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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-82907; File No. SR-NYSEArca-2018-08]

March 20, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change 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 Product If the Exchange Does Not Conduct a Closing Auction or If a Closing Auction Trade Is Less Than a Round Lot

I. Introduction

On January 19, 2018, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Arca Rule 1.1(l) to establish how the Official Closing Price³ would be determined for an Exchange-listed security that is a Derivative Securities Product⁴ if the Exchange does not conduct a Closing Auction⁵ or if a Closing Auction trade is less than a round lot. The proposed rule change was published for comment in the Federal Register on February 6, 2018.⁶ The Commission received no comment letters on the proposed rule change. This order approves the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See NYSE Arca Rule 1.1(l) for a definition of Official Closing Price.

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 Act. 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).

⁵ See NYSE Arca Rule 7.35-E(d) for further information on how the Closing Auctions would function on the Exchange.

⁶ See Securities Exchange Act Release No. 82608 (January 31, 2018), 83 FR 5284 (“Notice”).

proposed rule change.

II. Description of the Proposed Rule Change

Current NYSE Arca Rule 1.1(l)(1) provides how the Exchange establishes the “Official Closing Price” for Auction-Eligible Securities,⁷ which is used for purposes of NYSE Arca Rule 7-E.⁸ Specifically, 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.⁹ 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 Hours¹⁰ on that trading day. 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.¹¹ For a security that has transferred 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 former primary listing market.¹² For a security that is a new listing and does not have any consolidated last-sale eligible trades on its

⁷ For purposes of the Closing Auction, an “Auction-Eligible Security” is defined to mean all securities for which the Exchange is the primary listing market and UTP Securities designated by the Exchange. See NYSE Arca Rule 7.35-E(a)(1).

⁸ In NYSE Arca 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 NYSE Arca 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 NYSE Arca 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 NYSE Arca Rule 7.16-E(f)(2).

⁹ See NYSE Arca Rule 1.1(l)(1).

¹⁰ The term “Core Trading Hours” means 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. See NYSE Arca Rule 1.1(j).

¹¹ See NYSE Arca Rule 1.1(l)(1)(A).

¹² See NYSE Arca Rule 1.1(l)(1)(B).

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.¹³

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.¹⁴ The Exchange proposes that the Official Closing Price for such securities would be comprised of both a time-weighted average price (“TWAP”) of the midpoint of the NBBO¹⁵ over the last five minutes of trading before the end of Core Trading Hours and any last-sale eligible trades during that period.

Specifically, if the Official Closing Price for an Exchange-listed security that is a Derivative Securities Product cannot be determined under proposed NYSE Arca Rule 1.1(II)(1)(A) (i.e., if the Exchange does not conduct a Closing Auction or if a Closing Auction trade is less than a round lot), the Official Closing Price for such security would be derived by adding a percentage of the TWAP of the NBBO midpoint measured over the last five 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 the percentages assigned to each would depend on when the last consolidated last-sale eligible trade occurred.¹⁶

The Exchange proposes that, 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;

¹³ See NYSE Arca Rule 1.1(II)(1)(C).

¹⁴ According to the Exchange, if a security is thinly traded or generally illiquid, the Official Closing Price for such security will currently be based on a last-sale trade that may be hours, days, or months old and may not be indicative of the true and current value of the security. See Notice, *supra* note 6, at 5285.

¹⁵ The term “NBBO” means the national best bid or offer. See NYSE Arca Rule 1.1(dd).

¹⁶ See proposed NYSE Arca Rule 1.1(II)(1)(B).

- (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; and
- (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.

If the Official Closing Price cannot be determined under proposed NYSE Arca Rule 1.1(II)(1)(A) or (B), as described above, the most recent consolidated last-sale eligible trade during Core Trading Hours on that trading day would be the Official Closing Price.¹⁷ If there are no consolidated last-sale eligible trades during Core Trading Hours on that trading day, the

¹⁷ See proposed NYSE Arca Rule 1.1(II)(1)(C).

Official Closing Price will be the prior trading day's Official Closing Price, as under the current rule.¹⁸

The Exchange states that it will implement the proposed rule change no later than 120 days after this approval of the proposed rule change and will announce the implementation date via Trader Update.¹⁹

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²¹ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,²² which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹⁸ See proposed NYSE Arca Rule 1.1(l)(1)(D). Current NYSE Arca Rule 1.1(l)(1)(B) and (C) will similarly continue to apply as renumbered proposed Arca Rule 1.1(l)(1)(E) and (F).

¹⁹ See Notice, *supra* note 6, at 5285.

²⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78f(b)(8).

The proposal would set forth the procedures governing how the Exchange would determine the Official Closing Price in Exchange-listed securities that are Derivative Securities Products when the Exchange does not conduct a Closing Auction or if a Closing Auction trade is less than a round lot. The Commission notes that the primary listing market's closing price for a security is relied upon by market participants for a variety of reasons, including, but not limited to, calculation of index values, calculation of the net asset value of mutual funds and exchange-traded products, the price of derivatives that are based on the security, and certain types of trading benchmarks such as volume weighted average price strategies. As the Exchange notes, the proposed calculation for the Official Closing Price is designed to utilize more recent and reliable market information to provide a closing price that more accurately reflects the true and current value of a security that may be thinly traded or generally illiquid and when the Official Closing Price for such security may otherwise be based on a potentially stale last-sale trade.²³ The Commission further notes that this objective calculation would take into account more recent firm quotations over less recent trades, which trades may provide less information about the value of a security, and would assign less weight to the last consolidated last-sale eligible trade the farther away it occurred from the end of Core Trading Hours. The Commission therefore believes that the Exchange's proposal is reasonably designed to achieve the Act's objectives to protect investors and the public interest. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

²³ See Notice, supra note 6, at 5285-86.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-NYSEArca-2018-08) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Eduardo A. Aleman,
Assistant Secretary.

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

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