15c3-5. The controls proposed here will serve as an additional tool for Entering Firms to assist them in identifying any risk exposure. The Exchange believes the proposed additional Pre-Trade Risk Controls will assist Entering Firms in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system by permitting Entering Firms to set price controls under paragraph (b)(2)(B) that are equal to or more restrictive than the levels in the Exchange's Limit Order Price Protection Rule, but preventing Entering Firms from setting price controls that are less restrictive than those levels during Core Trading Hours in most circumstances. The Exchange's Limit Order Price Protection Rule protects from aberrant trades, thus improving continuous trading and price discovery. The Exchange believes that Entering Firms should not be able to circumvent the protections of that rule by setting lower levels during Core Trading Hours, except with respect to orders that participate in the Closing Auction (e.g., LOC Orders).¹⁵ But under the proposed rule, Entering

¹⁵ LOC Orders are not subject to the Limit Order Price Protection in Rule 7.31-E(a)(2)(B).

Firms seeking to further manage their exposure to aberrant trades would be permitted to set price controls at levels that are more restrictive than in the Exchange's Limit Order Price Protection Rule. Additionally, because price controls set by an Entering Firm under paragraph (b)(2)(B) would function as a form of limit order price protection, the Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system for an order that would breach such a price control to be rejected or canceled as specified in the Limit Order Price Protection Rule.

Finally, the Exchange believes that the proposed rule change does not unfairly discriminate among the Exchange's ETP Holders because use of the proposed additional Pre-Trade Risk Controls is optional and is not a prerequisite for participation on the Exchange. In addition, because all orders on the Exchange would pass through the risk checks, there would be no difference in the latency experienced by ETP Holders who have opted to use the proposed additional Pre-Trade Risk Controls versus those who have not opted to use them.

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. In fact, the Exchange believes that the proposal will have a positive effect on competition because, by providing Entering Firms additional means to monitor and control risk, the proposed rule will increase confidence in the proper functioning of the markets. The Exchange believes the proposed additional Pre-Trade Risk Controls will assist Entering Firms in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system. As a result, the level of competition should increase as public confidence in the markets is solidified.

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 Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷ 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.¹⁸

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)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii). 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 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.

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-2022-80 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-2022-80. 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. 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-2022-80 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.²⁰

Sherry R. Haywood
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).