

benefits all market participants by providing more trading opportunities, tighter spreads, and increased order interaction.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that its proposals will place any category of market participant at a competitive disadvantage. The Exchange believes that the proposed Market Maker growth incentive should encourage the provision of liquidity from both existing and new Market Makers that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all market participants who will be able to compete for such opportunities.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

As discussed above, the proposed growth incentive is pro-competitive in that the Exchange intends for the changes to increase liquidity addition and activity on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>11</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MRX-2023-07 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-MRX-2023-07. 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-MRX-2023-07 and should be submitted on or before April 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-97145; File No. SR-NYSEARCA-2023-06]**

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 7.44-E Relating to the Retail Liquidity Program**

March 15, 2023.

On January 10, 2023, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the Exchange's Retail Liquidity Program (the "Program").<sup>3</sup> The proposed rule

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Program was established on a pilot basis in 2013 and was approved by the Commission to operate on a permanent basis in 2019. See Securities Exchange Act Release No. 87350 (October 18, 2019), 84 FR 57106 (October 24, 2019) (SR-NYSEArca-2019-63). In connection with the Commission's approval of the Program on a pilot basis, the Commission granted the Exchange's request for exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612, which, among other things, prohibits a national securities

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

change was published for comment in the **Federal Register** on January 30, 2023.<sup>4</sup> The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act<sup>5</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 16, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,<sup>6</sup> designates April 28, 2023 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEARCA-2023-06).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97147; File No. SR-NYSEARCA-2023-24]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.40P-O Pertaining to Pre-Trade Risk Controls

March 15, 2023.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 9, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 6.40P-O (Pre-Trade and Activity-Based Risk Controls) pertaining to pre-trade risk controls to make additional pre-trade risk controls available to Entering Firms. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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 6.40P-O (Pre-Trade and Activity-Based Risk Controls) pertaining to pre-trade risk controls to make additional pre-trade risk controls available to entering Firms.<sup>4</sup> The Exchange originally filed on November 17, 2022 to make this change immediately effective and that filing was published for comment on December 5, 2022 (the “original filing”).<sup>5</sup> In light of a comment letter dated January 5, 2023,<sup>6</sup> the Exchange withdrew the original filing and now submits this revised filing to address several of the points raised in the comment letter.

##### Background and Purpose

In 2022, in connection with the Exchange’s migration to Pillar and to better assist OTP Holders and OTP Firms in managing their risk, the Exchange adopted Rule 6.40P-O, which included pre-trade risk controls, among other activity-based controls, wherein an Entering Firm had the option of establishing limits or restrictions on certain of its trading behavior on the Exchange and authorizing the Exchange to take action if those limits or restrictions were exceeded.<sup>7</sup> Specifically, the Exchange added a Single Order Maximum Notional Value Risk Limit, and a Single Order Maximum Quantity Risk Limit<sup>8</sup> (collectively, the “Initial Pre-Trade Risk Controls”).

The Exchange now proposes to expand the list of the optional pre-trade risk controls available to Entering Firms by adding several additional pre-trade risk controls that would provide

<sup>4</sup> The term “Entering Firm” refers to an OTP Holder or OTP Firm (including those acting as Market Makers). See Rule 6.40P-O(a)(1).

<sup>5</sup> See Securities Exchange Act Release No. 96829 (February 7, 2023), 88 FR 8980 (February 10, 2023) (SR-NYSEARCA-2022-82).

<sup>6</sup> See Letter to Vanessa Countryman, Secretary, Securities and Exchange Commission, from Gerard P. O’Connor, Vice President and General Counsel of Hyannis Port Research, Inc. (“HPR Letter”) dated January 19, 2023, available at <https://www.sec.gov/comments/sr-bx-2022-022/srbx2022022-20155250-323599.pdf>. HPR is a provider of (among other things) non-exchange based risk controls solutions.

<sup>7</sup> See Securities Exchange Act Release No. 94072 (January 26, 2022), 87 FR 5592 (February 1, 2022) (Notice of filing Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4) (SR-NYSEARCA-2021-47).

<sup>8</sup> The terms “Single Order Maximum Notional Value Risk Limit, and “Single Order Maximum Quantity Risk Limit” are defined in Rule 6.40P-O(a)(2).

exchange from accepting or ranking orders priced greater than \$1.00 per share in an increment smaller than \$0.01. See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEARCA-2013-107).

<sup>4</sup> See Securities Exchange Act Release No. 96741 (Jan. 24, 2023), 88 FR 5948.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 200.30-3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.