

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83341; File No. SR-NYSEAMER-2018-22)

May 30, 2018

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change to amend Rule 7.35E Relating to the Auction Reference Price for a Trading Halt Auction Following a Regulatory Halt

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 May 15, 2018, NYSE American LLC (the “Exchange” or “NYSE American”) 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 7.35E relating to the Auction Reference Price for a Trading Halt Auction following a regulatory halt. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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.

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 7.35E (Auctions) relating to the Auction Reference Price for a Trading Halt Auction following a regulatory halt.

Under Rule 7.35E, Auction Reference Prices are used for a number of purposes, including determining Auction Collars under Rule 7.35E(a)(10)(A). Rule 7.35E(a)(8)(A) defines the Auction Reference Price applicable to auctions on the Exchange. For the Trading Halt Auction, the Reference Price is the last consolidated round-lot price of that trading day, and if none, the prior day's Official Closing Price (except as provided for in Rule 7.35E(e)(7)(A)).⁴

The Exchange proposes to amend Rule 7.35E(a)(8)(A) to permit the Exchange to designate a different Auction Reference Price for a Trading Halt Auction following a regulatory halt. The Exchange believes that if the price of a security changes during a regulatory halt, for example, due to a news event, an Auction Reference Price based on the last consolidated round-lot price of that trading day, or if none, the prior day's Official Closing Price, may no longer reflect the value of the security. In such case, using that price for purposes of calculating Auction Collars for the Trading Halt Auction may unnecessarily constrict the price at which such auction would initially be permitted and potentially lead to an unnecessary number of extensions

⁴ Rule 7.35E(e)(7)(A) provides for a different Auction Reference Price for a Trading Halt Auction following a Trading Pause. The "Official Closing Price" is defined in Rule 1.1E(gg).

before the security resumes trading, thereby delaying the Trading Halt Auction.⁵ The Exchange believes that for these scenarios, it would be appropriate to designate a different Auction Reference Price.⁶

To effect this change, the Exchange proposes to amend Rule 7.35E(a)(8)(A) to provide that if the Auction Reference Price would impact a fair and orderly Trading Halt Auction following a regulatory halt, the CEO of the Exchange, or his or her designee, may designate a different Auction Reference Price.⁷

Because the specific circumstances for a security and impact on pricing cannot be known in advance, the Exchange does not believe it would be appropriate, let alone feasible, to specify in the rule what the alternate Auction Reference Price should be. For example, NYSE Arca designated a revised Auction Reference Price for SVXY that was 84% lower than the Auction Reference Price that would have been required under the NYSE Arca rule.⁸ But SVXY

⁵ Pursuant to Rule 7.35E(e)(6), the Re-Opening Time for a Trading Halt Auction will be extended if the Indicative Match Price, before being adjusted based on Auction Collars, would be below (above) the Lower (Upper) Auction Collar or if there is a sell (buy) Market Imbalance.

⁶ For example, the Exchange's affiliated exchange, NYSE Arca, Inc. ("NYSE Arca") recently amended NYSE Arca Rule 7.35-E(a)(8)(A), which is identical to Rule 7.35E(a)(8)(A), on a temporary basis to provide for a different Auction Reference Price for a security that was the subject of a regulatory halt. See Securities Exchange Act Release No. 82716 (February 14, 2018), 83 FR 7517 (February 21, 2018) (SR-NYSEArca-2018-12). NYSE Arca sought such relief to respond to the impact of market-wide trading volatility on February 5, 2018 on the pricing of the ProShares Short VIX Short-Term Futures ETF (SVXY). In that scenario, NYSE Arca halted trading in SVXY before trading began on February 6, 2018. Because the Official Closing Price no longer reflected the value of the security and would not have been an appropriate Auction Reference Price, to protect and fair and orderly market, NYSE Arca proposed a different Auction Reference Price for the Trading Halt Auction.

⁷ See, e.g., New York Stock Exchange LLC ("NYSE") Rule 15(f)(1) (providing authority for the CEO of the NYSE to suspend the requirement to publish pre-opening indications for a security if, absent relief, the operation of the Exchange is likely to be impaired).

⁸ See supra note 6.

represents just one example. The reasons why an Auction Reference Price for a Trading Halt Auction following a regulatory halt may no longer be appropriate are myriad, and include external reasons specific to a security, such as news relating to an issuer or a corporate action. The Exchange therefore believes that the facts and circumstances for individual securities should inform the Exchange of an Auction Reference Price to designate under the proposed rule.

As noted above, the Exchange would not conduct a Trading Halt Auction until all Market Orders can be satisfied in that auction and extends the time before trading in a security resumes until such time. The Exchange believes, however, that if the last consolidated sale price no longer reflects the value of such security, a Trading Halt Auction may be unnecessarily delayed with multiple extensions. By contrast, enabling the Exchange to designate a different Auction Reference Price could potentially reduce the number of extensions, thus eliminating unnecessary delay and allowing for a fair and orderly auction process. In such case, the Auction Reference Price designated by the Exchange does not need to be perfectly calibrated, as the extension logic would ensure that the Trading Halt Auction would not occur until equilibrium among all Market Orders is met and the overall trading auction interest is satisfied at or within the auction collars. The Exchange believes that it would promote a more fair and orderly, and timely, Trading Halt Auction, for the Exchange to exercise the discretion as proposed when the last consolidated round-lot price of that trading day, or if none, the prior day's Official Closing Price, would otherwise be significantly out of sync with the value of the security. The Exchange believes that having the CEO, or his or her designee, designate the Auction Reference Price would ensure that proper deliberation would be put into determining such alternative Auction Reference Price.

The proposed rule would further provide that the Exchange would announce the updated Auction Reference Price prior to the Trading Halt Auction. Pursuant to Rule 7.35E(a)(4), the

Exchange publishes the Auction Reference Price for a Trading Halt Auction via a proprietary data feed. If the Exchange designates a different Auction Reference Price, that price would not only be disseminated via the proprietary data feed, but the Exchange would also announce the new Auction Reference Price by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁹ in general, and furthers the objectives of Section 6(b)(5),¹⁰ 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 it would promote the protection of investors and the public interest to amend Rule 7.35E(a)(8)(A) to permit the Exchange to designate a different Auction Reference Price for a Trading Halt Auction following a regulatory halt. In particular, the Exchange believes that using an Auction Reference Price based on a price that no longer reflects the value of the security could result in an unnecessary number of extensions before the Trading Halt Auction would be permitted to occur under Rule 7.35E(e)(6). By contrast, enabling the Exchange to designate a different Auction Reference Price could potentially reduce the number of extensions, thus eliminating unnecessary delay and allowing for a fair and orderly auction process. In such case, the Auction Reference Price designated by the Exchange does not need to be perfectly calibrated, as the extension logic would ensure that the Trading Halt Auction would

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

not occur until equilibrium among all Market Orders is met and the overall trading auction interest is satisfied at or within the auction collars. The Exchange believes that it would promote a more fair and orderly, and timely, Trading Halt Auction, for the Exchange to exercise the discretion as proposed when the last consolidated round-lot price of that trading day, or if none, the prior day's Official Closing Price, would otherwise be significantly out of sync with the value of the security. The Exchange believes that having the CEO, or his or her designee, designate the Auction Reference Price would ensure that proper deliberation would be put into determining such alternative Auction Reference Price.

The Exchange therefore believes that it 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 to amend Rule 7.35E(a)(8)(A) to provide that if the Auction Reference Price would impact a fair and orderly Trading Halt Auction following a regulatory halt, the CEO of the Exchange, or his or her designee, may designate a different Auction Reference Price.

The Exchange further 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, and in general, protect investors and the public interest because the Exchange would provide notice of any change to an Auction Reference Price, both via the proprietary data feed and a Trader Update, thereby providing transparency to investors and the public regarding the Auction Reference Price that would be used for a Trading Halt Auction.

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

Exchange believes that the proposed rule change is not designed to address any competitive issues, but rather to protect investors and the public by providing the Exchange with authority to designate an Auction Reference Price for a Trading Halt Auction following a regulatory halt if the Auction Reference Price, as defined in the current rule, would impair a fair and orderly auction.

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-NYSEAMER-2018-22 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2018-22. 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-NYSEAMER-2018-22 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

Eduardo A. Aleman
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).