

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-98168; File No. SR-NYSEARCA-2023-55)

August 18, 2023

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.44-E

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on August 8, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“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 7.44-E relating to the Retail Liquidity Program. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

NYSE Arca Rule 7.44-E currently sets forth the Exchange’s Retail Liquidity Program (the “Program”), which is intended to attract retail order flow to the Exchange and allow such order flow to receive potential price improvement.<sup>3</sup> Currently, Rule 7.44-E provides for a class of market participant called Retail Liquidity Providers (“RLPs”) who, along with non-RLP ETP Holders, are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer, called a Retail Price Improvement Order (“RPI Order”).<sup>4</sup> When there is an RPI Order in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, that such interest exists.<sup>5</sup> Retail Member Organizations (“RMOs”) can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPI Orders and then may interact with other liquidity on the Exchange or elsewhere, depending on the Retail Order’s instructions.<sup>6</sup> The segmentation in the Program is intended to allow retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by liquidity providers.

The Exchange has determined to discontinue the Program, as its affiliated exchange NYSE National, Inc. (“NYSE National”) is proposing to implement a similarly structured Retail

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<sup>3</sup> The Program was established on a pilot basis in 2013 and was approved by the Commission to operate on a permanent basis in 2019. See Securities Exchange Act Release No. 87350 (October 18, 2019), 84 FR 57106 (October 24, 2019) (SR-NYSEArca-2019-63).

<sup>4</sup> See Rules 7.44-E(a)(1) (defining an RLP) and 7.44-E(a)(4) (defining RPI Order).

<sup>5</sup> See Rule 7.44-E(j).

<sup>6</sup> See Rule 7.44-E(a)(2) (defining RMO); Rules 7.44-E(a)(3) and 7.44-E(k) (describing Retail Orders).

Liquidity Program.<sup>7</sup> Accordingly, the Exchange proposes to delete the text of Rule 7.44-E and designate the rule as Reserved. The Exchange notes that its affiliate New York Stock Exchange LLC (“NYSE”) also currently offers a similarly structured Retail Liquidity Program,<sup>8</sup> and both the NYSE Retail Liquidity Program and the proposed NYSE National Retail Liquidity Program would be available to RMOs that currently participate in the Program. The Exchange further notes that several other equities exchanges currently offer retail price improvement programs as well.<sup>9</sup>

Subject to the effectiveness of this proposed rule change, the Exchange will implement this change in the third quarter of 2023 and announce the implementation date by Trader Update.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> 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 the proposed designation of Rule 7.44-E as Reserved in conjunction with the decommissioning of the Program would remove impediments

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<sup>7</sup> See SR-NYSENAT-2023-17. The Exchange proposes to decommission the Program in tandem with the introduction of the NYSE National Retail Liquidity Program in the third quarter of 2023, on a date to be announced via Trader Update.

<sup>8</sup> See NYSE Rule 7.44 (setting forth NYSE Retail Liquidity Program).

<sup>9</sup> See, e.g., Cboe BYX Exchange, Inc. (“BYX”) Rule 11.24 (setting forth BYX’s Retail Price Improvement Program); Nasdaq BX, Inc. (“BX”) Rule 4780 (setting forth BX’s Retail Price Improvement Program); Investors Exchange LLC (“IEX”) Rule 11.232 (setting forth IEX’s Retail Price Improvement Program).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

to and perfect the mechanism of a free and open market and a national market system by deleting rule text that would no longer have application, thereby promoting clarity, transparency, and consistency in the Exchange's rulebook. In addition, the proposed change would ensure that the Exchange's rules accurately reflect the functionality offered by the Exchange.

The Exchange further believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and would not be inconsistent with the public interest or the protection of investors because the proposed change to designate Rule 7.44-E as Reserved would alleviate any potential confusion among market participants regarding the availability of the Program. The Exchange also believes that investors would not be harmed by the proposed change, as a similarly structured Retail Liquidity Program is offered on its affiliated exchange NYSE and is proposed to be offered on its affiliate NYSE National; in addition, several other equities exchanges also currently offer price improvement programs for retail order flow.<sup>12</sup> The Exchange further notes that it is not under any requirement to offer the Program and that participation in the Program is voluntary.

**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. As noted above, multiple equities exchanges currently offer retail price improvement programs, and investors can readily choose to direct retail order flow to any of the other available programs (including the NYSE Retail Liquidity Program or the proposed NYSE National Retail Liquidity Program, both of which are structured similarly to the Program). Accordingly, the Exchange does not believe that the discontinuation of the Program would harm competition.

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<sup>12</sup> See notes 8, 9 & 10, supra.

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 Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> 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<sup>15</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>18</sup> 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 immediately upon filing. As discussed above, the Exchange states that this proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

system and would not be inconsistent with the public interest or the protection of investors because it would remove the Program from the rulebook of Exchange and prevent potential confusion among market participants regarding the availability of the Program. The Exchange also states that retiring the Program should not harm investors because: (1) NYSE, an affiliated exchange, will continue to offer a similarly structured Retail Liquidity Program, and (2) NYSE National, an affiliated exchange, proposes to introduce a Retail Liquidity Program concurrent with this Program's discontinuance. The Exchange further states that both its offering of the Program and participation therein by ETP Holders are voluntary. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will reduce the likelihood of any potential confusion among market participants regarding the availability of the Program on the Exchange. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>19</sup>

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)<sup>20</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>19</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>20</sup> 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2023-55 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-2023-55. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2023-55 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>21</sup> 17 CFR 200.30-3(a)(12).