



8011-01
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82608; File No. SR-NYSEArca-2018-08)

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend NYSE Arca Rule 1.1(I) to Establish How the Official Closing Price Would Be Determined for an Exchange-Listed Security That Is a Derivative Securities Product If the Exchange Does Not Conduct a Closing Auction or If a Closing Auction Trade Is Less Than a Round Lot

January 31, 2018

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 January 19, 2018, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 NYSE Arca Rule 1.1(I) to establish how the Official Closing Price would be determined for an Exchange-listed security that is a Derivative Securities Product if the Exchange does not conduct a Closing Auction or if a Closing Auction trade is less than a round lot. The proposed 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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.

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 NYSE Arca Rule 1.1(l) to establish how the Official Closing Price would be determined for an Exchange-listed security that is a Derivative Securities Product⁴ if the Exchange does not conduct a Closing Auction or if a Closing Auction trade is less than a round lot. The Exchange also proposes to modify the structure of current Rule 1.1(l)(1) by adding new rule text under subparagraphs (A), (B) and (C) and renumbering current subparagraphs (A) through (C) as subparagraphs (D) through (F).

Current Rule 1.1(l)(1) provides how the Exchange establishes the "Official Closing

⁴ With respect to equities traded on the Exchange, the term "Derivative Securities Product" means a security that meets the definition of "derivative securities product" in Rule 19b-4(e) under the Securities Exchange Act of 1934. See NYSE Arca Rule 1.1(k). For purposes of Rule 19b-4(e), a "derivative securities product" means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest, in, an underlying instrument. 17 CFR 240.19b-4(e).

Price” for Auction-Eligible Securities⁵ which is used for purposes of Rule 7-E.⁶

Rule 1.1(II)(1) provides that the Official Closing Price for Auction-Eligible Securities is the price established in a Closing Auction of one round lot or more on a trading day. If there is no Closing Auction or if a Closing Auction trade is less than a round lot on a trading day, the Official Closing Price is the most recent consolidated last-sale eligible trade during Core Trading Hours⁷ on that trading day. Rule 1.1(II)(1)(A)-(C) further provides that if there were no consolidated last-sale eligible trades during Core Trading Hours on that trading day, the Official Closing Price will be the prior trading day's Official Closing Price.⁸ For a security that has transferred its listing to NYSE Arca and does not have any consolidated last-sale eligible trades on its first trading day, the Official Closing Price will be the prior day's closing price disseminated by the primary listing market that previously listed such security.⁹ For a security that is a new listing and does not have any consolidated last-sale eligible trades on its first trading day, the Official Closing Price will be based on a derived last-sale associated with the price of such security before it begins trading on the Exchange.¹⁰

⁵ For purposes of the Closing Auction, an “Auction-Eligible Security” is defined in Rule 7.35-E(a)(1) to mean all securities for which the Exchange is the primary listing market and UTP Securities designated by the Exchange.

⁶ In Rule 7-E, the Exchange uses the Official Closing Price for three purposes: (1) to determine the Auction Reference Price for a security, as provided for in Rule 7.35-E(a)(8)(A); (2) to determine the Trading Collar for a security if there is no consolidated last-sale price on the same trading day, as provided for in Rule 7.31-E(a)(1)(B)(i); and (3) for securities listed on the Exchange only, for purposes of determining whether to trigger a Short Sale Price Test, as defined under Rule 7.16-E(f)(2).

⁷ The term “Core Trading Hours” is defined in Rule 1.1(j) to mean the hours of 9:30 am Eastern Time through 4:00 pm Eastern Time or such other hours as may be determined by the Exchange from time to time.

⁸ See NYSE Arca Rule 1.1(II)(1)(A).

⁹ See NYSE Arca Rule 1.1(II)(1)(B).

¹⁰ See NYSE Arca Rule 1.1(II)(1)(C).

The Exchange proposes to amend how the Official Closing Price for an Exchange-listed security that is a Derivative Securities Product would be determined if the Exchange does not conduct a Closing Auction or if a Closing Auction trade is less than a round lot. The proposed rule change is intended to allow the Exchange to provide what would be a more indicative value of such securities. Specifically, if a security is thinly traded or generally illiquid, the Official Closing Price for such security will be based on a last-sale trade that may be hours, days, or even months old and therefore not necessarily indicative of the true and current value of the security.

In the case of a stale last-sale price, the Exchange believes that a value based on the midpoint of the NBBO leading into the close may be more indicative of the true and current value of the security. To take into consideration potentially aberrant quotes, the Exchange proposes to use a time-weighted average price (“TWAP”) of the midpoint of the NBBO¹¹ over the last five minutes of trading before the end of Core Trading Hours. To further take into consideration the value of trades that may occur during the last five minutes of trading, the Exchange proposes that the Official Closing Price would be comprised of both the TWAP value and any last-sale eligible trades during that period. Last-sale eligible trades that occur closer to the close of trading would be assigned more weight in the determination of the Official Closing Price.

To effect this change, the Exchange proposes to move the first sentence of current Rule 1.1(II)(1) to new subparagraph (A) to Rule 1.1(II)(1) without any changes.

Proposed new subparagraph (B) to Rule 1.1(II)(1) would provide that if the Official Closing Price for an Exchange-listed security that is a Derivative Securities Product cannot be determined under proposed new Rule 1.1(II)(1)(A), the Official Closing Price for such security

¹¹ The term “NBBO” is defined in Rule 1.1(dd) to mean the national best bid or offer.

would be derived by adding a percentage of the TWAP of the NBBO midpoint measured over the last 5 minutes before the end of Core Trading Hours and a percentage of the last consolidated last-sale eligible trade before the end of Core Trading Hours on that trading day and that the percentages assigned to each would depend on when the last consolidated last-sale eligible trade occurred.

As proposed, if the last consolidated last-sale eligible trade occurred:

- (i) prior to 5 minutes before the end of Core Trading Hours, the TWAP would be given 100% weighting;
- (ii) between 5 minutes and 4 minutes before the end of Core Trading Hours, the TWAP will be given 40% weighting and the consolidated last-sale eligible trade would be given 60% weighting;
- (iii) between 4 minutes and 3 minutes before the end of Core Trading Hours, the TWAP will be given 30% weighting and the consolidated last-sale eligible trade would be given 70% weighting;
- (iv) between 3 minutes and 2 minutes before the end of Core Trading Hours, the TWAP will be given 20% weighting and the consolidated last-sale eligible trade would be given 80% weighting;
- (v) between 2 minutes and 1 minute before the end of Core Trading Hours, the TWAP will be given 10% weighting and the consolidated last-sale eligible trade would be given 90% weighting;
- (vi) during the last 1 minute before the end of Core Trading Hours, the TWAP will be given 0% weighting and the consolidated last-sale eligible trade would be given 100% weighting.

Proposed new subparagraph (C) to Rule 1.1(l)(1) further provides that if the Official Closing Price cannot be determined under proposed new subparagraphs (A) or (B) to Rule 1.1(l)(1), the most recent consolidated last-sale eligible trade during Core Trading Hours on that trading day would be the Official Closing Price. This proposed rule text is based on the current second sentence of Rule 1.1(l)(1), but revised to specify that the Exchange would use the most recent consolidated last-sale eligible trade if it cannot determine an Official Closing Price under either subparagraphs (A) or (B) of Rule 1.1(l)(1).

The Exchange is not proposing any substantive changes to current Rule 1.1(l)(1)(A)-(C) other than to renumber current subparagraphs (A) through (C) as (D) through (F), or to any aspect of current Rule 1.1(l)(2)-(5).

Because of the technology changes associated with this proposed rule change, the Exchange will implement the proposed rule change for determining an Official Closing Price no later than 120 days after the operative date of this proposed rule change and will announce the implementation date via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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 provide for a method of determining the Official Closing Price in an Exchange-listed security that is a Derivative Securities Product if there is no Closing Auction or if a Closing Auction trade is less than a round lot on a trading day. More specifically, the Exchange believes the proposed methodology for determining the Official Closing Price would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a more up-to-date indication of the value of such a security if there have not been any last-sale eligible trades leading in to the close of trading. The Exchange believes the proposed Official Closing Price calculation would also provide a closing price that more accurately reflects the most recent and reliable market information possible.

The Exchange further believes that the proposed TWAP calculation would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a more robust mechanism to determine the value of an affected security for purposes of determining an Official Closing Price. By using a time-weighted calculation based on the midpoint of the NBBO over the last five minutes of trading and then assigning a weight to that TWAP calculation as compared to any last-sale eligible trades leading into the close, the Exchange believes that the proposed calculation would result in the price of a security that is reflective of the true and current value of such security on that trading day. Additionally, by adding a TWAP calculation rather than just the last consolidated last-sale eligible price as of the end of regular trading hours, the Exchange would reduce the potential for an anomalous trade that may not reflect the true and current price of a security from being set as the Exchange's Official Closing Price for that security.

Finally, the Exchange believes that the proposed methodology for determining an Official Closing Price would be appropriate for Derivative Securities Products because if such securities are thinly traded, a last-sale price from earlier in a trading day or even from a prior trading day or days may no longer be reflective of the value of such product, which should be priced relative to the value of the components of such security. In such case, recent quoting may be more reflective of the value of the security. However, to take into consideration a stale quote or an aberrant trade that may occur leading into the close, the Exchange believes a time-weighted average price derived from the midpoint of the NBBO would provide a greater indication of the value of such securities.

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 proposed rule change is not designed to address any competitive issues, but rather to provide for how the Exchange would determine an Official Closing Price for Exchange-listed securities that are Derivative Securities Products if there is no Closing Auction or if a Closing Auction trade is less than a round lot on a trading day.

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-NYSEArca-2018-08 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-NYSEArca-2018-08. 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-2018-08 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.¹⁴

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Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

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