

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99622; File No. SR-NYSEARCA-2024-20)

February 28, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.31-E(a)(2)(B)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 16, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 7.31-E(a)(2)(B) regarding Limit Order Price Protection. 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31-E(a)(2)(B) (“Limit Order Price Protection”) to provide for the application of Limit Order Price Protection during the Core Trading Session even where a contra-side NBB (NBO) has not been established.

Currently, Rule 7.31-E(a)(2)(B) provides that a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of \$0.15 or a specified percentage away from the National Best Offer (National Best Bid) (“NBO” and “NBB,” respectively),³ and that Limit Order Price Protection will not be applied to an incoming Limit Order to buy (sell) if there is no NBO (NBB).

The Exchange has recently received requests from market participants to modify this rule so that during the Core Trading Session, Limit Order Price Protection would apply even when no contra-side NBB or NBO has been established. In such cases, market participants have suggested that the Limit Order Price Protection calculation should use an alternate reference price, such as the last consolidated round-lot price of the trading day or the prior trading day’s official closing price. That way, even if no contra-side NBB or NBO has been established, the Exchange would still apply Limit Order Price Protection using the best-available alternate reference price, thereby offering market participants greater protections against the execution of Limit Orders with aberrant prices during the Core Trading Session. The Exchange is aware that the Limit Order Price Protection rule on the MIAX Pearl equities exchange (“MIAX Pearl”)

³ For securities with a reference price between \$0.00 and \$25.00, the specified percentage is 10%; for securities with a reference price between \$25.01 and \$50.00, the specified percentage is 5%; and for securities with a reference price greater than \$50.00, the specified percentage is 3%.

currently features such a hierarchy of reference prices, so that Limit Order Price Protection is applied to all Limit Orders, even where no contra-side NBB or NBO has been established.⁴

In light of these requests from market participants, the Exchange now proposes to amend Rule 7.31-E(a)(2)(B) to provide a hierarchy of reference prices against which Limit Order Price Protection would apply during the Core Trading Session. As in the current rule, during the Core Trading Session, a Limit Order to buy (sell) would be rejected if it is priced at or above (below) the greater of \$0.15 or a specified percentage (as set forth in the accompanying table) away from the NBO (NBB). But if such NBO (NBB) has not yet been established, the Exchange would use as the reference price the last consolidated round-lot price of that trading day, or, if none, the prior trading day's Official Closing Price.⁵ This proposal is substantively identical to an immediately-effective rule change recently filed by the Exchange's affiliate exchange, NYSE American LLC ("NYSE American").⁶

As in the NYSE American filing, the Exchange does not propose for this change to apply during the Early and Late Trading Sessions. This is because with respect to both the Early and Late Trading Sessions, there is a higher likelihood that overnight news developments may move the market more than the percentages specified in the Limit Order Price Protection rule. If, in the absence of an NBO (NBB), such percentages were applied to the prior trading day's Official

⁴ Under current MIAX Pearl rules, a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of a specified dollar and percentage away from (1) the PBO (PBB), or, if unavailable, (2) the consolidated last sale price disseminated during the Regular Trading Hours on trade date, or, if unavailable, (3) the prior day's Official Closing Price. See MIAX Pearl Rule 2614(a)(1)(ix)(A).

⁵ The Exchange's proposed hierarchy of reference prices is substantially similar to the hierarchy in the MIAX Pearl rules. The only differences are that the Exchange's proposal (a) would continue to reference the NBO (NBB) instead of the PBO (PBB), as the Exchange's Limit Order Price Protection mechanism has always done; and (b) unlike the MIAX Pearl rule, which permits an odd lot to serve as "the consolidated last sale price disseminated during the Regular Trading Hours on trade date," the Exchange's proposal would instead use the last consolidated round-lot price of that trading day, which the Exchange believes is a better indication of actual market conditions. Both the MIAX Pearl rule and the Exchange's proposed rule would use the prior trading day's Official Closing Price as the reference price of last resort.

⁶ See Securities Exchange Act Release No. ____ (SR-NYSEAMER-2024-11). [sic]

Closing Price, this might lead the Exchange to reject orders that are appropriately trying to establish a quote at the new market level. For this reason, the Exchange believes the current rule should continue to govern during the Early and Late Trading Sessions, such that if there is no contra-side NBO (NBB), Limit Order Price Protection will not be applied.

Accordingly, the Exchange proposes to amend and reorganize Rule 7.31-E(a)(2)(B) into three sub-sections, with sub-section (i) describing the relevant reference prices during the Core Trading Session, sub-section (ii) describing the relevant reference price during the Early and Late Trading Sessions, and sub-section (iii) describing the balance of the current rule.

Specifically, the Exchange proposes that new sub-section (i) of Rule 7.31-E(a)(2)(B) would provide that during the Core Trading Session, a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of \$0.15 or a specified percentage (as set forth in the accompanying table) away from “(a) the NBO (NBB), or, if none, (b) the last consolidated round-lot price of that trading day, or, if none, (c) the prior trading day’s Official Closing Price.”

The Exchange proposes that new sub-section (ii) of the rule would provide that during the Early and Late Trading Sessions, a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of \$0.15 or a specified percentage (as set forth in the accompanying table) away from the NBO (NBB), and that Limit Order Price Protection will not be applied to an incoming Limit Order to buy (sell) if there is no NBO (NBB).

Finally, the Exchange proposes that the balance of the current rule be moved to new sub-section (iii) after the new subtitle “Applicability.”

The Exchange does not propose to make any other changes to the rule, nor does it propose any changes to the \$0.15 or specified percentages used in the calculation of Limit Order Price Protection.

Implementation

The Exchange anticipates implementing the proposed change in the first quarter of 2024 and, in any event, will implement the proposed rule change no later than the end of June 2024. The Exchange will announce the timing of such changes by Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and with Section 6(b)(5),⁸ 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 change would remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest, because the use a substantially similar hierarchy of reference prices for the application of Limit Order Price Protection when no contra-side NBO or NBB has been established is currently in effect on MIAX Pearl and is the subject of an immediately-effective rule filing on NYSE American, and therefore is not novel.⁹ The Exchange further believes that the proposed change would enhance the Exchange's Limit Order Price Protection mechanism during the Core Trading Session, because it would apply using the best-available alternate reference price when a contra-side NBO or NBB has not been established, thereby offering market participants greater protection from aberrant prices and improving

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See supra notes 5 and 6.

continuous trading and price discovery. In addition, the proposal to enhance Limit Order Price Protection by adding alternative reference prices to apply to the Core Trading Session would assist with the maintenance of fair and orderly markets because such mechanisms protect investors from potentially receiving executions away from the prevailing market prices.

The Exchange also believes that it would protect investors and the public interest for the Exchange to maintain the current Limit Order Price Protection rule for the Early and Late Trading Sessions. With respect to both the Early and Late Trading Sessions, there is a higher likelihood that overnight news developments may move the market more than the percentages specified in the Limit Order Price Protection rule. If, in the absence of an NBO (NBB), such percentages were applied to the prior trading day's Official Closing Price, this might lead the Exchange to reject orders that are appropriately trying to establish a quote at the new market level. For this reason, the Exchange believes that, for the protection of investors and the public interest, the current rule should continue to govern during the Early and Late Trading Sessions, such that if there is no contra-side NBO (NBB), Limit Order Price Protection will not be applied

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would not address competitive issues but rather would enhance the Exchange's Limit Order Price Protection mechanism, to further protect market participants from aberrant prices and improve continuous trading and price discovery.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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.

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)¹² 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 (<https://www.sec.gov/rules/sro.shtml>); or

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(2)(B).

- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-20 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-2024-20. 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 10:00 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. 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-2024-20, and should be submitted on or before [INSERT 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Sherry R. Haywood,

Assistant Secretary.

¹³ 17 CFR 200.30-3(a)(12).