

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 69370, November 2, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, November 4, 2020 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Wednesday, November 4, 2020 at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: November 4, 2020.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2020-24811 Filed 11-4-20; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90311; File No. SR-NYSEArca-2020-92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 7.31-E

November 2, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on October 20, 2020, NYSE Arca, Inc. (“NYSE Arca” or “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 7.31-E to cancel ALO Orders that lock displayed interest. 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.

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 Rule 7.31-E (Orders and Modifiers) to provide that ALO Orders that lock displayed interest would be cancelled. Specifically, the Exchange proposes to amend Rules 7.31-E(e)(2), which describes how the Exchange processes ALO Orders, and 7.31-E(e)(3)(D), which describes how the Exchange processes Day ISO ALO Orders. Currently, under Rule 7.31-E(e)(2)(B)(iii), an arriving ALO Order to buy (sell) with a limit price that would lock a displayed order priced equal to or below (above) the PBO (PBB) on the NYSE Arca Book will be assigned a working price and display price one minimum price variation (“MPV”) below (above) the displayed order. Day ISO ALO Orders that would lock displayed interest on the NYSE Arca Book are processed in the same manner.⁴ The Exchange proposes to amend these rules to provide that arriving ALO and Day ISO ALO Orders with a limit price that would lock displayed interest on the NYSE Arca Book would be cancelled.

To effect this change, the Exchange proposes to delete the portion of Rule 7.31-E(e)(2)(B)(iii) providing that an ALO Order that locks displayed interest will be “assigned a working price and

display price one MPV below (above) the displayed order on the NYSE Arca Book” and instead provide that such order would be cancelled. In addition, to simplify the rule text, the Exchange proposes to combine Rule 7.31-E(e)(2)(B)(iii), as revised, into Rule 7.31-E(e)(2)(B)(ii). Proposed amended Rule 7.31-E(e)(2)(B)(ii) would thus provide:

If the limit price of the ALO Order to buy (sell) crosses the working price of any displayed or non-displayed order on the NYSE Arca Book priced equal to or below (above) the PBO (PBB), it will trade as the liquidity taker with such order(s). Any untraded quantity of the ALO Order will have a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB), provided that if the limit price of the ALO Order to buy (sell) locks the display price of any order ranked Priority 2—Display Orders on the NYSE Arca Book priced equal to or below (above) the PBO (PBB), it will be cancelled.

The Exchange also proposes the following conforming changes to Rules 7.31-E(e)(2)(B) and 7.31-E(e)(2)(C) to reflect the proposed change to how ALO Orders that lock displayed interest would be handled:

- The Exchange proposes to renumber current Rule 7.31-E(e)(2)(B)(iv) as 7.31-E(e)(2)(B)(iii) to accommodate the proposed combination of current Rules 7.31-E(e)(2)(B)(ii) and 7.31-E(e)(2)(B)(iii), as described above.
- The Exchange proposes to replace introductory references providing that an ALO Order will be “priced” or “priced or trade, or both,” with the phrase “will be processed” in Rules 7.31-E(e)(2)(B), 7.31-E(e)(2)(B)(iv)(a) (which would become Rule 7.31-E(e)(2)(B)(iii)(a) after renumbering), 7.31-E(e)(2)(C), and 7.31-E(e)(2)(C)(i). The Exchange proposes to use the term “processed” because some ALO Orders would be cancelled (and therefore not priced or traded).
- The Exchange proposes to renumber current Rule 7.31-E(e)(2)(B)(v) as 7.31-E(e)(2)(B)(iv) to accommodate the proposed combination of current Rules 7.31-E(e)(2)(B)(ii) and 7.31-E(e)(2)(B)(iii), as described above.
- The Exchange further proposes to revise Rule 7.31-E(e)(2)(C)(i) to delete the reference to orders ranked Priority 2—Display Orders because, as noted above, an ALO Order would no longer be repriced based on contra-side Priority 2—Display Orders and instead would be cancelled. Accordingly, the only time a resting ALO Order would be repriced is if the contra-side PBBO re-prices.

The Exchange proposes to amend Rule 7.31-E(e)(3)(D) to align the rules governing Day ISO ALOs with the proposed changes to ALO Orders.

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Rule 7.31-E(e)(3)(D)(ii).

Currently, pursuant to Rule 7.31–E(e)(3)(D)(ii), if the limit price of an arriving Day ISO ALO locks the display price of a displayed order on the NYSE Arca Book, it will be assigned a working price and display price one MPV below (above) the price of the displayed order. As with ALO Orders, the Exchange proposes to amend this rule to specify that arriving Day ISO ALOs that lock displayed interest would be cancelled.

To effect this change, the Exchange proposes to delete the portion of Rule 7.31–E(e)(3)(D)(ii) that provides that a Day ISO ALO that locks displayed interest will be “assigned a working price and display price one MPV below (above) the displayed order on the NYSE Arca Book” and instead provide that such order would be cancelled. In addition, to simplify the rule text, the Exchange proposes to combine Rule 7.31–E(e)(3)(D)(ii), as revised, with Rule 7.31–E(e)(3)(D)(i). Proposed amended Rule 7.31–E(e)(3)(D)(i) would thus provide:

If the limit price of the Day ISO ALO to buy (sell) crosses the working price of any displayed or non-displayed order on the NYSE Arca Book, it will trade as the liquidity taker with such order(s). Any untraded quantity of the Day ISO ALO will have a working price and display price equal to its limit price, provided that if the limit price of the Day ISO ALO to buy (sell) locks the display price of any order ranked Priority 2—Display Orders on the NYSE Arca Book, it will be cancelled.

The Exchange also proposes the following conforming changes consistent with the proposed change to cancel Day ISO ALOs that lock displayed interest:

- The Exchange proposes to renumber Rule 7.31–E(e)(3)(D)(iii) as Rule 7.31–E(e)(3)(D)(ii) to accommodate the proposed combination of current Rules 7.31–E(e)(3)(D)(i) and 7.31–E(e)(3)(D)(ii), as described above.

- The Exchange proposes to replace introductory references providing that a Day ISO ALO Order will be “priced” or “priced or trade, or both,” with the phrase “will be processed” in Rules 7.31–E(e)(3)(D) and 7.31–E(3)(D)(ii)(a) (as renumbered). The Exchange proposes this change to reflect that certain ALO Orders would be cancelled (and therefore not priced or traded).

- The Exchange proposes to delete Rule 7.31–E(e)(3)(D)(iv), which currently specifies how a Day ISO ALO will be processed after it is displayed. Because a Day ISO ALO would now either display at its limit price (because, by its terms, it can be displayed at a price that locks or crosses the contra-side PBBO)⁵ or be cancelled if it locks

displayed interest on the NYSE Arca Book, there would no longer be any circumstances where a resting Day ISO ALO would reprice and therefore this rule text would no longer be applicable.

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update. Subject to approval of this proposed rule change, the Exchange anticipates that the proposed changes will be implemented in January 2021.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ 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 the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by simplifying the treatment of ALO Orders that lock displayed orders. The Exchange believes that cancelling ALO Orders that lock displayed interest, rather than repricing them, would provide ETP Holders with greater determinism with respect to how ALO Orders would be processed on the Exchange and enhance ETP Holders’ ability to manage order flow to suit their business needs. In addition, the Exchange believes that cancelling ALO Orders that would otherwise be marketable against displayed interest on the NYSE Arca Book is consistent with the terms of the ALO Order, *i.e.*, that such orders would not take liquidity on the Exchange. The Exchange further believes that the proposed changes would promote just and equitable principles of trade and 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 proposed behavior to cancel ALO Orders on the Exchange if the limit price would lock contra-side displayed orders would be consistent with functionality available on other

exchanges for similar order types when they lock displayed interest.⁸

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 would reduce the burden on competition because it would simplify the treatment of such orders when they lock displayed interest and promote consistency with functionality offered for similar order types on other exchanges.⁹

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 within such longer period 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:

⁸ See, e.g., Cboe BZX Exchange, Inc. (“BZX”) Rules 11.9(c)(6), 11.9(g)(1)(D), 11.9(g)(2)(D), and 11.13(a)(2)(C) (a Post Only Order that locks displayed interest on BZX may be cancelled at the User’s option); Nasdaq Stock Exchange LLC (“Nasdaq”) Rule 4702(b)(4)(A) (Nasdaq Participants may opt to have Post-Only Orders cancel if they lock orders displayed on the Nasdaq Book); MEMX LLC (“MEMX”) Rules 11.6(a), 11.6(l), and 11.8(b)(10) (Users have the option to apply Post Only and Cancel Back instructions to orders that would lock displayed interest, and MEMX cancels ISO orders with Post Only and Day instructions if they lock displayed interest).

⁹ See *id.*

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁵ See Rule 7.31–E(e)(3)(C).

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2020-92 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-2020-92. 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 (<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-2020-92 and should be submitted on or before November 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90302; File No. SR-FINRA-2020-038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Amendments to FINRA Rules 5122 (Private Placements of Securities Issued by Members) and 5123 (Private Placements of Securities) That Would Require Members To File Retail Communications Concerning Private Placement Offerings That Are Subject to Those Rules' Filing Requirements

November 2, 2020.

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 October 28, 2020, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. 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

FINRA is proposing to amend FINRA Rules 5122 (Private Placements of Securities Issued by Members) and 5123 (Private Placements of Securities) that would require members to file retail communications concerning private placement offerings that are subject to those rules' filing requirements.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

FINRA Rules 5122 and 5123

Rule 5122 applies to private placements of unregistered securities issued by a member or a control entity³ ("member private offerings"). The rule requires the member or control entity to provide prospective investors with a private placement memorandum ("PPM"), term sheet or other offering document that discloses the intended use of the offering proceeds, the offering expenses and the amount of selling compensation that will be paid to the member and its associated persons.

The rule also requires a member to file the PPM, term sheet or other offering document with the FINRA Corporate Financing Department ("Corp Fin") at or prior to the first time the document is provided to any prospective investor.⁴ Many member private offerings are exempt from the rule's requirements, including among others, offerings sold only to institutional accounts, as defined in FINRA Rule 4512(c),⁵ qualified purchasers, as defined in the Investment Company Act of 1940,⁶ and qualified institutional buyers,⁷ as defined in Rule 144A under the Securities Act of 1933 ("Securities Act").⁸

³ A "control entity" means any entity that controls or is under common control with a member, or that is controlled by a member or its associated persons. See FINRA Rule 5122(a)(2). Control means beneficial interest, as defined in FINRA Rule 5130(i)(1), of more than 50 percent of the outstanding voting shares of a corporation, or the right to more than 50 percent of the distributable profits or losses of a partnership or other non-corporate legal entity. Control is determined immediately after the closing of an offering, and in the case of an offering with multiple intended closings, immediately following each closing. See FINRA Rule 5122(a)(3).

⁴ Rule 5122 also requires the filing of any amendments to such documents within 10 days of being provided to any investor or prospective investor. See FINRA Rule 5122(b)(2).

⁵ Rule 4512(c) defines "institutional account" as the account of:

(1) A bank, savings and loan association, insurance company or registered investment company;

(2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or

(3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

⁶ See 15 U.S.C. 80a-2(a)(51).

⁷ See 17 CFR 230.144A(a)(1).

⁸ Rule 5122 exempts the following member private offerings:

(1) Offerings sold solely to:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 17 CFR 200.30-3(a)(12).